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

OHIO CRIMINAL SENTENCING COMMISSION MEETING

November 16, 2023 10am-12pm
Ohio Judicial Center, Room 281 or Zoom

I. Call to order
II. Roll Call
III. Approval of minutes from September 21, 2023
IV. Introduction of Executive Director Melissa Knopp
V. Committee Reports
- Adult Criminal Justice Committee
- Juvenile Justice Committee
- Data Committee

VI. Legislative Update
VII. Old Business
- Operating Guidelines **(VOTE NEEDED)**
  - Formation of Personnel Committee, *pending outcome of Operating Guidelines vote* **(VOTE NEEDED)**

VIII. New Business
- Commission appointments
- Representative Jarrells' proposed Postconviction relief bill **(VOTE NEEDED)**
- The Ohio Supreme Court's request to consider statutory changes to address wrongful convictions **(VOTE NEEDED)**
- House Bill 1 (HB1) Biennial Impact Study **(VOTE NEEDED)**

IX. Announcements
X. Adjourn

2024 Full Commission Meeting Dates

All meetings will be at the Ohio Judicial Center unless otherwise indicated:

Thursday, February 15, 2024 at 10am, Room 101
Thursday, May 16, 2024 at 10am, Riffe Center 31st Floor, South B&C
Thursday, September 12, 2024 at 10am, Room 101
Thursday, November 21, 2024 at 10am, Room 101

Included: Minutes of September 21, 2023 DRAFT, legislative updates, revised Operating Guidelines DRAFT, postconviction relief bill materials, Supreme Court request to consider statutory changes to address wrongful convictions, HB1 Biennial Impact Study DRAFT

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FULL SENTENCING COMMISSION MEETING MINUTES
September 21, 2023
10:00 a.m.
Ohio Judicial Center, Room 281 or Zoom

MEMBERS PRESENT

Sharon L. Kennedy, Chief Justice, Chair
Nick Selvaggio, Common Pleas Court Judge, Vice-Chair
Amy Ast, Director, Department of Youth Services
Brooke Burns, Ohio Public Defender, Juvenile Department
Beth Cappelli, Judge, Municipal Court
Annette Chambers-Smith, Director, Department of Rehabilitation and Correction
Charles Chandler, Peace Officer
Nicole Condrey, Mayor
Robert DeLamatre, Judge, Juvenile Court
Sean Gallagher, Judge, Appellate Court
Gwen Howe-Gebers, County Prosecutor, Juvenile
Kristen Johnson, Judge, Probate and Juvenile Court
Robert Krapenc, Attorney, Criminal Defense
Teri LaJeunesse, Victim Representative
Nathan Manning, Ohio Senate
Charles "Chip" McConville, County Prosecutor
Stephen McIntosh, Judge, Common Pleas Court
Jennifer Muench-McElfresh, Judge, Common Pleas Court
Rob Sellers, State Highway Patrol
Darren Shulman, Municipal Prosecutor
Larry Sims, Sheriff
Brandon Standley, Law Enforcement
Helen Wallace, Judge, Juvenile Court
Josh Williams, House of Representatives
Donnie Willis, County Commissioner
Tyrone Yates, Judge, Municipal Court
Tim Young, Ohio Public Defender

MEMBERS ATTENDING BY ZOOM

Vernon Sykes, Ohio Senate

GUESTS PRESENT

In Person:

Director Lori Criss, Ohio Mental Health and Addiction Services
Dustin Ensinger, Gongwer News

Kyle Petty, Ohio County Commissioner's Association
Marta Mudri, Ohio Judicial Conference
Dr. Hazem Said, University of Cincinnati

Zoom:
Paul Pfeifer, Ohio Judicial Conference
Paul Teasley, Hannah News

STAFF PRESENT
Michael Crofford, Research Specialist
Will Davies, Criminal Justice Counsel
Niki Hotchkiss, Interim Director
Todd Ives, Research Specialist
Alex Jones, Criminal Justice Counsel

CALL TO ORDER AND APPROVAL OF MEETING MINUTES

Chief Justice Kennedy called the meeting to order at 10:00 am. Niki Hotchkiss took roll call, and a quorum was achieved. Sheriff Sims motioned to approve the July 27, 2023, meeting notes. Chief Chandler seconded. A roll call vote was taken and the minutes were approved unanimously.

COMMITTEE REPORTS

Director Chambers-Smith updated the group on the Criminal Justice Committee. They are currently rounding up membership and getting consensus from the group on what to work on. The committee intends to bring the membership and work to the Commission for approval. The major tasks include the development of the uniform sentencing entry as well as clarifying Senate Bill 201. The first meeting date is set for October 19, at 2:30 PM via zoom. Judge Yates signaled his intent to join the Committee.

Judge Wallace updated the Commission on the Juvenile Justice subcommittee. A proposed roster was circulated among the Commission. Judge Wallace welcomed participation from anyone else on the Commission. Judge Wallace moved that the roster be adopted. Judge Selvaggio seconded. A roll call vote was held and the motion carried unanimously. The Juvenile Justice Committee will be meeting at 12:30, in person with a Zoom option, on September 21, to go over their agenda. The operating guidelines will be discussed at the Committee meeting.

Director Criss updated the Commission on the Data Committee. The initial Data Committee was held on the morning of September 21. The group is using the first meetings to level-set and fully understand the ORC 181 statutory requirements. The group is also evaluating what data is already collected and the development of a data governance structure. The group will move forward from there to determine how the data can be deployed to inform policy. Director Criss invited others to join the group as well. Representative Williams agreed to joint the Data Committee.

OLD BUSINESS

Uniform Sentencing Entry and Associated Template Draft Contract with University of Cincinnati (Option 1: $210,000; Option 2: $400,000)

Dr. Said summarized the two options for the continued development of the USE. The first option represents the minimum to keep the USE going. The second proposal takes a more active role in advancing features of the system and collecting feedback from judges. The largest part of that is customizing entries for judges. Another part of it is the development of the offense codes associated with the template. This would make the form smarter, allowing the judge to see what is mandatory. Mayor Condrey asked how many active members are on the system. Niki updated the group that 54 judges have login credentials. At least 30 judges are using the form regularly.

Judge Selvaggio asked about the attachments of the contract, and why the indicator "Attachment F" is at the top. Dr. Said explained that the original contract was signed in 2020, and the subsequent contracts are amendments to the contract. The contract gives the Commission the right to the software, but UC may use the code for non-competing purposes. The contract also stipulates that the Commission owns the data. Judge Selvaggio suggests that a copy of the current contract and one of these options be attached. If it comes time to renew in the future or there are new members, members will be able to understand better.

Judge McIntosh asked if the Commission selected option 1, will a new judge be given the opportunity to access the system. Dr. Said answered that with option 1 any judge can reach out to get login credentials, but UC will not be active in outreach and site visits. Director Chambers-Smith asked about the ORC not being included in option 1. Dr. Said answered that it is still included in option 1. The code is still maintained, but the offense code portal and the digitization of the code is in option 2. Hazem specified that all contracts are fixed costs, as well.

There was a discussion about how the code updates happen in the system with changes to law. Dr. Said explained that this is done through Commission staff and regular meetings with the UC team. The Update Protocol Group finalizes the changes to the code based on legislative or judicial updates. These changes are developed and reviewed by the UC team.

Director Chambers-Smith asked if there was a renewed interest in the USE? Niki answered that there were about 30 regular users, and in the past two months there have been five new judges interested in the project. This is likely due to clarification in the data portion of the project, and mention of this in the OJC newsletter. Director Chambers-Smith asked if additional interest by judges will necessitate more support from UC. Niki answered that Commission staff is devising a way to bring in new judges.

Mayor Condrey asked how this contract compares to the previous contract. Dr. Said answered that this contract is 60% of the previous contract. The Chief added that this contract is less than what was proposed for 2023-2024 initially. Judge Selvaggio stated that although he is not a user of this system, he is thinking about how new judges may think of the system. The sentencing entry plays a critical role in the criminal justice process. Judge Selvaggio stated that going from 200 to 400 thousand in contract

options is not a big jump. Judge Selvaggio noted that there does not seem to be anyone on the Commission having opposition to the development of the USE.

Chief Justice Kennedy stated that a pause button was hit to allow judges who are using the system to continue using it. Eventually the body has to decide whether to continue investing in updating the entry. Niki added that legislative changes go through the Update Protocol Committee which then go to UC to be put into the system.

Judge Gallagher stated that there is a unified prison system in Ohio even though there is not a unified court system. He discussed the necessity of the USE due to the complexity of the code. As new judges come on this document is critical to teach them what they need to be aware of to write their sentencing entry. Judge Gallagher ask that whether option 1 or 2 is picked, that it be vetted through the Data Committee. Judge Gallagher stated that due to the high cost of appeals, a uniform sentencing entry is needed to get sentencing entries right.

There was a discussion about whether the opportunity to bring on new judges with option 1 would be lost. Niki stated that it will still be possible to bring on new judges with option 1. Director Chambers Smith motioned to accept option 1. Judge Yates seconded. A roll call vote was held. The motion passed with Judge Selvaggio, Judge McIntosh, and Representative Williams voting no.

NEW BUSINESS

Community Corrections Committee

A letter from OCCA asked for a stand-alone committee on community corrections. Director Chambers-Smith stated that community corrections should address both Juvenile and Adult Committees, as it would not be appropriate to put it in one or the other committee. Judge Cappelli asked if there is a need for this committee. Director Chambers-Smith said that community corrections is large and touches everything. Director Chambers-Smith suggests addressing the issue in both existing Committees rather than a standalone committee. The Chief Justice suggested reaching out to OCCA to get additional members on the Adult and Juvenile Committees.

Sheriff Simms motioned to divide the responsibilities of community corrections into the existing standalone committees. Chief Justice Kennedy Seconded. The motion was passed by unanimous roll call vote. Chief Justice Kennedy asked the Commission to permit her to write letters to OCCA and OJACC to solicit participation in the committees. Chief Standley moved to permit the Chief Justice to write the letter to the respective organizations. Judge Johnson seconded. The motion was approved unanimously by roll call vote.

Revised Commission Operation Guidelines

Chief Justice Kennedy introduced the proposed updated/revised Commission Operating Guidelines. The guidelines are required to be distributed at this meeting and voted on at the next meeting. Judge Selvaggio read Judge Spanagel's written comment, asking that section 1, subdivision (c) be modified to

allow voice votes, rather than a roll call vote with dissentions noted. Judge Selvaggio clarified that executive session needs a roll call vote. The language should note that exception.

Niki summarized the proposed changes made to the operating guidelines, noting the removal of the advisory committee, update of ad hoc committees, and updates to office operations. Judge Cappelli asked if it is realistic to approve in-state travel quarterly. Niki stated this rule is mostly for conferences, but if the Commission approves, will make it possible for the Executive Director to approve their own in-state travel as well as the in-state travel of staff. Chief Justice Kennedy stated that a monetary threshold could be set to allow single day or overnight travel. The in-state travel threshold was raised to $1,500 per trip. Additional changes included allowing for a voice vote on most matters, with the exception of entering executive session. Nos or abstentions on a voice vote would require a roll call vote. The proposed changes to the guidelines were noted and changes will be distributed once they are made. A vote will be held in November on the revised guidelines.

Personnel Matters

Chief Justice Kennedy suggested revising language in the at-will employment section of the employee position descriptions to remove the Supreme Court's role. It should be rewritten to say the "Commission and its personnel committee" instead of "the Court." The position descriptions will be rewritten to address the court expectations paragraph and a few other areas mentioning court/court business.

Judge Selvaggio moves to amend all position descriptions so that it reflects statute and the Commission rather than the Supreme Court. Director Chambers-Smith seconds. A roll call vote is held. The motion is approved with Judge Gallagher dissenting.

Mayor Condrey raised a question about the background check and suggests modifications to it. Chief Chandler recommends the personnel committee determine this.

Change of the September 2024 meeting to second Thursday

A discussion was held regarding moving the September 2024 full Commission meeting as it conflicts with the OJC meeting. Chief Justice Kennedy motioned to move the September 2024 meeting to September 12, 2024. Director Chambers-Smith seconded the motion. The motion passed by unanimous roll call vote.

EXECUTIVE SESSION

Chief Justice Kennedy moved to enter executive session at 11:15 a.m. Chip McConville seconded. The motion was unanimously approved by roll call vote.

At 11:57 a.m., Chip McConville moved to exit executive session. Chief Justice Kennedy seconded the motion. The motion was unanimously approved by roll call vote.

Chief Chandler motioned to not reclassify employees and that staff receive a 3% raise, effective July 1, 2023. Judge Yates seconded the motion. The motion passed unanimously by roll call vote.

Judge Yates moved to extend an offer of employment for Executive Director to Melissa Knopp, at the current Director's salary with the 3% salary raise. Director Ast seconded the motion. The motion was approved with Judge Gallagher, Robert Krapenc, and Judge Cappelli voting no. Darren Shulman abstained. Judge Selvaggio formally commended Niki Hotchkiss and Will Davies for their work leading the Commission and participating in the candidacy process.

ANNOUNCEMENTS: NOVEMBER MEETING IS SET AT 10:00 AM IN ROOM 281.

ADJOURN

Sheriff Simms moves to adjourn at 12:02 p.m. Judge Johnson seconded. The motion was approved unanimously by roll call vote.

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LEGISLATIVE UPDATE

November 16, 2023

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UPCOMING LEGISLATIVE SESSIONS:

House: Nov. 29 (if needed), Dec. 5 (if needed), Dec. 6, Dec. 12 (if needed), Dec. 13.

Senate: Nov. 29, Dec. 5, Dec. 6, Dec. 12, Dec. 13.

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Legislative Update
November 2023

Consistent with R.C. 181.23 and 181.25, the Commission staff regularly monitors, analyzes, and summarizes all bills that are introduced in the General Assembly that provide for new criminal offenses, change the penalty of any criminal offense, impact the sentencing structure in Ohio, and impact the number and type of offenders who are imprisoned. Additionally, the Commission staff monitors, analyzes, and summarizes all bills that impact the provisions outlined in R.C. 181.27.

135th General Assembly

The bills outlined below are listed in the order of their introduction. Bills that provide for new criminal offenses, change the penalty for existing criminal offenses, or impact sentencing are listed first, followed by an "Other Bills of Interest" section. Special attention should be given to House Bill 67, which directly impacts the work of the Commission. If passed, HB 67 would enact a new section (R.C. 181.26) requiring the Commission to perform additional duties.

Bills Providing for New Criminal Offenses
Bills That Change the Penalty for Existing Criminal Offenses
Bills Impacting Sentencing

House Bill 20 (Swearingen)
Enact the Computer Crimes Act
Status: In House Committee
Commission Interest: New Criminal Offense(s)

House Bill 20 (HB 20) was introduced on February 15, 2023, and was referred to the House Criminal Justice Committee on February 16, 2023. The fourth hearing was held on March 28, 2023. The bill creates new criminal offenses that cover crimes committed using, or involving, computers.

- The bill creates the new felony of the fifth, fourth, third or second-degree offense of computer trespass, which means to knowingly and without authorization gain access to, or cause access to be gained to, a computer, computer system, or computer network under delineated circumstances.
- The bill creates the new felony of the fourth-degree offense of electronic computer services interference which prohibits an offender from knowingly and without authorization causing the transmission of data, a computer program, or an electronic command that interrupts or suspends

access to or the use of a computer network or computer service with the intent to impair the functioning of a computer network or computer service.

- The bill creates the new felony of the fourth-degree offense of electronic data tampering which, under delineated circumstances, prohibits an offender from knowingly and without authorization altering data as it travels between two computer systems over an open or unsecure network or introducing malware into an electronic data, computer, computer system, or computer network.
- The bill creates the new felony of the fourth-degree offense of electronic data manipulation which prohibits an offender from knowingly and without authorization altering data as it travels between two computer systems over an open or unsecure network or introducing malware into any electronic data, computer, computer system, or computer network under circumstances that do not constitute the offense of electronic data tampering.
- The bill creates the new felony of the fourth-degree offense of electronic data theft which prohibits an offender from knowingly and without authorization obtaining electronic data with the intent to defraud, deceive, extort, or commit any crime OR to wrongfully control or obtain property or wrongfully gain access to electronic data.
- Finally, the bill creates the new felony of the fourth-degree offense of unauthorized data disclosure which prohibits an offender from knowingly and without authorization making or causing to be made a display, use, disclosure, or copy of data residing in, communicated by, or produced by a computer, computer system, or computer network. This new offense also prohibits an offender from knowingly and without authorization disclosing a password, identifying code, personal identification number, or other confidential information that is used as a means of access to a computer, computer system, computer network, or computer service.

The bill makes several other changes to the Ohio Revised Code related to computer crimes. Notably, the bill adds the crime of "electronic computer service interference" to the list of offenses that, if committed by reason of the race, color, religion, or national origin of another person or group of persons, constitute the crime of ethnic intimidation.

House Bill 33 (Edwards)
Establishes operating appropriations for fiscal years 2024-2025
Status: Enrolled and Signed by the Governor
Commission Interest: R.C. 181.27

House Bill 33 (HB 33) was this biennium's budget bill. The bill was introduced on February 15, 2023, and was signed by the Governor on July 4, 2023. The bill modified many aspects of the revised code. Notably, HB 33 clarified that, for purposes of R.C. 2953.32 expungements, all entities other than the bureau of criminal identification and investigation must destroy, delete, and erase the official records so that the records are permanently irretrievable. The bill also modified the sealing and

expungement eligibility criteria for offenders who have multiple F3 convictions and made fourth-degree misdemeanor domestic violence convictions eligible for sealing.

House Bill 37 (Johnson, Miller, K.)
Increase penalties for OVI and aggravated vehicular homicide
Status: In House Committee
Commission Interest: Change in Penalty for Exiting Criminal Offense(s)

House Bill 37 (HB 37) was introduced on February 15, 2023, and was referred to the House Criminal Justice Committee on February 16, 2023. The third hearing was held on October 24, 2023. The bill makes changes to 2903.06 (Aggravated Vehicular Homicide) and to 4511.19 (Operating a Vehicle Under the Influence of Alcohol or Drugs). The changes are best summarized by first examining existing law and then analyzing how the proposed changes differ from existing law.

2903.06 Aggravated Vehicular Homicide (OVI at the time of offense)

For F1 offenses, the bill makes modifications to the criteria necessary for the imposition of one of the two available mandatory prison terms.

Under current law, an offender being sentenced on an aggravated vehicular homicide offense (involving an OVI) is subject to a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if the offender has previously been convicted of:

- three or more OVI offenses within the previous ten years,
- three or more aggravated vehicular homicide offenses (involving an OVI) within the previous ten years,
- three or more aggravated vehicular assault offenses (involving an OVI) within the previous ten years,
- three or more involuntary manslaughter offenses (involving an OVI) within the previous ten years,
- a combination of three or more of the preceding offenses within the previous ten years, or
- two or more felony OVI offenses.

Under the bill, an offender being sentenced on an aggravated vehicular homicide offense (involving an OVI) committed after the effective date of the amendment is subject to a mandatory prison term of fifteen, sixteen, seventeen, eighteen, nineteen, or twenty years if the offender has previously been convicted of:

- one OVI offense within the previous ten years,
- one aggravated vehicular homicide offense (involving an OVI),
- one aggravated vehicular assault offense (involving an OVI),

- one involuntary manslaughter offense (involving an OVI), or
- one felony OVI offense.

The bill states that the fine for the offense of aggravated vehicular homicide (involving an OVI) is mandatory and shall not exceed $25,000.

4511.19 OVI

The bill increases both the mandatory minimum and possible maximum fines for OVI offenses. Under current law, an offender convicted of an OVI offense is fined as follows:

Type of Offense	Fine
1st offense in 10 years	$375-$1,075
2nd offense in 10 years	$525-$1,625
3rd offense in 10 years	$850-$2,750
Felony OVI Offense	$1,350-$10,500

Under the bill, an offender convicted of an OVI offense is fined as follows:

Type of Offense	Fine
1st offense in 10 years	$750-$1,250
2nd offense in 10 years	$1,200-$2,000
3rd offense in 10 years	$2,000-$2,750
Felony OVI Offense	$2,300-$10,500

The bill also creates a new notification judges must give at an OVI sentencing. The court must "warn" a person convicted of an OVI that any subsequent OVI conviction that results in the death of another/another's unborn could result in the person being convicted of aggravated vehicular homicide. The judge must also "warn" the person of the possible penalties for an aggravated vehicular homicide (involving an OVI) offense.

House Bill 56 (Plummer, White)
Increase penalty-fleeing police; regards motor vehicle pursuit
Status: Reported by House Committee
Commission Interest: New Criminal Offense(s); Change in Penalty for Exiting Criminal Offense(s)

House Bill 56 (HB 56) was introduced on February 16, 2023, and was referred to the House Criminal Justice Committee on February 21, 2023. The bill was reported out of Committee on October 18, 2023. HB 56 increases the penalties for the offense of failure to comply with an order or signal of a police officer, creates the new offenses of hooning and complicity to hooning, and requires law

enforcement entities to adopt a written policy governing the pursuit of a motor vehicle based on statutorily delineated criteria.

For the offense of failure to comply, the bill increases the 2921.331(B) offense level from a first-degree misdemeanor to a fourth-degree felony if the offender willfully eludes or flees police after receiving a visible or audible signal to stop. Under these circumstances, if the offender was fleeing immediately after the commission of a felony, the bill increases the offense level from a fourth-degree felony to a third-degree felony. The bill also states that, if an offender is sentenced to prison for violating 2921.331(B), the prison term shall be served consecutively to any other prison term.

The bill also creates two new offenses: hooning, and hooning complicity. Hooning, a misdemeanor of the first degree, means operating a motor vehicle in a reckless or dangerous manner to provoke a reaction from spectators by speeding, street racing, performing doughnuts, performing burnouts, drifting, rapid acceleration, squealing tires, engine revving, or allowing passengers to ride partially or fully outside of a motor vehicle. Hooning complicity, an unclassified misdemeanor, means being a spectator at a hooning event.

House Bill 83 (Humphrey)
Remove criminal penalties for certain drug offenses
Status: In House Committee
Commission Interest: Change in Penalty for Exiting Criminal Offense(s)

House Bill 83 (HB 83) was introduced on February 27, 2023, and was referred to the House Criminal Justice Committee on February 28, 2023. The bill changes the offense of possession of drug abuse instruments (R.C. 2925.12) to the offense of making drug abuse instruments. Current law states that it is a criminal offense for a person to "knowingly make, obtain, possess, or use any instrument, article or thing the…primary purpose of which is for the administration or use of a dangerous drug…when the instrument involved is a hypodermic or syringe…" Under the bill, it is only a criminal offense if a person knowingly makes such an instrument, article, or thing.

In addition, the bill also makes a change to R.C. 2925.14. Under current law, it is a criminal offense for a person to knowingly use, or possess with the purpose to use, drug paraphernalia. The bill removes this prohibition in its entirety. Thus, under HB 67, R.C. 2925.14 only prohibits a person from dealing in drug paraphernalia (i.e., to knowingly sell, or manufacture with the purpose to sell, drug paraphernalia.)

House Bill 91 (Patton)
Prohibit tracking without consent
Status: In House Committee
Commission Interest: New Criminal Offense(s)

House Bill 91 (HB 91) was introduced on March 7, 2023, and was referred to the House Criminal Justice Committee on March 14, 2023. The fourth hearing was held on October 17, 2023. The bill creates the new misdemeanor of the first-degree offense of illegal use of a tracking device or application. The new offense prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. If the victim had previously consented to the installation of a tracking device or tracking application, the bill delineates circumstances that constitute a presumptive revocation of that original consent. The offense does not apply to:

- law enforcement use as part of a criminal investigation,
- parental use in order to track a minor child (under certain circumstances),
- the caregiver of an elder person or disable adult if the tracking is necessary to ensure the safety of the elderly person or disable adult,
- any person acting in good faith on behalf of a business entity for a legitimate business purpose (under certain circumstances), or
- the owner or lessee of a motor vehicle (under certain circumstances).

House Bill 111 (LaRe, Miller, K.)
Increase sentencing range for third degree felony domestic violence
Status: Reported by House Committee
Commission Interest: Change in Penalty for Exiting Criminal Offense(s)

House Bill 111 (HB 111) was introduced on March 14, 2023, and was referred to the House Criminal Justice Committee on March 22, 2023. The bill was reported out of Committee on October 11, 2023. The bill increases the penalty range for third-degree felony domestic violence and creates a presumption in favor of a prison term for the offense. Third-degree domestic violence still requires two or more prior convictions, but the sentencing range increases from the normal third-degree felony range (12 to 36 months) to the higher-level third-degree sentencing range (12 to 60 months) with a presumption in favor of the imposition of a prison term. The bill also increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions involving pregnant victims from 6 months to 12 months and increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions resulting in serious physical harm to a woman's unborn or termination of the pregnant woman's pregnancy from 12 months to 18 months.

House Bill 122 (Pavliga, Miller, A.)
Expand intimidation offenses to include guardians ad litem
Status: Passed by House; In Senate Committee
Commission Interest: New Criminal Offense(s); Impacts Sentencing

House Bill 122 (HB 122) was introduced on March 21, 2023. HB 122 was passed by the House on June 21, 2023. The bill was introduced in the Senate on September 12, 2023, and was referred to the Senate Judiciary Committee on September 13, 2023. The bill modifies both R.C. 2921.04 (Intimidation of attorney, victim, or witness in criminal case or delinquent child action proceeding) and R.C. 2921.03 (Intimidation). The bill adds guardians ad litem to the list of special victim classes for these offenses. Additionally, the bill expands the prohibited behaviors to include attempts to abuse, threaten, or harass the victim (in addition to the existing prohibitions against attempts to influence, intimidate, or hinder.) Under the bill, when the victim of the offense is a guardian ad litem the violation is a misdemeanor of the first degree.

Senate Bill 88 (Smith, Cirino)
Expand offense of aggravated menacing for utility workers
Status: In Senate Committee
Commission Interest: New Criminal Offense(s); Impacts Sentencing

Senate Bill 88 (SB 88) was introduced on March 21, 2023, and was referred to the Senate Judiciary Committee on March 23, 2023. The second hearing was held on May 9, 2023. SB 88 expands the offense of aggravated menacing to include a new special victim class for utility workers, cable operators, and broadband workers. The bill states that a violation of this section is a first-degree misdemeanor. Subsequent violations are felonies of the fifth degree.

House Bill 139 (Roemer, Miller, J.)
Increase assault penalties if the victim is a sports official
Status: Reported by House Committee
Commission Interest: New Criminal Offense(s); Impacts Sentencing

House Bill 139 (HB 139) was introduced on March 28, 2023. HB 139 was referred to the House Criminal Justice Committee on April 18, 2023. The second hearing was held on June 13, 2023. The bill adds sports officials to the list of special victim classes for assault offenses. To qualify as a special victim, the sports official must be engaged in their official duties at the time of the offense, or the offense must be committed in retaliation for an action taken by the sports official when they were engaged in their

official duties. Under the bill, assaults of this type are misdemeanors of the first degree and require courts to impose mandatory fines of $1,500 and 40 hours of community service, in addition to other penalties allowed by law. When the offender has previously been convicted of assault with a qualifying sports official as the victim, the offense is a felony of the fifth degree. The bill also creates statutory definitions for "sports official" and "sports event".

Senate Bill 101 (Antonio, Huffman)
House Bill 259 (Schmidt, Miller, A.)
Abolish death penalty; modify juror challenges in certain cases
Status: Senate Bill 101 – In Senate Committee; House Bill 259 -In House Committee
Commission Interest: Impacts Sentencing

Senate Bill 101 (SB 101) was introduced on March 29, 2023. SB 101 was referred to the Senate Judiciary Committee on April 19, 2023. The first hearing was held on May 9, 2023. House Bill 259 (HB 259) was introduced on September 12, 2023, and was referred to the House Finance Committee on September 26, 2023. The second hearing was on October 11, 2023.

The bills abolish the death penalty in Ohio and, accordingly, modify many aspects of the revised code related to the death penalty. The bills also modify the sentencing structures for the existing offenses that allow for a death penalty sentence. Under the bills, a person convicted of aggravated murder would be sentenced in one of three ways: life imprisonment with parole eligibility after 20 years, life imprisonment with parole eligibility after 30 years, or life imprisonment without parole. HB 259 includes a $10 million appropriation for the Attorney General's Victim Compensation Program.

House Bill 196 (Williams, Seitz)
Change maximum periods of community control sanctions
Status: In House Committee
Commission Interest: Impacts Sentencing

House Bill 196 (HB 196) was introduced on May 31, 2023. The bill adds a fourth category of available sanctions for technical community control violations. Under the bill, offenders who commit a technical community control violation would be subject to the imposition of a more restrictive nonresidential sanction or a term of temporary incarceration. The available terms of temporary incarceration are:

First technical violation	Jail incarceration of not more than 15 days
Second technical violation	Jail incarceration of not more than 30 days

Third technical violation	Jail incarceration of not more than 45 days
Fourth or subsequent technical violation	Any sanction of temporary incarceration described in divisions (B)(1)(a) to (c) of R.C. 2929.15

HB 196 also modifies the definition of "technical violation" to apply to all felony offense levels, rather than only fourth degree and fifth degree felony offenses that are not offenses of violence or sexually oriented offenses.

In addition to the technical violation changes as described above, HB 196 modifies the available durations of community control sanctions:

Offense Level	*Max. Community Control Duration*
Misdemeanor (except minor misd.)	2 Years (current max: 5 years)
Fourth or Fifth Degree Felony	2 Years (current max: 5 years)
Third Degree Felony	3 Years (current max: 5 years)
First or Second Degree Felony	5 Years (current max: 5 years)

House Bill 230 (Abrams, Swearingen)
Regards drug trafficking, organized trafficking of persons
Status: In House Committee
Commission Interest: New Criminal Offense(s)

House Bill 230 (HB 230) was introduced on June 27, 2023. HB 230 was referred to the House Homeland Security Committee on September 12, 2023. The fourth hearing was held on October 25, 2023. The bill creates the new offense of participating in an organization or operation for trafficking in persons, a felony of the first degree. The bill modifies R.C. 2925.03 (Trafficking, aggravated trafficking in drugs) in several ways. The bill increases the existing third-degree felony offense level for trafficking in cocaine to the second-degree felony offense level and increases the existing second-degree felony offense level for trafficking in cocaine to the first-degree felony offense level. The bill increases the existing fourth-degree felony offense level for trafficking in heroin to the second-degree felony offense level, increases the existing third-degree felony offense level for trafficking in heroin to the first-degree felony offense level, and increases the existing second-degree felony offense level for trafficking in heroin to the first-degree felony offense level. The bill increases the existing fifth-degree felony offense level trafficking in a fentanyl-related compound to the second-degree felony offense level, increases the existing fourth-degree felony offense level for trafficking in a fentanyl-related compound to the first-degree felony offense level, increases the existing third-degree felony offense level for trafficking in a

fentanyl-related compound to the first-degree felony offense level, and increases the existing second-degree felony offense level for trafficking in a fentanyl-related compound to the first-degree felony offense level. The bill creates the new offense of trafficking in methamphetamine. The bill creates a new specification applicable to indictments for R.C. 2903.04 (Involuntary manslaughter) when the victim's death was consistent with opioid overdose or when a fentanyl-related compound was present in the victim's body in lethal amounts.

House Bill 234 (Williams, Rogers)
Regards imposing sentence on offender who entered an Alford plea
Status: In House Committee
Commission Interest: Impacts Sentencing

House Bill 234 (HB 234) was introduced on June 30, 2023. HB 234 modifies R.C. 2929.12 (Seriousness of crime and recidivism factors) and R.C. 2929.22 (Determining appropriate sentence for misdemeanors) by prohibiting courts from considering an offender's Alford plea when determining whether the offender shows genuine remorse for the offense. The bill also adds that "[t]he general assembly…hereby declares the purpose of the amendment is to address that Alford pleas are generally disfavored by courts of this state because Alford pleas do not determine the guilt or innocence of the offender."

House Bill 295 (Demetriou)
Enact the Innocence Act
Status: In House Committee
Commission Interest: New Offense(s)

House Bill 295 (HB 295) was introduced on October 10, 2023, and was referred to the House Criminal Justice Committee on October 24, 2023. The bill amends two sections of the revised code and enacts three new sections. The bill creates three new offenses: failure to verify age of person accessing materials that are obscene or harmful to juveniles, use of false identifying information to access materials that are obscene or harmful to juveniles, and nonconsensual dissemination of fabricated sexual images.

House Bill 322 (Seitz, Abrams)
Regards childhood sexual abuse registrants, offense of grooming
Status: Introduced
Commission Interest: New Offense(s)

House Bill 322 (HB 322) was introduced on November 8, 2023. HB 322 modifies the statute of limitations for R.C. 2151.421 (reporting child abuse or neglect) to provide that any prosecution for a violation of that section is barred unless it is commenced within four years after the violation is committed. Additionally, HB 322 creates the new offense of grooming. Under the bill, new R.C. 2907.071(B) prohibits someone eighteen years or older from engaging in a pattern of conduct with a minor, who is thirteen years of age but less than sixteen years of age and at least four or more years younger than the offender, when the pattern of conduct would cause a reasonable adult person to believe that the person is communicating with the minor with the purpose to entice, coerce, solicit, or prepare the minor to engage in sexual activity when the offender's purpose is to entice, coerce, solicit, or prepare the minor to engage in sexual activity. Generally, a violation of division (B) of this new section is a misdemeanor of the second degree. If the offender supplied alcohol or a drug of abuse to the minor, the violation is a felony of the fifth degree. Offenders with prior convictions would be charged with a felony of the fourth degree and, if an offender with a prior conviction supplied alcohol or a drug of abuse to the minor, a felony of the third degree. Division (C) of R.C 2907.071 would prohibit someone eighteen years or older who is in a relationship described in divisions (A)(5) to (13) of R.C. 2907.03 (generally, authority persons in the minor's life) from engaging in the pattern of behavior as described in division (B). Generally, a violation of division (C) of this new section is a misdemeanor of the first degree, and offenders who supply alcohol, victimize children under the age of 13, or have prior convictions are subject to the enhanced felony levels as described above.

Other Bills of Interest

House Bill 50 (Humphrey, Seitz)
Status: Passed by House; In Senate Committee
Create mechanism to allow relief-collateral sanction for housing

House Bill 50 (HB 50) was introduced on February 15, 2023, and was referred to the House Criminal Justice Committee on February 16, 2023. The bill passed the House on May 24, 2023, was introduced in the Senate on May 30, 2023, and was referred to the Senate Community Revitalization Committee on May 31, 2023. The second hearing was held on October 11, 2023. The bill creates a mechanism by which persons previously convicted of a criminal offense may seek relief from the collateral sanctions for housing of that conviction by applying for a Certificate of Qualification for Housing (CQH).

The CQH may be granted by the common pleas court if the court finds by a preponderance that: 1) granting the petition will materially assist the individual in obtaining housing; 2) the individual has a substantial need for the requested relief in order to live a law-abiding life and; 3) the granting of the petition would not pose an unreasonable risk to the safety of the public or any individual.

- If convicted of a felony, an offender may petition the court for the CQH at least 1 year after the offender's release from incarceration and all periods of supervision imposed after that release have ended or, if the offender was not incarcerated, at least 1 year after the offender's final release from all other sanctions imposed for the offense.
- If convicted of a misdemeanor, the offender may petition the court for the CQH at least 6 months after the offender's release from incarceration and all periods of supervision after that release have ended or, if the offender was not incarcerated, at least 6 months after the offender's final release from all other sanctions imposed for that offense.

House Bill 62 (Humphrey)
Limit the locations at which a person has no duty to retreat
Status: In House Committee

House Bill 62 (HB 62) was introduced on February 21, 2023, and was referred to the House Government Oversight Committee on February 28, 2023. Current law states that a person does not have a duty to retreat before using force in self-defense when that person is in any place in which they have a lawful right to be. The bill limits the locations at which a person has no duty to retreat before using force in self-defense to the person's residence, the person's vehicle, or the vehicle of the person's immediate family member, provided the person is lawfully in their residence or the vehicle. The bill also removes language stating that the trier of fact shall not consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.

House Bill 67 (Seitz, Williams)
Regards subsequent reduction in penalties for prior offenses
Status: In House Committee

House Bill 67 (HB 67) was introduced on February 27, 2023, and was referred to the House Criminal Justice Committee on February 28, 2023. The second hearing was held on October 24, 2023. The bill states that a qualifying offender who has been sentenced for an offense may apply to the court in which the original penalty, forfeiture, or punishment was imposed if, after the original imposition, the penalty, forfeiture, or punishment for the offense is reduced by a change to the Ohio Revised Code or the Ohio Constitution. This relief is not available to offenders sentenced on an offense of violence. After

application is made, the court shall grant the application and make the reduction if the court finds that the change in law is a reduction in a penalty, forfeiture, or punishment for an offense, that the offense is not an offense of violence, that the offender was sentenced for that offense, and that the penalty, forfeiture, or punishment was not imposed pursuant to a negotiated plea agreement.

HB 67 further provides that the Ohio Criminal Sentencing Commission shall prescribe a sample application form that may be used to make the application as described above. The bill also requires the Commission to review all enrolled acts enacted by the general assembly to determine whether the act may provide for a penalty, forfeiture, or punishment reduction. If an enrolled act may provide for one of these reductions, the Commission shall notify the state public defender, each county public defender, and the correctional institution inspection committee. This notification shall include all of the possible reductions in a penalty, forfeiture, or punishment for an offense and a sample application form.

House Bill 124 (Galonksi, Miranda)
Eliminate period of limitation – rape prosecution or civil action
Status: In House Committee

House Bill 124 (HB 124) was introduced on March 21, 2023, and was referred to the House Criminal Justice Committee on March 28, 2023. The first hearing was held on October 17, 2023. The bill modifies R.C. 2901.13(A)(2) by adding R.C. 2907.02 (Rape) to the list of offenses with no statute of limitations for criminal prosecution.

House Bill 314 (Bird, Williams)
Regards juvenile court transfer to juvenile's home county
Status: Introduced

House Bill 314 (HB 314) was introduced on October 30, 2023. The bill repeals R.C. 2151.271, eliminating the option for juvenile courts to transfer proceedings against a juvenile to the county where the juvenile resides.

OHIO
CRIMINAL SENTENCING COMMISSION
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COMMISSION OPERATING GUIDELINES

These Operating Guidelines are issued by the Ohio Criminal Sentencing Commission ("Commission") pursuant to R.C. 181.21(B) and apply to the operation of the Commission to assist in exercising the responsibilities established for the Commission under sections 181.21 through 181.2~~6~~7 of the Ohio Revised Code. These guidelines are intended to establish consistent standards and expectations in undertaking its duties and responsibilities. References to administrative policies in these guidelines refer to the Administrative Policies of the Supreme Court of Ohio.

I. General Provisions

(A) **Officers.** The Commission shall select a Vice-Chairperson and any other necessary officers. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson.

(B) **Commission Meetings.** The full Commission shall meet at least once per calendar quarter, at the call of the Chair or on the written request of eight or more of its members.

(C) **Commission Actions.** Members of the Commission shall strive for consensus on recommendations concerning criminal justice policy, procedure or legislative proposals. Official actions of the Commission will be recorded by roll call vote and dissenting opinion(s) noted or by voice vote at the discretion of the Chairperson or Vice-Chairperson if the Vice-Chairperson presides over the meeting. A roll call vote must be taken for the purpose of entering into executive session.

(D) **Meetings Open.** Meetings of the Commission and any committees shall be open to the public pursuant to R.C. 121.22.

(E) ~~**Advisory Committee.** Pursuant to R.C. 181.22, the Advisory Committee serves as an advisory body to the Commission and Advisory Committee members freely participate at all Commission meetings.~~

II. Member Attendance

(A) **Requirement.** For a fully effective Commission, a Commission member ~~or Advisory Committee member~~ shall make a good faith effort to attend, in person, each Commission meeting.

(B) **Participation by telephone or other electronic means.** A Commission member ~~or Advisory Committee member~~ who is unable to attend a meeting due

to an unavoidable conflict may request to participate by telephone or other electronic means available to the Commission. A Commission member ~~or Advisory Committee member~~ participating in this manner is **not** considered present for meeting attendance, quorum, and voting purposes.

(C) **Replacement designee.** Designees for the individual Commission members specified in R.C.181.21 shall be treated as Commission members for purposes of attendance, quorum, and voting. Other Commission ~~and Advisory Committee~~ members may request for an alternate individual to attend meetings; however, those alternates will not take the place of actual member for purposes of attendance, quorum, or voting.

(D) **Nonattendance.** If a Commission ~~or Advisory Committee~~ member misses three consecutive meetings of the full Commission pursuant to R.C. 3.17, the chairperson or executive director may recommend to the appointing authority that the member relinquish the member's position on the Commission ~~or Advisory Committee~~.

III. Commission Meeting Voting

(A) **Procedure.** Commission members in attendance at a Commission meeting may vote on any motion properly before the Commission. ~~The Advisory Committee members in attendance may vote if the Commission adopts a motion that allows for it.~~ Members may abstain from a vote if they have a conflict, noting their abstention for the record.

(B) **Quorum.** Sixteen members of the combined membership of the Commission ~~and Advisory Committee~~ constitute a quorum, and the votes of a majority of the quorum present shall be required to validate any action of the Commission.

(C) **Proxy voting.** Pursuant to Operating Guideline II(C), a Commission member may not vote by proxy unless the proxy vote is cast by a replacement designee specified under R.C. 181.21(A). If the statutory member and the replacement designee both attend a meeting, only the statutory member may vote. ~~Advisory Committee members do not have designees.~~

IV. Minutes

(A) Minutes shall be kept at every Commission meeting and distributed to the members for review and approval at the next meeting.

(B) Minutes shall, at a minimum, record any votes taken on motions by the Commission, including a notation of those members in opposition to and abstaining from such motion.

V. Parliamentary Authority

(A) The rules contained in the current edition of *Robert's Rules of Order Newly Revised (http://www.robertsrules.com/)* shall govern the Commission in all cases in which they are applicable and in which they do not conflict with State law and regulations; these Operating Guidelines; and any rules, procedures, or official action the Commission may adopt.

VI. Ethics

(A) **Compensation.** Pursuant to R.C. 181.21 and R.C. 181.22 Commission members ~~and Advisory Committee members~~ shall serve without compensation, but each member shall be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties on the commission. In order for non-Commission ~~and Advisory Committee~~ members serving on standing or ad hoc committees to receive reimbursement, they must be appointed by the Commission Chair, Vice-Chair, or standing committee chair and they must appear on the standing or ad hoc committee roster.

(B) **Ethics.** Commission ~~and Advisory Committee~~ members have the duty to file any disclosures required of them.

VII. Standing and Ad Hoc Committees

(A) **Creation.** The Commission hereby creates the following standing committees: Adult Criminal Justice committee and the Juvenile Justice committee, by vote of the Commission at the May 18, 2023 meeting. A Personnel committee is hereby created as a standing committee with the adoption of these Operating Guidelines. ~~Data Collection and Sharing committee~~. The Commission may form additional standing committees by formal vote. The Commission may also form ad hoc committees it believes necessary to complete its work. Ad Hoc committees shall be created by the Commission by formal vote and will also be dissolved by the Commission by formal vote when the Commission determines the Ad Hoc committee has completed its work and/or at the time final recommendations are presented to the Commission.

(B) **Chairpersons.** Each standing committee shall select a Chairperson and Vice-Chairperson who shall be Commission ~~or Advisory Committee~~ members. Chairpersons and Vice-Chairpersons shall serve in their capacity for a term not

exceeding two years. Chairpersons and Vice-Chairpersons shall be permitted to serve no more than two consecutive terms in their respective capacities. Ad Hoc committees created will select a chairperson in consultation with the Standing Committee Chairperson, Vice-Chairperson or Director of the Commission.

(C) **Membership.** Any standing or ad hoc committee created should consist of Commission members~~, Advisory Committee members~~ and other persons who the Standing Committee Chairperson, Vice-Chairperson, or Director of the Commission believe will assist in a full exploration and vetting of the specific issues under the review of the committee. Standing committee members and Ad Hoc committee members must be appointed by the Commission's Chair, Vice-Chair, or the Standing Committee Chairperson. The Commission will maintain member rosters for all Standing Committee and Ad Hoc committees. The Personnel committee will consist of three members, and all three must be members of the Commission.

(D) **Voting.** All appointed members to a standing and/or ad hoc committee including non-Commission~~ or non-Advisory Committee~~ members, may vote on any motion properly before the (standing or ad hoc) committee.

VIII. Office Operations

(A) **Duties of the Executive Director.** In addition to the duties outlined in the position description, statute, and those determined by the Commission, the Executive Director manages the following day-to-day duties of the Commission Office, including:

(1) **Purchase Requisitions.** Upon completion of a Purchase Requisition, including obtaining the necessary quotes and certifications according to the process directed by the Director of Fiscal Resources, the Executive Director shall indicate approval of the purchase upon determining the justification for the purchase is sufficient and the requirements of this policy have been met for all purchases $2,500 or less.

- **Signature Authority.** The Executive Director requesting the purchase shall sign all contracts and purchase approvals not requiring the approval of the Commission and signature of the Chair.

(2) **Approval of Timesheets.** Each pay period, the Executive Director shall submit the time sheet completed by every employee, as described in Administrative Policy 13, to the Office of Human Resources. The Executive

Director shall acknowledge reviewing the information contained on the form by approving it.

(3) **Approval of Employee Leave.** An employee shall prepare a request for leave and follow all procedures as listed in the Supreme Court of Ohio's Administrative Policy 12.

(4) **In-state travel.** A staff member shall obtain prior approval from the Executive Director to travel in-state at Commission expense while on Commission business with anticipated expenses equaling $1,500 or less. Prior approval may be given verbally and may be of a continuing nature, except when an employee wishes to attend a continuing education conference, seminar, or workshop, in which case the employee shall complete a Travel and Conference Approval Form. Approval for travel costs greater than $1,500 must be approved by the Commission, in the same manner as out-of-state travel, as described below. The Executive Director may approve their own in-state travel, within the limits listed here.

(B) **Duties of the Commission.** The Commission shall vote on operations matters concerning the office and the staff of the Commission and the Executive Director in certain instances, as outlined below. "Approval of the Commission" as discussed in this section refers to a majority vote of a quorum of the Commission:

(1) **Purchase Requisitions over $2,500.** Upon completion of a Purchase Requisition, including obtaining the necessary quotes and certifications according to the process directed by the Director of Fiscal Resources, the matter should be brought to the next meeting of the Commission for approval. A majority vote of a quorum of the Commission shall approve a purchase upon determining the justification for the purchase is sufficient, fiscal responsibility has been demonstrated, and the requirements of the policy of the Director of Fiscal Resources has been demonstrated, for all purchases greater than $2,500.

(2) **Out-of-state travel.** All staff members and Commission members, including the Executive Director, shall obtain prior written approval from the Commission to travel out-of-state at Commission expense while on Commission business. The procedure to obtain approval shall occur in the following order:

- The staff member shall complete a Travel and Conference Approval Form and attach a copy of the notice, agenda, course description, or letter of invitation relating to the meeting, conference, seminar, or workshop the

employee will attend and reasonable estimates of reimbursable expenses the employee expects to incur;

- The Executive Director shall indicate approval of the travel as appropriate Commission business by signing the form;
- The Director of Fiscal Resources shall indicate the availability of funds to reimburse the employee for travel expenses by signing the form;
- The Commission shall indicate approval with a majority vote of a quorum of the Commission in favor of the travel. The Chair shall indicate this approval of the travel by signing the form.

(3) **Authority of the Chair**. The Commission delegates approval to the Chair for the following matters:

- **Executive Director leave requests.** The Executive Director may present a request for leave—vacation leave, personal leave, family and medical leave, adoption or childbirth leave, unpaid leave, poll worker leave, compensatory time, sick leave, bereavement leave, court leave, or military leave—to the Chair for approval. The Chair shall indicate approval by approving the leave through the Supreme Court of Ohio system.
- **Approval of Executive Director time sheets.** Each pay period the Executive Director shall complete a timesheet consistent with Administrative Policy 13 and submit it for review and approval of the Chair.

(4) **Signature Authority.** Where the approval of the Commission is necessary as described above, this approval shall be documented in the Minutes and indicated on appropriate forms and contracts with the signature of the Chair.

(C) **Personnel Actions.** The Executive Director shall work together with the Commission's Personnel committee and the Commission on the matter of personnel actions, as described below:

(1) **Hiring of Commission Staff.** The Executive Director will lead the hiring process for the replacement or addition of Commission staff members, not including an Executive Director, according to the following procedures:

- The Executive Director shall present a job announcement and position description to the Commission for approval prior to its posting. Approval of the Commission is indicated with a majority vote of a quorum;

- The Executive Director and members of the Commission's Personnel committee will review applications received and select the candidates for a first-round interview;

- A minimum of two rounds of interviews are held, with the panel containing the Executive Director, member of Commission staff, the Supreme Court of Ohio's Director of Human Resources or the director's designee, and one or more members of the Commission's Personnel committee. Other persons may serve on an interview team, including outside consultants or experts, if appropriate;

- The Executive Director, in consultation with the Personnel committee and staff of the Office of Human Resources, shall select the most qualified applicant for the position vacancy without regard to race, color, religion, gender, sexual orientation, national origin, ancestry, age, citizenship, marital status, veteran's status, or non-disqualifying disability pursuant to Adm. P. 5 (Equal Employment Opportunity);

- The Executive Director shall present the recommended candidate to the Commission for appointment, approval indicated with the majority vote of a quorum.

(2) **Hiring of the Executive Director.** The Personnel committee, in partnership with the Chairperson or Vice-Chairperson, will lead the hiring of an Executive Director, e according to the following procedures:

- The Chair of the Personnel committee shall present a job announcement and position description to the Commission for approval prior to its posting. Approval of the Commission is indicated with a majority vote of a quorum;

- Members of the Commission's Personnel committee will review applications received and select the candidates for a first-round interview;

- A minimum of two rounds of interviews are held, with the panel containing the Personnel committee, the Supreme Court of Ohio's Director of Human Resources or the director's designee. Other persons

may serve on an interview team, including additional members of the Commission, or outside consultants or experts, if appropriate;

- The Personnel committee in consultation with the Chairperson or Vice-Chairperson of the Commission and staff of the Office of Human Resources, shall select the most qualified applicant for the Executive Director without regard to race, color, religion, gender, sexual orientation, national origin, ancestry, age, citizenship, marital status, veteran's status, or non-disqualifying disability pursuant to Administrative Policy 5 (Equal Employment Opportunity);

- The Chair of the Personnel committee shall present the recommended candidate to the Chairperson or Vice-Chairperson of the Commission for approval;

- Upon approval, the Chairperson or Vice-Chairperson shall present the recommended candidate to the Commission for appointment, approval indicated with the majority vote of a quorum.

(3) **Employee corrective action, dismissal, or demotion.** The Executive Director has the authority to take corrective action against an employee whose job performance is deemed unsatisfactory or who engages in misconduct, consistent with Administrative Policy 21.

- If, by the judgment of the Executive Director, verbal and written reprimands do not sufficiently address the issue, the Executive Director shall refer the matter to the Personnel committee for investigation and/or further corrective action including but not limited to: suspension, reduction in pay, demotion, or dismissal.

(4) **Allegations of misconduct by the Executive Director.** If there are allegations of misconduct against the Executive Director, or their job performance is deemed unsatisfactory, the matter shall be brought to the Personnel committee of the Commission. The Personnel committee shall take the following action:

- Investigate alleged misconduct and/or job performance concerns;

- Consult with the Attorney General's office for legal advice as necessary;

- If corrective action is deemed necessary based on the investigation, bring a recommendation for corrective action to the Commission

including but not limited to: verbal or written reprimand, suspension, reduction in pay, demotion, or dismissal;

- The Commission may take corrective action considered appropriate in view of the nature, frequency, and severity of the misconduct or unsatisfactory job performance and other relevant factors.

(5) **Employee compensation.** The Personnel committee shall work with the Executive Director to establish appropriate salary ranges for Commission staff based on the analysis of the compensation of similar positions.

- At the last Commission meeting of each fiscal year, the Personnel committee shall recommend a cost-of-living salary adjustment for Commission staff to the Commission. Approval of this recommendation is indicated by a majority vote of a quorum of the Commission.

(6) **Americans with Disabilities Act (ADA) and Family Medical Leave Act (FMLA) requests for accommodations and/or leave.** The personnel committee shall work with the Executive Director to address ADA and FMLA requests. The committee will present a recommendation to the Commission, approval indicated with the majority vote of a quorum of the Commission.

~~VIII.~~

IX. Amendment of Operating Guidelines

(A) The Operating Guidelines may be amended at any full meeting of the Commission by the votes of a majority of the quorum present, provided that the amendment was submitted in writing at the last previous full Commission meeting or in advance of the full Commission meeting as approved by the chairperson, vice-chairperson or executive director.

X. Effective Date

(A) These Operating Guidelines are effective upon adoption.

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OHIO CRIMINAL SENTENCING COMMISSION ROSTER

Member	Designation	Term Expires
Chief Justice Sharon L. Kennedy (Chair) Supreme Court of Ohio Ohio Judicial Center Columbus, Ohio 43215	Chief Justice	Upon leaving office
Judge Nick Selvaggio (Vice Chair) Champaign County Court of Common Pleas Urbana, Ohio 43078	Common Pleas Court Judge	02/16/26
Judge Sean Gallagher Eighth District Court of Appeals Cleveland, Ohio 44113	Judge, Appellate Court	01/01/24
Judge Stephen McIntosh Franklin County Court of Common Pleas Columbus, Ohio 43215	Common Pleas Court Judge	02/16/26
Judge Jennifer Muench-McElfresh Butler County Court of Common Pleas Hamilton, Ohio 45011	Common Pleas Court Judge	02/16/26
Judge Robert DeLamatre Erie County Domestic Relations & Juvenile Court Sandusky, Ohio 44870	Juvenile Court Judge	02/16/26
Judge Kristen Johnson Hancock County Probate & Juvenile Court Findlay, Ohio 45480	Juvenile Court Judge	01/01/27

Member	Designation	Term Expires
Judge Helen Wallace (Juvenile Justice Committee Chair) Montgomery County Juvenile Court Dayton, Ohio 45429	Juvenile Court Judge	01/01/27
Judge Beth Cappelli Fairborn Municipal Court Fairborn, Ohio 45324	Municipal Court Judge	01/01/24
Judge Kenneth Spanagel Parma Municipal Court Parma, Ohio 44129	Municipal Court Judge	02/16/25
Judge Tyrone Yates Hamilton County Municipal Court Cincinnati, Ohio 45202	Municipal Court Judge	01/01/24
Colonel Charles A. Jones Ohio Highway Patrol Columbus, Ohio 43218-2074 *Designee: S/Lt. Rob Sellers*	Ohio State Highway Patrol Superintendent	Upon leaving office
Timothy Young Ohio Public Defender Columbus, Ohio 43215 *Designee: Elizabeth Miller*	State of Ohio Public Defender	Upon leaving office
Director Amy Ast Department of Youth Services Columbus, Ohio 43228 *Designee: Justin Stanek*	Director of Youth Services	Upon leaving office

Member	Designation	Term Expires
Director Annette Chambers-Smith (Adult Criminal Justice Committee Chair) Department of Rehabilitation & Correction Columbus, Ohio 43228 *Designee: Joe Gruber*	Director of Rehabilitation of Correction	Upon leaving office
Sheriff Larry Sims Warren County Sheriff's Office Lebanon, Ohio 45036	Sheriff	08/21/25
Charles T. "Chip" McConville Knox County Prosecutor Mt. Vernon, Ohio 43050	County Prosecutor	08/21/25
Gwen Howe-Gebers Henry County Prosecutor's Office Napoleon, Ohio 43545	County Prosecutor, Juvenile	08/21/24
Chief Charles Chandler Westerville Division of Police Westerville, Ohio 43081	Peace Officer	08/21/24
Brandon Standley Bellefontaine Police Department Bellefontaine, Ohio 43311	Law Enforcement	08/21/22
Teri LaJeunesse Greene County Prosecutor's Office Victim/Witness Division Xenia, Ohio 45385	Victim Representative	08/21/23
VACANT	Ohio State Bar Association	

Member	Designation	Term Expires
Brooke Burns Office of the Ohio Public Defender Columbus, Ohio 43215	Ohio Public Defender, Juvenile Department	08/21/25
Darren Shulman Upper Arlington City Attorney's Office Upper Arlington, Ohio 43221	Municipal Prosecutor	08/21/26
Commissioner Donnie Willis Jackson County Board of Commissioners Jackson, Ohio 45103	County Commissioner	08/21/26
Mayor Nicole Condrey Middletown City Hall Middletown, Ohio 45042	Mayor	08/21/26 **vacant as of 12/31/23*
Senator Nathan Manning Statehouse Columbus, Ohio 43215	State Senator	12/31/26
Senator Vernon Sykes Statehouse Columbus, Ohio 43215	State Senator	12/31/24
Representative Latyna Humphrey Ohio House of Representatives Columbus, Ohio 43215	State Representative	12/31/24
Representative Josh Williams Ohio House of Representatives Columbus, Ohio 43215	State Representative	12/31/24

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OHIO CRIMINAL SENTENCING COMMISSION STAFF	
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Reviewed As To Form By
Legislative Service Commission

I_135_1193

135th General Assembly
Regular Session . B. No.
2023-2024

A BILL

To amend sections 181.25, 2929.06, 2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 and to enact section 2945.811 of the Revised Code to allow a person to file a motion for a new trial or a petition for postconviction relief if the person produces new evidence that would result in a reasonable likelihood of acquittal of the person.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 181.25, 2929.06, 2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 be amended and section 2945.811 of the Revised Code be enacted to read as follows:

Sec. 181.25. (A) If the comprehensive criminal sentencing structure that it recommends to the general assembly pursuant to section 181.24 of the Revised Code or any aspects of that sentencing structure are enacted into law, the state criminal sentencing commission shall do all of the following:

(1) Assist the general assembly in the implementation of

those aspects of the sentencing structure that are enacted into law;

(2) Monitor the operation of the aspects of the sentencing structure that are enacted into law and report to the general assembly no later than January 1, 1997, and biennially thereafter, on all of the following matters:

(a) The impact of the sentencing structure in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including all of the following information:

(i) The number and type of offenders who were being imprisoned in a state correctional institution under the law in effect prior to July 1, 1996, but who are being punished under a community control sanction, as defined in section 2929.01 of the Revised Code, under the law in effect on and after July 1, 1996;

(ii) The fiscal and other impact of the law in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including law enforcement agencies, the court system, prosecutors, as defined in section 2935.01 of the Revised Code, the public defender and assigned counsel system, jails and workhouses, probation departments, the drug and alcohol abuse intervention and treatment system, and the mental health intervention and treatment system.

(b) The impact of the sentencing structure in effect on and after July 1, 1996, on the population of state correctional institutions, including information regarding the number and types of offenders who are being imprisoned under the law in effect on and after July 1, 1996, and the amount of space in

state correctional institutions that is necessary to house those offenders;

(c) The impact of the sentencing structure and the sentence appeal provisions in effect on and after July 1, 1996, on the appellate courts of this state, including information regarding the number of sentence-based appeals, the cost of reviewing appeals of that nature, whether a special court should be created to review sentences, and whether changes should be made to ensure that sentence-based appeals are conducted expeditiously.

(3) Review all bills that are introduced in the general assembly that provide for new criminal offenses or that change the penalty for any criminal offense, determine if those bills are consistent with the sentencing policy adopted under division (B) of section 181.23 of the Revised Code, determine the impact of those bills upon the correctional resources of the state, and recommend to the general assembly any necessary amendments to those bills. When the commission recommends any amendment for a bill before the general assembly, it shall do so in a manner that is consistent with the requirements of section 181.24 of the Revised Code.

(4) Study criminal sentencing structures in this state, other states, and the federal government, recommend necessary changes to the sentencing structure of the state, and determine the costs and effects of any proposed changes in the sentencing structure of the state;

(5) Collect and maintain data that pertains to the cost to counties of the felony sentence appeal provisions set forth in section 2953.08 of the Revised Code, of the postconviction relief proceeding provisions set forth in division ~~(A)(2)~~ (B)(2)

of section 2953.21 of the Revised Code, and of appeals from judgments entered in such postconviction relief proceedings. The data so collected and maintained shall include, but shall not be limited to, the increase in expenses that counties experience as a result of those provisions and those appeals and the number of felony sentence appeals made, postconviction relief proceedings filed, and appeals of postconviction relief proceeding judgments made in each county under those provisions.

(B) In addition to its duties set forth in section 181.24 of the Revised Code and division (A) of this section, the state criminal sentencing commission shall review all forfeiture statutes in Titles XXIX and XLV of the Revised Code and, not later than July 1, 2002, recommend to the general assembly any necessary changes to those statutes.

Sec. 2929.06. (A)(1) If a sentence of death imposed upon an offender is set aside, nullified, vacated, or voided for any of the following reasons, the trial court that sentenced the offender shall conduct a hearing to resentence the offender in accordance with division (A)(2) of this section:

(a) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in a case in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code.

(b) The sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional.

(c) The sentence of death is set aside, nullified, or

vacated pursuant to division (C) of section 2929.05 of the Revised Code.

(d) A court has determined that the offender is a person with an intellectual disability under standards set forth in decisions of the supreme court of this state or the United States supreme court.

(e) The sentence of death is voided by a court pursuant to division ~~(H)~~ (I) of section 2953.21 of the Revised Code.

(2) At a resentencing hearing conducted under division (A)(1) of this section, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If the sentence of death was voided by a court pursuant to division ~~(H)~~ (I) of section 2953.21 of the Revised Code, the offender has waived any right to be sentenced to any sentence other than life imprisonment without parole as described in division (A)(3)(b) of that section and the court shall impose a sentence of life imprisonment without parole. If the immediately preceding sentence does not apply and if division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, except as provided in division (F) of this section, the court shall impose the sentence so required. In all other cases, except as provided

in division (F) of this section, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, except as provided in division (F) of this section, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in

this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, except as provided in division (F) of this section, the court or panel shall impose the sentence so required. In all other cases, except as provided in division (F) of this section, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole

eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

(F) A court shall not impose a sentence of life imprisonment without parole on a person under division (A) or (B) of this section for an offense that was committed when the person was under eighteen years of age.

Sec. 2945.79. A new trial, after a verdict of conviction, may be granted on the application of the defendant for any of the following causes affecting materially ~~his~~ the defendant's substantial rights:

(A) Irregularity in the proceedings of the court, jury, prosecuting attorney, or the witnesses for the state, or for any order of the court, or abuse of discretion by which the defendant was prevented from having a fair trial;

(B) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(C) Accident or surprise which ordinary prudence could not have guarded against;

(D) That the verdict is not sustained by sufficient evidence or is contrary to law; but if the evidence shows the defendant is not guilty of the degree of crime for which ~~he~~ the defendant was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and pass sentence on such verdict or finding as modified, provided that this power extends to any court to which the cause may be taken on appeal;

(E) Error of law occurring at the trial;

(F) When new evidence is discovered material to the defendant, which ~~he~~ the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing of said motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as under all the circumstances of the case is reasonable. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

(G) When new evidence is discovered that is relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case, and that were it to be considered at a

new trial, would result in a reasonable likelihood of acquittal.

Sec. 2945.80. ~~Application~~ (A) Except as provided in divisions (B) and (C) of this section, applications for a new trial shall be made by motion upon written grounds~~,~~ and ~~except for the cause of newly discovered evidence material for the person applying, which he could not with reasonable diligence have discovered and produced at the trial,~~ shall be filed within three days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing ~~his~~ a motion for new trial in which case it shall be filed within three days from the order of the court finding that ~~he~~ the defendant was unavoidably prevented from filing such motion within the time provided herein.

(B) Motions for new trial on account of newly discovered evidence under division (F) of section 2945.79 of the Revised Code shall be filed within one hundred twenty days following the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which ~~he~~ the defendant must rely, such motion shall be filed within three days from an order of the court finding that ~~he~~ the defendant was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

(C) Motions for new trial on account of newly discovered evidence under division (G) of section 2945.79 of the Revised Code shall be filed at any time after the verdict was rendered.

Sec. 2945.81. (A) The causes enumerated in divisions (B)

and (C) of section 2945.79 of the Revised Code must be sustained by affidavit showing their truth, and may be controverted by affidavits.

(B) The causes enumerated in division (G) of section 2945.79 of the Revised Code may be sustained by affidavit showing their truth, and may be controverted by affidavit and other documentary evidence in support of the claim for relief.

Sec. 2945.811. (A) As used in this section, "patently frivolous" means offering evidence that, even if true, would not satisfy the standard in division (G) of section 2945.79 of the Revised Code.

(B) Within ten days after the docketing of the motion for a new trial under division (C) of section 2945.80 of the Revised Code, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

(C)(1) The court shall consider a motion for a new trial that is filed under division (C) of section 2945.80 of the Revised Code.

(2) Before granting a hearing on a motion for a new trial, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the motion, the supporting affidavits and the documentary evidence, all the files and records pertaining to the proceedings against the defendant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court

reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs.

(3) If the court finds that there are no substantive grounds for relief or that the motion is patently frivolous, the court shall dismiss the motion and make and file findings of fact and conclusions of law with respect to such dismissal. If the motion was filed by a person who has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the dismissal of the motion and of each claim it contains.

(4) Unless the motion for a new trial is dismissed under division (C)(3) of this section, the court shall hold a hearing on the issues thirty days after the prosecuting attorney is required to respond by answer or motion as described in division (B) of this section, even if a direct appeal of the case is pending. If the court notifies the parties that it has found substantive grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

(D) A defendant who files a motion for a new trial under division (C) of section 2945.80 of the Revised Code may amend the motion as follows:

(1) If the motion was filed by a person who has been sentenced to death, at any time that is not later than one hundred eighty days after the motion is filed, with or without leave or prejudice to the proceedings;

(2) If division (D)(1) of this section does not apply, at any time before the answer or motion is filed, with or without

leave or prejudice to the proceedings;

(3) With leave of court at any time after the expiration of the applicable period specified in division (D)(1) or (2) of this section.

(E) If the court does not find grounds for granting relief under division (C)(4) of this section, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the motion for a new trial. If the motion was filed by a person who has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the denial of relief on the motion and of each claim it contains. If no direct appeal of the case is pending and the court finds grounds for relief under division (C)(4) of this section or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division (C)(4) of this section and the court finds grounds for granting relief under division (C)(4) of this section, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and shall grant a new trial.

(F) The court shall appoint counsel to represent a person who files a motion for a new trial under division (C) of section 2945.80 of the Revised Code upon a finding that the person is indigent, unless the court finds that the motion is patently frivolous.

Sec. 2953.21. ~~(A)(1)(a)~~ (A) As used in this section, "patently frivolous" means offering evidence which, even if true, would not satisfy the standard in division (B)(1)(a)(v) of this section.

(B)(1)(a) A person in any of the following categories may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief:

(i) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States;

(ii) Any person who has been convicted of a criminal offense and sentenced to death and who claims that there was a denial or infringement of the person's rights under either of those Constitutions that creates a reasonable probability of an altered verdict;

(iii) Any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death;

(iv) Any person who has been convicted of aggravated

murder and sentenced to death for the offense and who claims that the person had a serious mental illness at the time of the commission of the offense and that as a result the court should render void the sentence of death, with the filing of the petition constituting the waiver described in division ~~(A)(3)(b)~~ (B)(3)(b) of this section;

(v) Any person who produces relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case that, were it to be considered at a new trial, would result in a reasonable likelihood of acquittal.

(b) A petitioner under division ~~(A)(1)(a)~~ (B)(1)(a) of this section may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(c) As used in division ~~(A)(1)(a)~~ (B)(1)(a) of this section:

(i) "Actual innocence" means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

(ii) "Serious mental illness" has the same meaning as in

section 2929.025 of the Revised Code.

(d) As used in divisions ~~(A)(1)(a)~~ (B)(1)(a) and (c) of this section, "former section 2953.82 of the Revised Code" means section 2953.82 of the Revised Code as it existed prior to July 6, 2010.

(e) At any time in conjunction with the filing of a petition for postconviction relief under division ~~(A)~~ (B) of this section by a person who has been sentenced to death, or with the litigation of a petition so filed, the court, for good cause shown, may authorize the petitioner in seeking the postconviction relief and the prosecuting attorney of the county served by the court in defending the proceeding, to take depositions and to issue subpoenas and subpoenas duces tecum in accordance with divisions ~~(A)(1)(e)~~ (B)(1)(e), ~~(A)(1)(f)~~ (B)(1)(f), and ~~(C)~~ (D) of this section, and to any other form of discovery as in a civil action that the court in its discretion permits. The court may limit the extent of discovery under this division. In addition to discovery that is relevant to the claim and was available under Criminal Rule 16 through conclusion of the original criminal trial, the court, for good cause shown, may authorize the petitioner or prosecuting attorney to take depositions and issue subpoenas and subpoenas duces tecum in either of the following circumstances:

(i) For any witness who testified at trial or who was disclosed by the state prior to trial, except as otherwise provided in this division, the petitioner or prosecuting attorney shows clear and convincing evidence that the witness is material and that a deposition of the witness or the issuing of a subpoena or subpoena duces tecum is of assistance in order to substantiate or refute the petitioner's claim that there is a

reasonable probability of an altered verdict. This division does not apply if the witness was unavailable for trial or would not voluntarily be interviewed by the defendant or prosecuting attorney.

(ii) For any witness with respect to whom division ~~(A)(1)(e)(i)~~ (B)(1)(e)(i) of this section does not apply, the petitioner or prosecuting attorney shows good cause that the witness is material and that a deposition of the witness or the issuing of a subpoena or subpoena duces tecum is of assistance in order to substantiate or refute the petitioner's claim that there is a reasonable probability of an altered verdict.

(f) If a person who has been sentenced to death and who files a petition for postconviction relief under division ~~(A)~~ (B) of this section requests postconviction discovery as described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, within ten days after the docketing of the request, or within any other time that the court sets for good cause shown, the prosecuting attorney shall respond by answer or motion to the petitioner's request or the petitioner shall respond by answer or motion to the prosecuting attorney's request, whichever is applicable.

(g) If a person who has been sentenced to death and who files a petition for postconviction relief under division ~~(A)~~ (B) of this section requests postconviction discovery as described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, upon motion by the petitioner, the prosecuting attorney, or the

person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from oppression or undue burden or expense, including but not limited to the orders described in divisions ~~(A)(1)(h)(i)~~ (B)(1)(h)(i) to (viii) of this section. The court also may make any such order if, in its discretion, it determines that the discovery sought would be irrelevant to the claims made in the petition; and if the court makes any such order on that basis, it shall explain in the order the reasons why the discovery would be irrelevant.

(h) If a petitioner, prosecuting attorney, or person from whom discovery is sought makes a motion for an order under division ~~(A)(1)(g)~~ (B)(1)(g) of this section and the order is denied in whole or in part, the court, on terms and conditions as are just, may order that any party or person provide or permit discovery as described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section. The provisions of Civil Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion, except that in no case shall a court require a petitioner who is indigent to pay expenses under those provisions.

Before any person moves for an order under division ~~(A)(1)(g)~~ (B)(1)(g) of this section, that person shall make a reasonable effort to resolve the matter through discussion with the petitioner or prosecuting attorney seeking discovery. A motion for an order under division ~~(A)(1)(g)~~ (B)(1)(g) of this section shall be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph.

The orders that may be made under division ~~(A)(1)(g)~~ (B)(1)(g) of this section include, but are not limited to, any of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;

(v) That discovery be conducted with no one present except persons designated by the court;

(vi) That a deposition after being sealed be opened only by order of the court;

(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(i) Any postconviction discovery authorized under division ~~(A)(1)(e)~~ (B)(1)(e) of this section shall be completed not later than eighteen months after the start of the discovery proceedings unless, for good cause shown, the court extends that period for completing the discovery.

(j) Nothing in division ~~(A)(1)(e)~~ (B)(1)(e) of this section authorizes, or shall be construed as authorizing, the relitigation, or discovery in support of relitigation, of any matter barred by the doctrine of res judicata.

(k) Division ~~(A)(1)~~ (B)(1) of this section does not apply to any person who has been convicted of a criminal offense and sentenced to death and who has unsuccessfully raised the same claims in a petition for postconviction relief.

(2)(a) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), or (iii) of this section shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal.

(b) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division ~~(A)(1)(a)(iv)~~ (B)(1)(a)(iv) of this section shall be filed not later than three hundred sixty-five days after ~~the effective date of this amendment~~ April 12, 2021.

(c) A petition under division (B)(1)(a)(v) of this section shall be filed at any time after the expiration of the time for filing the appeal.

(3)(a) In a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), ~~or~~ (iii), or (v) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death.

(b) A person sentenced to death who files a petition under division ~~(A)(1)(a)(iv)~~ (B)(1)(a)(iv) of this section may ask the court to render void the sentence of death and to order the resentencing of the person under division (A) of section 2929.06 of the Revised Code. If a person sentenced to death files such a petition and asks the court to render void the sentence of death and to order the resentencing of the person under division (A) of section 2929.06 of the Revised Code, the act of filing the petition constitutes a waiver of any right to be sentenced under the law that existed at the time the offense was committed and constitutes consent to be sentenced to life imprisonment without parole under division (A) of section 2929.06 of the Revised Code.

(4) A petitioner shall state in the original or amended petition filed under division ~~(A)~~ (B) of this section all grounds for relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived.

(5) If the petitioner in a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), or (iii) of this section was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion. If the supreme court adopts a rule requiring a court of common pleas to maintain information with regard to an offender's race, gender, ethnic background, or religion, the supporting evidence for the petition shall

include, but shall not be limited to, a copy of that type of information relative to the petitioner's sentence and copies of that type of information relative to sentences that the same judge imposed upon other persons.

(6) Notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the length of, a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section by a person who has been sentenced to death. If any court rule specifies a limit on the number of pages in, or on the length of, a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section or on a prosecuting attorney's response to such a petition by answer or motion and a person who has been sentenced to death files a petition that exceeds the limit specified for the petition, the prosecuting attorney may respond by an answer or motion that exceeds the limit specified for the response.

~~(B)~~ (C) The clerk of the court in which the petition for postconviction relief and, if applicable, a request for postconviction discovery described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section is filed shall docket the petition and the request and bring them promptly to the attention of the court. The clerk of the court in which the petition for postconviction relief and, if applicable, a request for postconviction discovery described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section is filed immediately shall forward a copy of the petition and a copy of the request if filed by the petitioner to the prosecuting attorney of the county served by the court. If the request for postconviction discovery is filed by the prosecuting attorney, the clerk of the court immediately shall forward a copy of the request to the petitioner or the

petitioner's counsel.

~~(C)~~ (D) If a person who has been sentenced to death and who files a petition for postconviction relief under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section requests a deposition or the prosecuting attorney in the case requests a deposition, and if the court grants the request under division ~~(A)(1)(e)~~ (B)(1)(e) of this section, the court shall notify the petitioner or the petitioner's counsel and the prosecuting attorney. The deposition shall be conducted pursuant to divisions (B), (D), and (E) of Criminal Rule 15. Notwithstanding division (C) of Criminal Rule 15, the petitioner is not entitled to attend the deposition. The prosecuting attorney shall be permitted to attend and participate in any deposition.

~~(D)~~ (E) The court shall consider a petition that is timely filed within the period specified in division ~~(A)(2)~~ (B)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal. If the petition was filed by a person

who has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the dismissal of the petition and of each claim it contains.

~~(E)~~ (F) Within ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Division ~~(A)(6)~~ (B)(6) of this section applies with respect to the prosecuting attorney's response. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

~~(F) Unless~~ (G) For a petition filed under division (B)(1)(a)(i), (ii), (iii), or (iv) of this section, unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. For a petition filed under division (B)(1)(a)(v) of this section, unless the petition and the files and records of the case show that the petition is patently frivolous, the court shall hold a hearing on the issues thirty days after the prosecuting attorney is required to respond by answer or motion as described in division (E) of this section even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

With respect to a petition filed under division ~~(A)(1)(a)(iv)~~ (B)(1)(a)(iv) of this section, the procedures and rules regarding introduction of evidence and burden of proof at the

pretrial hearing that are set forth in divisions (C), (D), and (F) of section 2929.025 of the Revised Code apply in considering the petition. With respect to such a petition, the grounds for granting relief are that the person has been diagnosed with one or more of the conditions set forth in division (A)(1)(a) of section 2929.025 of the Revised Code and that, at the time of the aggravated murder that was the basis of the sentence of death, the condition or conditions significantly impaired the person's capacity in a manner described in division (A)(1)(b) of that section.

~~(G)~~ (H) A petitioner who files a petition under division ~~(A)(1)(a)(i)~~(B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section may amend the petition as follows:

(1) If the petition was filed by a person who has been sentenced to death, at any time that is not later than one hundred eighty days after the petition is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings.

(2) If division ~~(G)(1)~~ (H)(1) of this section does not apply, at any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings.

(3) The petitioner may amend the petition with leave of court at any time after the expiration of the applicable period specified in division ~~(G)(1)~~ (H)(1) or (2) of this section.

~~(H)~~ (I) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition. If the petition was filed by a person who has been sentenced to

death, the findings of fact and conclusions of law shall state specifically the reasons for the denial of relief on the petition and of each claim it contains. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division ~~(F)~~ (G) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, except as otherwise described in this division, shall discharge or resentence the petitioner or grant a new trial as the court determines appropriate. If the court finds grounds for relief in the case of a petitioner who filed a petition under division ~~(A)(1)(a)(iv)~~ (B)(1)(a)(iv) of this section, the court shall render void the sentence of death and order the resentencing of the offender under division (A) of section 2929.06 of the Revised Code. If the petitioner has been sentenced to death, the findings of fact and conclusions of law shall state specifically the reasons for the finding of grounds for granting the relief, with respect to each claim contained in the petition. The court also may make supplementary orders to the relief granted, concerning such matters as rearraignment, retrial, custody, and bail. If the trial court's order granting the petition is reversed on appeal and if the direct appeal of the case has been remanded from an appellate court pursuant to a request under division ~~(F)~~ (G) of this section, the appellate court reversing the order granting the petition shall notify the appellate court in which the direct appeal of the case was pending at the time of the remand of the reversal and remand of the trial court's order. Upon the reversal and remand of the trial court's order granting the petition, regardless of whether

notice is sent or received, the direct appeal of the case that was remanded is reinstated.

~~(I)~~ (J) Upon the filing of a petition pursuant to division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this section by a person sentenced to death, only the supreme court may stay execution of the sentence of death.

~~(J)(1) If~~ (K)(1)(a) Except as provided in division (J)(1)(b) of this section, if a person sentenced to death intends to file a petition under division (B)(1)(a)(i), (ii), (iii), or (iv) of this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent. If a person sentenced to death intends to file a petition under division (B)(1)(a)(v) of this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel, unless the court finds that the evidence is patently frivolous. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

(b) The court shall appoint counsel to represent a person

who files a petition under division (B)(1)(a)(v) of this section upon a finding that the person is indigent, unless the court finds that the evidence is patently frivolous.

(2) The court shall not appoint as counsel under division ~~(J)(1)~~ (K)(1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division ~~(J)(1)~~ (K)(1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal.

(3) Division ~~(J)~~ (K) of this section does not preclude attorneys who represent the state of Ohio from invoking the provisions of 28 U.S.C. 154 with respect to capital cases that were pending in federal habeas corpus proceedings prior to July 1, 1996, insofar as the petitioners in those cases were represented in proceedings under this section by one or more counsel appointed by the court under this section or section 120.06, 120.16, 120.26, or 120.33 of the Revised Code and those appointed counsel meet the requirements of division ~~(J)(2)~~ (K)(2) of this section.

~~(K)~~ (L) Subject to the appeal of a sentence for a felony that is authorized by section 2953.08 of the Revised Code, the remedy set forth in this section is the exclusive remedy by

which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if committed by an adult or the validity of a related order of disposition.

Sec. 2953.23. (A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division ~~(A)(2)~~ (B)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, "actual innocence" has the same meaning as in division ~~(A)(1)(c)~~ (B)(1)(c) of section 2953.21 of the Revised Code, and "former section 2953.82 of the Revised Code" has the same meaning as in division ~~(A)(1)(d)~~ (B)(1)(d) of section 2953.21 of the Revised Code.

(B) An order awarding or denying relief sought in a petition filed pursuant to section 2953.21 of the Revised Code is a final judgment and may be appealed pursuant to Chapter 2953. of the Revised Code.

If a petition filed pursuant to section 2953.21 of the Revised Code by a person who has been sentenced to death is denied and the person appeals the judgment, notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the length of, a notice of appeal or briefs related to an appeal filed by the person. If any court rule specifies a limit on the number of pages in, or on the length of, a notice of appeal or briefs described in this

division or on a prosecuting attorney's response or briefs with respect to such an appeal and a person who has been sentenced to death files a notice of appeal or briefs that exceed the limit specified for the petition, the prosecuting attorney may file a response or briefs that exceed the limit specified for the answer or briefs.

Section 2. That existing sections 181.25, 2929.06, 2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 of the Revised Code are hereby repealed.

Section 3. Section 2929.06 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 136 and S.B. 256 of the 133rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

OHIO LEGISLATIVE SERVICE COMMISSION

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Legislative Budget Office

R-135-2041

To: The Honorable Dontavius L. Jarrells
Ohio House of Representatives

From: Sarah A. Maki, Attorney *Sam*

Date: September 28, 2023

Subject: Analysis of I_135_1193

SUMMARY

Newly discovered evidence

New trial

- Provides that a person may be granted a new trial based on newly discovered evidence if the evidence is relevant and admissible; if the evidence was not proffered at trial or any pretrial proceedings; and if the consideration of the evidence would result in a reasonable likelihood of acquittal.
- Specifies that a motion for a new trial based on newly discovered evidence may be filed at any time after the verdict is rendered.
- Allows a defendant who files a motion for a new trial based on newly discovered evidence to amend the motion under specified circumstances.
- Requires that within ten days after docketing the motion for a new trial based on newly discovered evidence, or within further time for good time shown, the prosecuting attorney must respond by answer or motion.
- Requires the court to consider a motion for a new trial based on newly discovered evidence and, before granting a hearing, determine whether there are substantive grounds for relief.
- If in making that determination, the court finds there are no substantive grounds for relief or that the motion is patently frivolous, the court must dismiss the motion and make and file findings of fact and conclusions of law.
- Unless the motion for a new trial based on newly discovered evidence is dismissed as described in the preceding dot point, requires the court to hold a hearing on the issues 30 days after the prosecuting attorney is required to respond by answer or motion.

- If the court does not find grounds for granting relief, requires the court to make and file findings of fact and conclusions of law and enter judgment denying relief for a new trial.
- If the court finds grounds for granting relief, requires the court to make and file findings of fact and conclusions of law and enter a judgment that vacates and sets aside the judgment in question, and grant a new trial.
- Requires the court to appoint counsel to represent a person who files a motion for a new trial based on newly discovered evidence upon a finding that the person is indigent, unless the court finds that the motion is patently frivolous.

Post-conviction relief

- Provides that a person may be granted post-conviction relief based on newly discovered evidence if the evidence is relevant and admissible; if the evidence was not proffered at trial or any pretrial proceedings; and if the consideration of the evidence would result in a reasonable likelihood of acquittal.
- Specifies that a petition for post-conviction relief based on newly discovered evidence may be filed at any time after the expiration of the time for filing an appeal.
- Unless the petition for post-conviction relief based on newly discovered evidence is patently frivolous, requires the court to hold a hearing on the issues 30 days after the prosecuting attorney is required to respond by answer or motion.
- Requires the court to appoint counsel to represent a person who files a petition for post-conviction relief based on newly discovered evidence upon a finding that the person is indigent, unless the court finds that the motion is patently frivolous.

DETAILED ANALYSIS

Newly discovered evidence

New trial

A new trial, after a verdict of conviction, may be granted on the application of a defendant for specified causes affecting materially the defendant's substantial rights.[1]

Cause for new trial

The bill adds an additional cause for a new trial. When new evidence[2] is discovered that is relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the

[1] R.C. 2945.79.

[2] There are two causes for a new trial based on newly discovered evidence; one created by the bill and one that exists in current law. When the analysis discusses a cause for newly discovered evidence the reference is to the one created by the bill unless otherwise indicated or unless the context clearly indicates otherwise.

case, and that were it to be considered at a new trial, would result in a reasonable likelihood of acquittal, the court may grant a new trial.[3] The causes may be sustained by affidavit showing their truth, and may be controverted by affidavit and other documentary evidence in support of the claim for relief.[4]

Under current law, the following causes for new trial exist:[5]

- Irregularity in the proceedings of the court, jury, prosecuting attorney, or witnesses for the state, or for any order of the court, or abuse of discretion by which the defendant was prevented from having a fair trial;
- Misconduct of the jury, prosecuting attorney, or the witnesses for the state;
- Accident or surprise which ordinary prudence could not have guarded against;
- That the verdict is not sustained by sufficient evidence or is contrary to the law; but if the evidence shows that defendant is not guilty of the degree of the crime for which the defendant was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and pass sentence on such verdict or finding as modified, provided that this power extends to any court to which the cause may be taken on appeal;
- Error of law occurring at the trial;
- When new evidence is discovered material to the defendant, which the defendant could not with reasonable diligence have discovered and produced at trial. When a motion for new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing of said motion, in support of, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendants to procure such affidavits, the court may postpone the hearing of the motion for such length of time as under all the circumstances of the case is reasonable. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

Motion for new trial

The bill requires that an application for a new trial based on newly discovered evidence be made by written motion and may be filed at any time after the verdict is rendered.[6] Under current law, a motion for a new trial based on the first five dot points under "**Cause for new trial**," above, must be filed within three days after the verdict was rendered, or the decision of

[3] R.C. 2945.79(G).

[4] R.C. 2945.81(B).

[5] R.C. 2945.79(A) to (F).

[6] R.C. 2945.80(C).

the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing a motion for a new trial in which case it must be filed within three days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided.[7] An application for new trial based on the final dot point under "**Cause for new trial**," above, must be filed within 120 days following the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which the defendant must rely, such motion must be filed within three days from an order of the court finding that the defendant was unavoidably prevented from discovering the evidence within the 120 day period.[8]

The bill allows a defendant who files a motion for a new trial based on newly discovered evidence to amend the motion as follows:[9]

- If the motion was filed by a person who has been sentenced to death, at any time that is not later than 180 days after the motion is filed, with or without leave or prejudice to the proceedings;
- If the above dot point does not apply, at any time before the answer or motion is filed, with or without leave or prejudice to the proceedings;
- With leave of court at any time after the expiration of the applicable period specified in the above dot points.

Answer

Under the bill, within ten days after docketing the motion for a new trial based on newly discovered evidence, or within any further time that the court may fix for good cause shown, the prosecuting attorney must respond by answer or motion. Within 20 days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment must appear on the face of the record.[10]

Court consideration

The bill requires that the court consider a motion for a new trial based on newly discovered evidence.[11] Before granting a hearing on a motion for a new trial, the court must determine whether there are substantive grounds for relief. In making such a determination, the court must consider, in addition to the motion, the supporting affidavits and the documentary evidence, all the files and records pertaining to the proceedings against the

[7] R.C. 2945.80(A).

[8] R.C. 2945.80(B).

[9] R.C. 2945.811(D).

[10] R.C. 2945.811(B).

[11] R.C. 2945.811(C)(1).

defendant, including the indictment, the court's journal entries, the journalized records of the clerk of the courts, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, must be taxed as court costs.[12]

If the court finds that there are no substantive grounds for relief or that the motion is "patently frivolous," the bill requires the court to dismiss the motion and make and file findings of fact and conclusions of law with respect to that dismissal. If the motion was filed by a person who has been sentenced to death, the findings of fact and conclusions of law must state specifically the reasons for the dismissal of the motion and of each claim it contains.[13]

Unless the motion for a new trial is dismissed, the bill requires the court to hold a hearing on the issues 30 days after the prosecuting attorney is required to respond by answer or motion, even if a direct appeal of the case is pending. If the court notifies the parties that it has found substantive grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.[14]

If the court does not find grounds for granting relief, the bill requires the court to make and file findings of fact and conclusions of law and to enter judgment denying relief on the motion for a new trial. If the motion was filed by a person who has been sentenced to death, the findings of fact and conclusions of law must state specifically the reasons for the denial of relief on the motion and of each claim it contains. If no direct appeal is pending or if a pending direct appeal of the case has been remanded to the court and the court finds ground for granting relief, it must make and file findings of fact and conclusions of law and must enter a judgment that vacates and sets aside the judgment in question, and must grant a new trial.[15]

Court-appointed counsel

The bill requires the court to appoint counsel to represent a person who files a motion for a new trial based on newly discovered evidence upon a finding that the person is indigent, unless the court finds that the motion is "patently frivolous."[16]

Definitions

The bill defines "patently frivolous" as offering evidence that, even if true, would not satisfy the standard for a new trial based on newly discovered evidence.[17]

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[12] R.C. 2945.811(C)(2).

[13] R.C. 2945.811(C)(3).

[14] R.C. 2945.811(C)(4).

[15] R.C. 2945.811(E).

[16] R.C. 2945.811(F).

[17] R.C. 2945.811(A).

Post-conviction relief

Under current law, a person may file a petition in a court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other relief.[18]

Grounds for post-conviction relief

The bill adds an additional ground for post-conviction relief. Any person who produces relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case that, were it to be considered at a new trial, would result in a reasonable likelihood of acquittal.[19] Under continuing law, a petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.[20]

Under current law, the following grounds for post-conviction relief exist:[21]

- Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the U.S. Constitution;
- Any person who has been convicted of a criminal offense and sentenced to death and who claims that there was a denial or infringement of the person's rights under either of those constitutions that creates a reasonable probability of an altered verdict;
- Any person who is convicted of a criminal offense that is a felony and who is an offender for whom DNA testing was performed on an eligible offender and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case and provided results that establish, by clear and convincing evidence, actual innocence of that felony offense, or, if the person was sentenced to death, establish by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death;
- Any person who has been convicted of aggravated murder and sentenced to death for the offense and who claims that the person had a serious mental illness at the time of the commission of the offense and that as a result the court should render void the sentence of death, with the filing of the petition constituting a waiver.

[18] R.C. 2953.21(B)(1)(a).

[19] R.C. 2953.21(B)(1)(a)(v).

[20] R.C. 2953.21(B)(1)(b).

[21] R.C. 2953.21(B)(1)(a)(i) to (iv).

Petition for post-conviction relief

The bill requires that a petition for post-conviction relief based on newly discovered evidence may be filed at any time after the expiration of the time for filing the appeal.[22] Under current law, a petition for post-conviction relief based on the first three dot points under "**Grounds for post-conviction relief**," above, must be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the Ohio Supreme Court. If no appeal is taken, the petition must be filed no later than 365 days after the expiration of the time for filing the appeal.[23] A petition for post-conviction relief based on the final dot point under "**Grounds for post-conviction relief**," above, must be filed no later than 365 days after April 12, 2021.[24]

Under current law, there is no page limit on the number of pages in, or on the length of, a petition filed by a person who has been sentenced to death. If any court rule specifies a limit on the number of pages in, or the length of, a petition filed or on a prosecuting attorney's response to such a petition that exceeds the limit specified in the petition, the prosecuting attorney may respond by an answer or motion that exceeds the limit specified for the response.[25]

The bill allows a petitioner who files a petition for post-conviction relief based on newly discovered evidence to amend the petition as follows:[26]

- If the petition was filed by a person who has been sentenced to death, at any time that is not later than 180 days after the petition is filed, the petitioner may amend the petition with or without leave of the court;
- If the above dot point does not apply, at any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings;
- The petitioner may amend the petition with leave of the court at any time after the expiration of the applicable period.

Answer

Under current law, within ten days after the docketing of the petition for post-conviction relief, or within any further time that the court may fix for good cause shown, the

[22] R.C. 2953.21(B)(2)(c).

[23] R.C. 2953.21(B)(2)(a).

[24] R.C. 2953.21(B)(2)(b).

[25] R.C. 2953.21(B)(6).

[26] R.C. 2953.21(H).

prosecuting attorney must respond by answer or motion. Within 20 days from the date the issues are raised, either party may move for summary judgment.[27]

Court consideration

Under current law, the court must consider a petition that is timely filed even if a direct appeal of the judgment is pending. Before granting a hearing, the court must determine whether there are substantive grounds for relief. In making such a determination, the court must consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, must be taxed as court costs.

If the court dismisses the petition it must make and file findings of fact and conclusions of law with respect to such a dismissal. If the petition was filed by a person who has been sentenced to death, the findings of fact and conclusions of law must state specifically the reasons for the dismissal of the petition and each claim it contains.[28]

Under the bill, for a petition for post-conviction relief based on newly discovered evidence, unless the petition and the files and records of the case show that the petition is "patently frivolous," the court must hold a hearing on the issues 30 days after the prosecuting attorney is required to respond by answer or motion as described above even if a direct appeal of the case is pending. Under current law, for a petition for post-conviction relief based on any other ground, unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court must proceed to a prompt hearing on the issues even if a direct appeal of the case is pending.[29]

Under current law, if the court does not find grounds for granting relief, it must make findings of fact and conclusions of law and must enter judgment denying relief on the petition. If the petition was filed by a person who has been sentenced to death, the findings of fact and conclusions of law must state specifically the reasons for the denial of relief on the petition and of each claim it contains. If no direct appeal is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded and the court finds grounds for granting relief, it must make and file findings of fact and conclusions of law and must enter a judgment that vacates and sets aside the judgment, and in the case of a petitioner who is in custody, must discharge or resentence the petitioner or grant a new trial as the court determines appropriate.[30]

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[27] R.C. 2953.21(F).

[28] R.C. 2953.21(E).

[29] R.C. 2953.21(G).

[30] R.C. 2953.21(I).

Court-appointed counsel

The bill provides that if a person sentenced to death intends to file a petition for post-conviction relief based on newly discovered evidence, the court must appoint counsel to represent the person upon a finding that the person is indigent and the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel, unless the court finds that the evidence is "patently frivolous." The court may decline to appoint counsel for the person only upon a finding, after hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent. Additionally, the court must appoint counsel to represent a person who files a petition for post-conviction relief based on newly discovered evidence upon a finding that the person is indigent, unless the court finds that the evidence is "patently frivolous."

Under current law, if a person sentenced to death intends to file a petition for post-conviction relief based on another ground, the court must appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.[31]

Definitions

The bill defines "patently frivolous" as offering evidence that, even if true, would not satisfy the standard for post-conviction relief based on newly discovered evidence.[32]

Cross references

The bill makes several conforming cross reference changes for R.C. 2953.21.[33]

R2041-135/ks

[31] R.C. 2953.21(K)(1).

[32] R.C. 2953.21(A).

[33] R.C. 181.25(A)(5), 2929.06(A)(1)(e) and (2), and 2953.23(A)(1)(a) and (2).

The Supreme Court of Ohio

OFFICE OF THE ADMINISTRATIVE DIRECTOR
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

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November 8, 2023

Melissa Knopp
Ohio Criminal Sentencing Commission
65 S. Front St., 5th Floor
Columbus, Ohio 43215

Re: Statutory Changes Regarding New Trial Motions Based on Newly Discovered Evidence

Ms. Knopp,

Welcome to the Ohio Criminal Sentencing Commission. Although I am relatively new to my position, it appears to me that the important work of our two organizations will intersect at times. I look forward to working with you on those occasions and getting to know you and your vision for the Commission in the meantime.

As an initial matter for your consideration, Chief Justice Kennedy and the Justices respectfully ask that the Ohio Criminal Sentencing Commission consider whether statutory changes are needed to better address wrongful convictions, particularly those litigated through the new trial motion process.

The Supreme Court of Ohio has considered this issue recently through the work of its Commission on the Rules of Practice and Procedure and the former Chief Justice's Task Force on Conviction Integrity and Postconviction Review. In its July 2022 report, the Task Force recommended certain statutory and procedural rule changes to help improve integrity in the conviction and post-conviction review process. Starting with those recommendations, the Commission on the Rules of Practice and Procedure proposed amendments to Criminal Rule 33. The challenge for this Court in considering the Commission's proposal, however, is that much of the authority to accomplish the needed change rests with the General Assembly. The change this Court can accomplish with its limited rule-making authority, alone, is not enough to achieve the sought after universal goal.

I have enclosed the Task Force Report and Crim.R. 33 proposal for your consideration in this effort. On behalf of the Chief Justice and Justices of the Supreme Court of Ohio, I kindly ask that you consider this issue and work with the Ohio General Assembly to improve the legal standard and process for post-conviction review of newly discovered evidence.

If you have any questions, please do not hesitate to contact me at (614) 387-9503.

Sincerely,

Robert W. Horner, III
Administrative Director

Enclosures

Cc: Chief Justice Sharon L. Kennedy, Chair of the Ohio Criminal Sentencing Commission

Judge Nick Selvaggio, Vice-Chair of the Ohio Criminal Sentencing Commission

RULE 33. New Trial.

(A) Grounds

A new trial may be granted on motion of the defendant for any of the following causes affecting materially the defendant's substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict is contrary to law;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. ~~When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses~~.

(B) Motion for new trial; form, time

(1) Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

(2) Motions for new trial on account of newly discovered evidence shall be filed without leave of court within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. ~~If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from~~

~~discovering the evidence within the one hundred twenty-day period.~~ Any other motion is untimely.

(a) Only with leave of court may an untimely motion for new trial on account of new evidence be filed. A motion for leave shall explain both of the following:

(i) Why the new evidence was not proffered at trial;

(ii) Why the new trial motion was not timely filed.

Leave of court shall be granted unless it is shown that the failure to use the evidence at trial or to timely file a new trial motion was intentionally delayed in an effort to gain a tactical advantage at trial, in the disposition of a motion for new trial, or at a new trial. Before determining whether to allow the defendant leave to file an untimely motion under division (A)(6) of this rule, the court may conduct a hearing and receive affidavits, exhibits, and testimony as to whether an untimely motion may be filed. Notwithstanding Crim.R. 43, a defendant in custody does not have a right to attend such hearing but may, in the discretion of the court, be permitted to attend the hearing in person or by remote presence.

(b) The defendant shall file the motion for new trial within thirty days of a court order granting leave to file.

(C) ~~Affidavits required~~ Content of motion for new trial

(1) The causes enumerated in ~~subsection~~ divisions (A)(1), (2), ~~and~~ (3), and (6) of this rule must be sustained by affidavit or other evidence showing their truth, and may be controverted by affidavit.

(2) Motions filed under division (A)(6) of this rule shall set forth specific, nonconclusory facts that do all of the following:

(a) Identify the new evidence;

(b) Explain how the evidence demonstrates entitlement to relief;

(c) Explain why the evidence was not proffered at trial.

(D) Upon the motion of any party or the victim, the court may enter an appropriate protective order, including an order that specified material associated with the motion may be filed under seal or considered only in camera.

(E) Within thirty days of the filing of a motion under division (B) of this rule, the prosecutor may file a response. Within fifteen days of the filing of the prosecutor's response, if any, the defendant may file a reply. These time limits may be extended for good cause shown.

(F) Procedure for motions filed under division (A)(6) of this rule

When a motion for new trial seeks relief, in whole or in part, under division (A)(6) of this rule, the court and parties shall proceed as follows:

(1) After reviewing the motion and all pleadings, the supporting materials, and as appropriate other files, records, and transcripts of proceedings pertaining to the trial and sentencing, the court shall determine whether the motion for new trial is patently frivolous. No discovery is permitted before the court completes this preliminary review.

(2) A patently frivolous motion shall be dismissed. However, for good cause shown and within thirty days following the court's dismissal order based on a preliminary review, the motion may be amended once by the movant if amendment is likely to correct any inadvertent omissions.

(3) If the motion is not dismissed following preliminary review by the court, the court shall promptly establish a schedule for further proceedings. In doing so, and in order to conserve public resources and avoid potentially conflicting court rulings, the court may exercise its discretion and stay further proceedings pending completion of direct appeal, or completion of already ongoing proceedings in state or federal court addressing other post-conviction issues. Unless a stay is issued, the court shall set a case schedule for discovery, briefing, and a final hearing. The time period for discovery shall be no longer than one hundred twenty days with such limitations and terms as the court deems appropriate subject to extension by the court for good cause shown. The court may also appoint counsel for an indigent defendant. At this stage, discovery on the motion shall, ordinarily, be limited to the allegedly newly discovered evidence. In that regard, the parties may conduct depositions consistent with the provisions of Crim. R. 57(B) and Civ. R. 30, except that the defendant may not be deposed without the defendant's written consent. Unless the court orders otherwise for good cause shown, at this stage discovery shall not be directed to witnesses who already testified at trial, seek material exempt under Crim. R. 16, or be directed to the victims unless there is a claim of witness tampering or recantation.

(4) After discovery has concluded in connection with the motion, the prosecution may file a motion for summary disposition together with all affidavits and other materials in support thereof. The defendant's responsive arguments, together with all affidavits and other materials in opposition, may be submitted and the prosecution may file a reply. The motion for new trial shall be denied if the court determines on the basis of the entirety of the record construed in the light most favorable to the defendant that no genuine issues of material fact exist and that the defendant cannot establish that the defendant is entitled to a new trial under the standard set forth in the Ohio Revised Code or as guaranteed by the Constitutions of the United States or the State of Ohio.

(5) If summary disposition is not sought by the prosecution or is denied, an evidentiary hearing is required. Notwithstanding Crim.R. 43, a defendant in custody shall attend such a hearing in person or by remote presence as the court may direct. If the defendant is indigent and unrepresented by counsel, the court shall appoint counsel for the defendant. Additional discovery may be permitted by the court to supplement that which has already occurred.

(6) Promptly following an evidentiary hearing on a motion for new trial, the court shall determine whether a new trial shall be granted under the standard for new trial set forth in the Revised Code and conforming with constitutional requirements.

(7) The trial court shall make findings of fact and conclusions of law explaining its ruling, either orally in open court or via written findings and conclusions, which shall be a part of the record.

(8) Interlocutory decisions on scheduling, discovery, or granting leave to file a motion for new trial are not final for purposes of appeal.

(9) A decision granting or denying a new trial under division (F) of this rule or dismissing or denying a motion for leave to file a motion for new trial under division (B)(2)(b) of this rule is a final order for purposes of appeal. The trial court may appoint counsel for an indigent defendant for purposes of any appeal and may order a transcript at state's expense.

~~(D)~~(G) **Procedure when new trial granted.** When a new trial is granted by the trial court, or when a new trial is awarded on appeal, the accused shall stand trial upon the charge or charges of which he or she was convicted.

~~(E)~~(H) **Invalid grounds for new trial.** No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of:

(1) An inaccuracy or imperfection in the indictment, information, or complaint, provided that the charge is sufficient to fairly and reasonably inform the defendant of all the essential elements of the charge against ~~him~~ the defendant.

(2) A variance between the allegations and the proof thereof, unless the defendant is misled or prejudiced thereby;

(3) The admission or rejection of any evidence offered against or for the defendant, unless the defendant was or may have been prejudiced thereby;

(4) A misdirection of the jury, unless the defendant was or may have been prejudiced thereby;

(5) Any other cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial.

~~(F)~~(I) **Motion for new trial not a condition for appellate review.** A motion for a new trial is not a prerequisite to obtain appellate review.

Proposed Staff Note (July 1, 2024 Amendment)

Motions for a new trial, particularly those based upon allegedly newly discovered evidence, have importance not only to defendants but also to crime victims, lawyers, and courts obligated to address such motions. It is universally agreed that the innocent should never be convicted and incarcerated; and that resolution of postconviction motions should be addressed in a timely manner. Likewise, it is recognized that motions for new trials sometimes are frivolous, may renew emotional harm for victims, and may impose unreasonable demands on prosecutors and the courts. If handled unsatisfactorily, practice regarding motions for a new trial may undermine society's confidence in the fair and timely resolution of cases by the justice system.

In 2022 the Supreme Court Task Force on Conviction Integrity and Postconviction Review issued a report recommending various steps, including a new Criminal Rule 33.1 to supplement the existing criminal rule on requests for new trials based on newly discovered evidence. After considering comments from the bench and bar, the Rules Commission concluded that an entirely new rule was unnecessary. Instead, the Commission recommended significant revisions to existing Crim. R. 33 to bring procedural clarity and timely resolution of new trial motions alleging newly discovered evidence.

The 2024 amendments to this rule do not purport to vary the substantive provisions in R.C. 2945.79 and 2945.80, which address new trials, or past appellate decisions interpreting them. On the other hand, procedural matters left unaddressed in statutes such as the obligation of trial courts to promptly screen-out frivolous motions or those lacking evidentiary support, to promptly schedule and decide motions that may have merit, and to provide limited, focused discovery and in appropriate cases to appoint counsel, all need clarification. Many filings are made by incarcerated defendants with, at best, modest understanding of steps needed to have a new trial motion addressed by a court or of requirements that must be met to gain relief, further justifying clarification of this process.

Ohio House Bill 1 (133rd General Assembly) Biennial Impact Study

December 2023

OHIO
CRIMINAL SENTENCING COMMISSION

Acknowledgements

This report is built upon the foundation of the first report on the impact of House Bill 1,[1] which was guided by input of the HB1 Workgroup. The Ohio Criminal Sentencing Commission would like to acknowledge the continuing contributions of this workgroup to this and future impact studies of HB1. Of course, participation in the 2021 HB1 workgroup or in the work is not an unqualified endorsement of the final recommendations in the current or previous HB1 Impact Study Report.

The commission would like to extend its gratitude the following individuals and organizations for their assistance in providing information or otherwise contributing to this report:

- *Shawn Welch, Ohio Judicial College*
- *Angie Lloyd, Ohio Access to Justice Foundation*
- *Doug Dumolt, Office of the Ohio Attorney General*
- *Ohio court staff and judges who responded to the request for information*

The commission would also like to give thanks to the following interns who contributed to this report:

- *Nandita Gaddam, Ohio State University*
- *Connor Tooman, Northwestern University*

[1] Ohio Criminal Sentencing Commission, *HB1 Impact Study Report*, (January 2022), available at https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/HB1/impactStudyReport.pdf.

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Introduction

Governor DeWine signed House Bill 1 ("HB1") into law on January 7, 2021. [2] The law modified the following statutes:

- R.C. 109.11: Attorney General Reimbursement Fund.
- R.C. 2929.15: Community Control Sanctions; felony.
- R.C. 2951.041: Intervention in Lieu of Conviction.
- R.C. 2953.31 & 2953.32: Sealing of record of conviction or bail forfeiture; definitions and exceptions.
- R.C. 5119.93 & 5119.94: Initiation of proceedings and Examination of petitioner; hearing; notification of respondent; dispositions [Involuntary commitment to treatment in probate courts]

Additionally, the bill required the Ohio Criminal Sentencing Commission ("commission") to biennially "study the impact" of these statutory changes and submit "a report that contains the results of the study and recommendations."[3]

In January 2021, the commission assembled a workgroup ("2021 HB1 Workgroup") composed of judges, prosecutors, defense attorneys, court administrators, probation officers, academicians, and state agency officials to design a study of the impact of HB1.[4] The initial HB1 Impact Study Report, submitted in early 2022, was designed to serve as the foundational report to establish the continuity of evaluation for future reports, such as this one.

Report Structure

This impact analysis of HB1 is organized into five parts, based on the topics of the statutes addressed in the bill: (1) attorney general reimbursement fund,[5] (2) community control sanctions and technical violations,[6] (3) intervention in lieu of conviction ("ILC"),[7] (4) sealing of a record of conviction,[8] and (5) involuntary commitment to treatment for alcohol or drug abuse in probate courts.[9] Preceding these sections is a summary of recommendations and a discussion of the limitations of this study.

This report utilizes the framework set out by the original workgroup to approach the study of impact as consistent and standardized as possible in order to allow for the most direct comparison across study years that is practically achievable with the information available. As such, each of the five sections begin with a brief review of the how HB1 changed each of the statutes. Following this information is a discussion of how the 2021 HB1 Workgroup defined the impact of these changes. The source(s) of information used to evaluate that impact is then discussed, followed by analysis of the available information and recommendations to improve upon the impact.

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[2] Am.Sub.H.B. No.1, 133 Ohio Laws.
[3] R.C. 181.27(B)
[4] See page 4 of *HB1 Impact Study Report* (January 2022) for a list of individuals on the workgroup and involved in the work of the report.
[5] R.C. 109.11
[6] R.C. 2929.15
[7] R.C. 2951.041
[8] R.C. 2953.31 and 2953.32
[9] R.C. 5119.93 and 5119.94

Study Limitations

Among policymakers and stakeholders, there is increasing acknowledgement that policy changes based upon empirical evidence helps to create programs and laws that are efficient and effective for their intended purposes.[10] Requiring the Ohio Criminal Sentencing Commission to regularly study the impact of statutory changes made in HB1 is a move towards evidence-informed criminal justice policy in Ohio; the ambition and intention of the 133rd General Assembly should be commended. However, the current state of available and sharable criminal justice information in Ohio significantly limits the rigor of the impact study.

Ohio is a "home rule" state and as such, local governments are expected to establish their own data collection methods and reporting systems based on their financial situations and preferences. As there are limited sources of statewide information, local courts are utilized as primary sources of information for this impact evaluation. However, the use of local court information creates concerns about comparability and the access of information, as discussed below, which contributes to limitations of this study.

Comparability

In HB1, the inclusion of R.C. 181.27(B)(1) charges the commission with studying the impact of the specified code sections and to "continue studying that impact on an on-going basis," defined in R.C. 181.27(B)(2) as a biennial report. In the inaugural HB1 report, data was collected to develop a baseline that existed before HB1 went into effect. The plan is that subsequent reports, such as this one, will use that pre-HB1 baseline as a comparison for post-HB1 levels of a measure.

When making comparisons, whether it be over time or across various courts, it is important that the items that are measured are standardized. Colloquially, this what is meant by "comparing apples to apples."

Local courts were contacted to get information about the sealing of a record of conviction, intervention in lieu of conviction, and involuntary commitment to treatment. The specific information received from courts varied widely, which made attempts to standardize and compare information and across courts difficult. Further, as these impact evaluations continue every two years, it is difficult to guarantee the standardization of information over time even in the same courts. One staff member may unknowingly gather the information differently than another did in a previous year, resulting in misleading conclusions.

Access to Information

Data requests have been made since 2021 to local courts to regularly provide the commission information on intervention in lieu of conviction cases and sealing of criminal records. It is acknowledged that these data requests are a burden to local courts, however the information does not exist in another source. In conversations with court staff, many must employ staff or intern time to hand-gather numbers on ILC and record sealing cases because no reporting exists within their case management system. This manual collection of cases can be a months-long process. Several courts have reached out to say that their system

[10] See, for example, The PEW Charitable Trust and MacArthur Foundation, *Evidence Based Policymaking: A guide for effective government,* (November 2014). Available at: https://www.pewtrusts.org/~/media/assets/2014/11/evidencebasedpolicymakingaguideforeffectivegovernment.pdf

does not allow for the collection of such information and/or that they do not have the staff resources to commit to the collection of the information.

Further, as identified throughout the report, some of the intended outcomes identified by the 2021 HB1 workgroup cannot be evaluated because the information is not available. For example, the workgroup discussed that a purpose of expanding the eligibility of those that can seal a record of conviction is to decrease the "collateral consequences" individuals face after completing their sanction.[11] Evaluating if expanding the opportunities for the sealing of a record of criminal conviction decreases the negative consequences for individuals regarding accessing employment opportunities—for example—necessitates information collected, shared, and connected at the level of the individual that is not currently available.[12]

Developing a method to share and connect information across the criminal justice system in Ohio could also create the ability to address concerns of the impact of these statutory changes on public safety. For example, long term outcomes such as recidivism or criminal desistance could be examined to see the impact of those that sealed a record of conviction or participated in ILC on future criminal behavior.

Addressing limitations

Despite these difficulties in assessing the impact of HB1, every effort has been made to provide reliable, valid comparisons across courts and overtime with the information available. The effectiveness of this, and future impact evaluations, can be improved with more available, and standardized, information. Many of the recommendations in the separate sections of this report suggest a standardized reporting or sharing of information so that there will be more evidence on which to base the conclusions and recommendations. It is important to note that reporting requirements are also not always easy to meet, particularly for local agencies with limited resources. For example, a revision of the case statistics reporting to expand to include record sealing, ILC, and involuntary commitment to treatment involves a change to the capabilities of courts' case management systems at a cost to local court. This then becomes an unfunded mandate for courts to alter their systems. In order to adequately evaluate changes to the criminal justice system, including the impact of changes examined here, adequate funding should be provided to local entities to enable the collection of necessary information.

[11] For more information on collateral consequences, see the National Inventory of Collateral Consequences of Conviction: https://niccc.nationalreentryresourcecenter.org/.

[12] For an example of an empirical examination of the expungement of a criminal record on employment, see Prescott, J.J. and Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study,* Harv. L. Rev 2460 (2020). Available at: https://harvardlawreview.org/print/vol-133/expungement-of-criminal-convictions-an-empirical-study/.

Summary of Recommendations

For reader ease, recommendations are summarized here. The recommendations of this report are based upon the recommendations in the inaugural House Bill 1 Impact Study,[13] and modified as necessary based on recent statutory changes and the analysis provided here. The recommendations are explained in each of the individual subject sections that follow.

INTERVENTION IN LIEU OF CONVICTION (ILC): R.C. 2951.041

1. **Create avenues for regular and standardized reporting of ILC cases.**
   - Include in case statistics reports for general division and municipal courts, specifically:
     - Number of cases that enter into ILC in a reporting period.
     - Additional disposition categories for ILC Cases: post-ILC guilty plea and post-ILC dismissal.
2. **Establish reporting from probation departments to evaluate long term effectiveness of ILC.**
   - Include measures of recidivism or desistance for ILC participants.
3. **Better communicate statutory changes regarding ILC:**
   - Create materials that explain changes to ILC in 2018 in SB66 of the 132nd General Assembly, specifically that offenders could go through ILC programs more than once and for different offenses.
   - Focus especially to the Association of Municipal/County Judges of Ohio, the defense bar, and treatment providers.
4. **Clarify the benefits of ILC in the statute:**
   - Who is a good candidate for ILC.
   - Formalize ILC so that courts see it as a program rather than an option.
5. **Standardize ILC assessment reports from treatment providers.**
6. **Address the barrier of the ILC cost for courts and participants:**
   - Provide guidance about billing for treatment providers.
   - Better funding of ILC programs.

RECORD SEALING: R.C. 2953.31 & 2953.32

1. **Create avenues for regular and standardized reporting of record sealing motions.**
   - Include in case statistics reports for general division and municipal courts, specifically:
     - Number of record-sealing applications/petitions received
     - Number granted
     - Number ineligible
     - Number denied (for reason other than ineligibility)
2. **Allow access, only with certain permissions, to anonymized sealed records in order to allow for the evaluation of the impact of record sealing over time.**
3. **Use standardized sealing forms in Rule 96 of the Rules of Superintendence for Ohio Courts**
4. **Simplify the process:**
   - Clarify the definition of "final discharge."

[13] *HB1 Impact Study Report*, (January 2022).

- Centralize the process for those with convictions in multiple courts (e.g., common pleas and municipal courts).
- Clarify eligibility for those with OVIs and companion felonies in the same case.

5. **Consider automatic expungement or record sealing for certain convictions after a certain time period.**
6. **Allow for automatic sealing of non-convictions.**
7. **Increase education:**
   - Clarify the differences between sealing and expungement for public and courts.
   - Clarify eligibility for sealing and expungement.

INVOLUNTARY COMMITMENT TO TREATMENT, PROBATE COURTS: R.C. 5119.93, 5119.94

1. **Expand education to judges to make them aware of changes to this law and encourage them regarding its potential**.
2. **Create avenues for regular and standardized reporting of Involuntary Commitment to Treatment cases:**
   - Include in case statistics reports for probate courts.
3. **Simplify forms for commitment, including:**
   - Developing strategies to work more effectively with the medical community (e.g., pilot program that partners a treatment facility and probate court or pilot program with Medicaid and regional facilities).
4. **Strategize with justice partners how to make families aware of this option.**
   - Discuss funding options to make treatment available, regardless of financial or insurance status.

R.C. 109.11 Attorney General Reimbursement Fund

Modifications to Ohio Revised Code Sections 109.11 from Ohio House Bill 1 (133rd General Assembly)

R.C. 109.11: Creates an attorney general reimbursement fund within the state treasury to be used to for the expenses of the Attorney General (AG) to provide legal services and other services to the state. Also specifies that a portion of funds, as specified in R.C. 2953.32 go to the Bureau of Criminal Investigation for expenses related to sealing or expungement of records.

What changed?

$15 for every $50 record sealing application fee is earmarked to BCI for expenses related to the sealing or expungement of records. This represents a decrease in the amount of money that is routed to BCI (previously it was $20 of every application fee), however this statute clarifies that the $15 goes directly to BCI. Previously, the money was allocated to the GRF and then funded back to BCI, so it was not possible to track. This fund should help to offset expenses for the labor-intensive record sealing process.

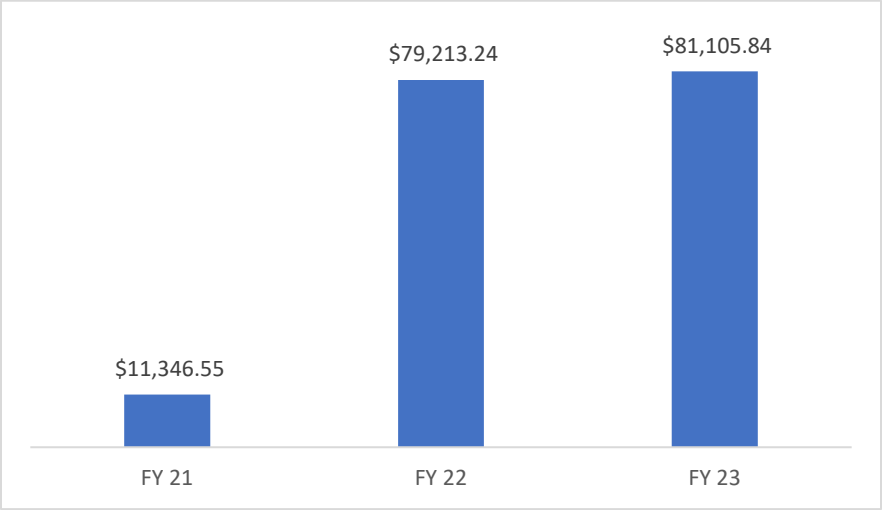
Impact

The intended impact of this statutory change is evident, as a separate fund to the Bureau of Criminal Investigation (BCI) to help in the record-sealing process did not exist prior to HB1. Therefore, after HB1 we would expect to see a **stable, independent fund at BCI exist year after year**.

Data & Analysis

The Bureau of Criminal Investigation provided numbers on funds received related to the sealing of records. It is important to note that the finance report follows the fiscal year, rather than the calendar year. Beginning in late 2021, BCI started using a separate agency code to track record sealing funds. Fiscal Year 2021 represents two months of collected data while 2022 and 2023 contain all 12 months of data. Figure 1 displays the BCI funds received from the record sealing application fee by fiscal year.

Figure 1. Record Sealing Funds Received by BCI by Fiscal Year.



It should be noted that while the $15 sealing fee is relatively new, the funds generated do not match the number record sealing orders BCI receives each year.[14] At this point, the source of the discrepancy is unclear, but there are multiple possible explanations. For example, fees waived for indigency status may contribute to the fees collected being lower than expected.

Conclusions

Given that, prior to HB1, the portion of the record sealing fee that BCI received went directly into the General Revenue Fund (GRF), these statutory changes did have the intended impact. Beginning in fiscal year 2021, there is a separate, stable fund within BCI to assist with the process of sealing and expungement of criminal convictions. Regarding this determination of impact, there are no further recommendations.

[14] See Figure 5 of this report.

R.C. 2929.15 Community Control Sanctions and Technical Violations

Modifications to Ohio Revised Code Section 2929.15 from Ohio House Bill 1 (133rd General Assembly)

R.C. 2929.15: House Bill 1 modified provisions of law that capped the maximum prison sentence available for "technical violations" of community control for felonies of the fourth[15] and fifth degree at 180/90 days respectively. The bill mandates that a prison term imposed for a technical violation may not exceed the time the offender has left to serve on community control or the "suspended"[16] prison sentence. Further, the time spent in prison must be credited against the offender's remaining time under the community control and against the "suspended" prison term in the case.

HB 1 also specifies that the court is not limited in the number of times it may sentence an offender to a prison term as a penalty for violation of a community control sanction or condition, violating a law, or leaving the state without permission. This provision applies to all levels of felonies and for both technical and non-technical violations, allowing for community control violators to be returned to community control after imposition of a prison term at the sentencing court's discretion. Offenders sentenced for a technical violation of community control for a fourth-degree felony, or fifth degree felony must remain under community control supervision upon the defendant's release from prison, if any time remains on the supervision period.[17]

The budget bill passed June 30, 2021,[18] included amendments to clarify parts of HB 1. The suspended sentence language was amended to reserved sentence to be consistent with existing statutes. The bill also clarified the manner in crediting time served, for example the length of time in prison was limited to the length of community control remaining if it was less than 90/180 days respectively.

Lastly, HB 1 defined "technical violation" as a violation of the condition of community control sanction imposed for a felony of the fifth degree, or for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense, and to which neither of the following apply:

(1) The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under a community control sanction.

(2) The violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal

[15] Fourth degree felony offenses of violence and sexually oriented offenses are not subject to the technical violator caps under the bill.
[16] When an offender is placed on community control the trial court must select a "reserved" prison term from the range available for the offense; the term "suspended" has no meaning under the post-SB2 sentencing scheme. As passed by the Senate, the budget bill replaced "suspended" with "reserved" prison term.
[17] HB1 also created RC 2929.15(B)(2)(c)(ii), which references an offender serving a community-control sanction as part of a "suspended prison sentence." As current law does not provide for any type of "suspended" prison sentence, that provision is amended in Am.Sub. HB 110 as passed by the Senate to instead reference "residential community control" sanctions – which include terms in jail, CBCF, alternative residential facilities, or halfway houses.
[18] Am.Sub.H.B. No. 110, 134 Ohio Laws 627.

demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.

What changed?

2929.15:

Provided a definition of "technical violations," the absence of which led to a number of appeals and two Supreme Court of Ohio[19] decisions attempting to define the term.

Mandated a return to community control for those technical violators released from prison and provided courts the option to do the same for both technical and non-technical community control violators at all other felony levels. Historically, case law interpretations have held that prison sentences and community control are mutually exclusive options at the time of sentencing.

Impact

As identified by the 2021 workgroup, the changes to ORC §2929.15 in HB1 (and subsequently in the 2021 budget bill) were intended to:

- Define and clarify what constitutes a technical violation of community control.
- Increase discretion regarding sanctions for community control violators by giving judges the ability to return an offender to community control.

Therefore, if these statutory changes had the intended impact, we would expect **a decrease in the number of appeals that address the classification of a community control violation as technical or non-technical** because the definition is clarified in the statute. Regarding the intention to increase discretion, that is difficult to measure, however it can be assumed that if the statute gave judges more choices in what to do with a community control violator that it had the intended impact.

Data & Analysis

In order to determine the impact of these legislative changes, we tracked appellate cases in each of Ohio's twelve appellate courts. Original tracking terms asked for cases involving "technical violations," "technical violator" or considerations of divisions of R.C. 2929.15(B). These cases were further examined to determine if they involved distinguishing between technical and nontechnical violations as relevant for this statute.

[19] *State v. Castner*, 163 Ohio St. 3d 19, 2020-Ohio-4590, 167 N.E.3d 939; *State v. Nelson* 162 Ohio St. 3d 338, 2020-Ohio-3690, 165 N.E.3d 1110.

Figure 2. Ohio Appellate Decisions Involving the Definition of "Technical Violations," by year.

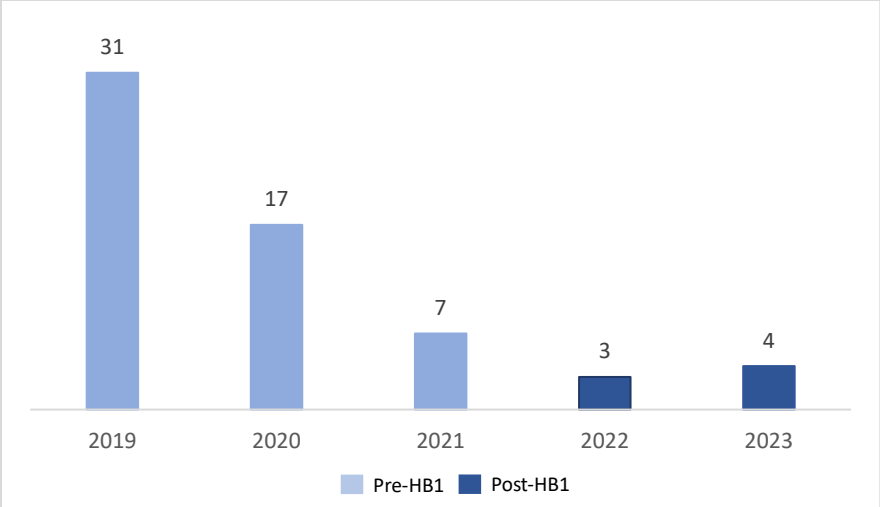


Figure 2 reflects the number of cases that fit these criteria each year, with cases from 2019 to 2021 reflecting the statute prior to HB1 and 2022 and 2023 cases reflecting post-HB1 decisions.[20] As shown, there have been few cases appealed since the enactment of HB1 that have argued the violations of community control have been technical violations. In those cases, the appellate courts have used the statutory definition and, in most cases, have found that the defendants' violations were non-technical violations. [21]

Conclusion & Recommendations

Based on the low number of appeals after the statutory changes, it appears that the codification of the definition of "technical violation" has had the intended impact of providing clarification for what constitutes a technical violation.

There are no further recommendations regarding these changes or evaluating the impact of this statute.

[20] For this report, 2023 appellate decisions were not tracked beyond September 30, 2023.

[21] For details on the post-HB1 appellate cases summarized by appellate district, please see Appendix A.

R.C. 2951.041 Intervention in Lieu of Conviction

Modifications to Ohio Revised Code Section 2951.041 from Ohio House Bill 1 (133rd General Assembly)

2951.041: If the court has reason to believe that a person charged with a crime had: drug or alcohol usage, mental illness, intellectual disability, victim of trafficking or compelling prostitution, the court may accept request for ILC before a guilty plea. The bill grants a presumption of eligibility for intervention in lieu of conviction (ILC) to offenders alleging that drug or alcohol abuse was a factor in the commission of a crime. If an offender alleges that drug or alcohol usage was a factor leading to the offense, then the court must hold a hearing to determine if the offender is eligible for ILC. The bill requires the court to grant the request for ILC unless the court finds specific reasons why it would be inappropriate, and, if the court denies the request, the court is required to state the reasons in a written entry. If granted, the offender is placed under control of local probation, APA, other appropriate agency, or CCS. The offender must, abstain from illegal drugs and alcohol, participate in treatment and recovery, submit to drug/alcohol testing, and other conditions imposed by the court.

What changed and why?

The bill broadens the scope of ILC, requiring that the court must, at a minimum, hold eligibility hearing for each applicant that alleges drug or alcohol usage as a leading factor to the underlying criminal offense. Along with the presumption of ILC eligibility, the court must state the reasons for denial in a written entry. The bill also caps mandatory terms of an ILC plan at 5 years. The bill narrows ILC eligibility in one new way, making an offender charged with a felony sex offense ineligible for ILC (a violation of a section contained in Chapter 2907 of the ORC that is a felony). The court can continue to reject an ILC hearing if the offender does not allege alcohol or substance abuse was a leading factor to the criminal offense. F1-F3 offenses and offenses of violence remain ineligible for ILC.

SB 288, enacted in 2023, made a further change to R.C. 2951.041. This change allows for courts to use community-based correctional facilities for ILC.[22] Research conducted for the initial HB1 Impact Study Report suggests this is a codification of current practice, though respondents indicated it rarely used—only used as a sanction of last resort or based on a high risk assessment score.[23] This bill also incorporated expungement of records for those successfully completing ILC as an option for courts.

Impact

As identified by the 2021 workgroup, the changes to R.C. 2951.041 in HB1 were intended to broaden the scope of ILC by presuming eligibility if drug or alcohol abuse was a factor in the offense and by requiring a written reason for denial. Therefore, if these statutory changes had the intended impact, after HB1 went into effect, we would expect **an increase in ILC placements and a decrease in ILC denials**.

Data Sources

Currently, there is no central source in the state for tracking the number of applications for intervention in lieu of conviction (ILC) or, consequently, the number of applications that were granted or denied each year.

[22] Am.Sub.S.B. No. 288, 134 Ohio Laws 267.
[23] See p. 58 of the *HB1 Impact Study Report,* (January 2022).

To establish a baseline number of ILC applications for comparison against requests received after the post-HB1 changes, we gathered available information from individual courts.[24] We reached out to all court administrators with a valid email address on file at each municipal, county, and court of common pleas in Ohio to request a range of information from them about applications for ILC for the calendar year of 2022.[25] Many courts were unable to provide all pieces of information requested, but provided what they could. Table 1 displays the number of courts contacted, as well as the number that supplied data.

Table 1. Number of Courts Contacted and Providing ILC Data

	Successfully contacted	Responded with Data	Responded to Say They Could Not Provide Data
Common Pleas	75	14	5
Municipal and County Courts	62	1	2
Total	**134**	**15**	**7**

Notably, this year, one county court reported using ILC. Although it is difficult to confirm with the current data, ILC appears to be rarely used in county and municipal courts. As noted in the 2021 HB1 Impact Study Report,[26] county and municipal courts often use different pretrial diversion programs, and some are unaware of changes that made ILC is a more viable option at the misdemeanor level.[27]

Table 2 shows the number of courts who provided data for both reports and can be compared across time, both pre- and post- HB1. Note that only a few courts provided updated data for the time period between April 12, 2021, and December 31, 2021, the immediate post-HB1 time period. For the courts who did not provide the post-HB1 2021 data, their 2022 records can be compared from 2018 to 2020, omitting 2021.

Table 2. Courts Providing ILC Data Continuous Data Pre- and Post- HB1

	Provided Pre-HB1 Data	Provided Post HB1 2021 Data	Provided 2022 and Pre-HB1 2021 Data	Provided 2022 Data and All 2021 Data
Common Pleas	9	2	5	2
Municipal and County Courts	0	0	0	0
Total	**9**	**2**	**5**	**2**

As displayed, five courts can be compared pre- and post- HB1, excluding the incomplete 2021 data. Two courts provided continuous data which can be compared fully pre- and post- HB1, which includes full 2021 data. Note also that not every court provided complete data on ILC applications filed, granted, and denied. In this report, the denominator of courts included in each analysis is always indicated with (n=x). For the

[24] The 2021 HB1 Impact Study Report illustrated data from the APA Counties that the Ohio Department of Rehabilitation and Corrections oversees. A conversation with the Bureau of Research and Evaluation revealed that ODRC is supervising just 12 small APA counties currently. Data on these counties was not provided.
[25] See Appendix B: Letter to Court Administrators Requesting Data.
[26] https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/HB1/impactStudyReport.pdf
[27] Am.Sub.H.B. No. 66, 132 Ohio Laws. Prior to this change in 2018, ILC could only be used once by any offender. Therefore, municipal courts rarely offered such programs and attorneys rarely recommended application in order to "save" the opportunity for a more serious offense.

sake of continuity and fair comparison across years, analyses focus on the courts who have provided some level of pre- and post- HB1 data. The court data provided starting in 2022 will provide a useful post-HB1 measure for this report moving forward.[28]

A Note on Court ILC Data

The 2021 HB1 Impact Study Report noted several issues concerning ILC data that must be addressed in order to fully understand the impact of ILC in the future. From qualitative interviews with common pleas judges, the 2021 report stated:

> *Only one common pleas court judge interviewed indicated their court has robust data on ILC, because the grants they receive for the program have rigorous reporting requirements. The rest of the judges interviewed stated that they do not formally track data on ILC. In most common pleas courts, some data exists in the court case management system, but it is not aggregated. Therefore, it is time intensive to mine the data for useful analytical purposes. As a result, most courts are not using data to evaluate ILC at a programmatic level.*
>
> *Others also pointed out that the data they do have does adequately capture the ILC process. As one judge summarized, ILC is not being denied in their jurisdiction. The prosecution does a background check to determine eligibility and defense counsel will withdraw their motion if someone is statutorily ineligible. So, no denials are reflected in the court's records. For this reason, the data will not reflect why defendants do not get into ILC. The data also does not reflect those who are eligible for ILC and do not apply, for any reason. Further, there is a severe lack of data on what happens to a defendant participating in ILC. Although some jurisdictions maintain data on successful ILC completion rates, it is difficult to track what happens to a defendant after leaving the program. This presents a major challenge for studying the ultimate impact of HB1 beyond the courtroom.*[29]

Analysis of the following court ILC data must take these considerations into mind as limitations for any conclusions drawn. Standardized definitions and reporting of ILC data could address these limitations.

Analysis

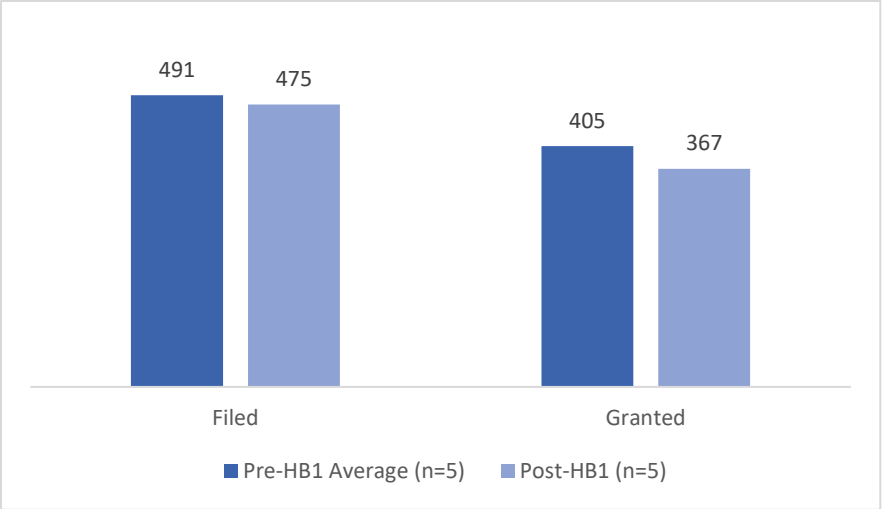
Figure 3 shows average ILC applications submitted and the number of ILC placements made pre- and post-HB1, excluding 2021.[30]

[28] The descriptive statistics of the 2022 court data on ILC are presented in Appendix C. Analysis of the two courts providing continuous data is also included in Appendix D.

[29] See *HB1 Impact Study Report,* (January 2022) p. 56.

[30] Note that the total applications include applications that were later withdrawn by the defendant. Further note that applications filed in a given calendar year may not always be disposed of in that year. Similarly, applications granted in a calendar year, may have been initiated in a preceding year.

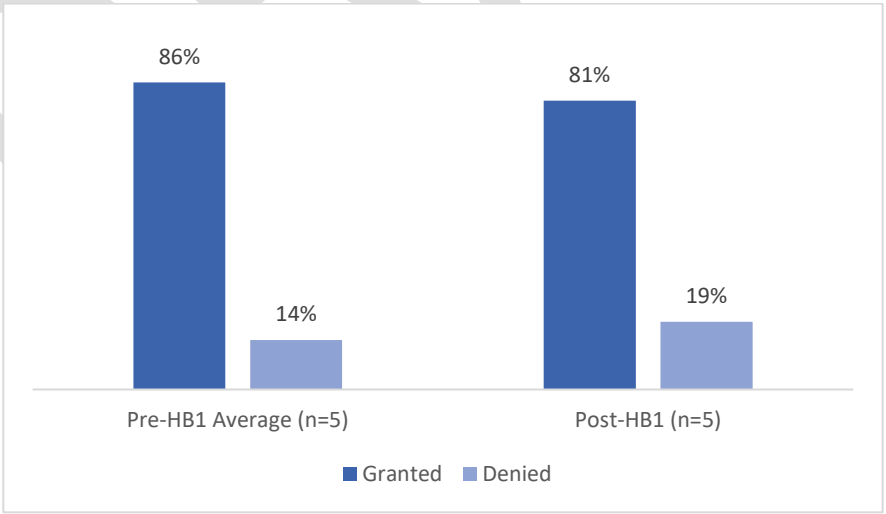
Figure 3. ILC Cases Filed and Granted Pre- and Post-HB1 Among Five Reporting Courts



Overall, the number of ILC cases filed and granted experienced a slight decline pre- and post-HB1. Due to the small sample size, this could be a normal fluctuation that can occur at the individual court level. In the 2021 iteration of this report, qualitative analysis suggested that the changes made to ILC by HB1 either codified existing practice or may not be substantive enough to impact the functioning of ILC at their respective courts. Among these five courts, a change to assuming eligibility for ILC has not resulted in an influx of ILC placements and applications.

Figure 4 displays the percentage of ILC applications granted and denied pre- and post-HB1. For this analysis, withdrawn and pending applications were removed from the totals.

Figure 4. Percentage of ILC Applications Granted and Denied Pre- and Post-HB1 Among Five Reporting Courts



As noted, it is difficult to draw generalizations of impact of HB1 changes based on the sample size. There has been a slight decline in percentage of cases accepted pre- and post-HB1. This could be a normal

fluctuation and it is to monitor in the future. It is worth considering, that among the 10 courts who reported data on those granted and denied ILC in 2022, the acceptance rate was also 81%.[31]

Conclusions and Recommendations

While the statute reflects efforts to expand the opportunities for ILC among certain offenders, the data that is available indicates that these changes are not having the intended impact. In the limited data presented here, there is a decrease in applications for ILC and a slight increase in denials.

Many of the 2021 HB1 Impact Study Report recommendations are still relevant two years later. Qualitative research conducted for the 2021 report suggested the removal of certain barriers for courts to use ILC, clarification of the benefits of ILC for courts and offenders, and to educate certain populations about expanded ILC options. Additionally, with systems and requirements in place to acquire reliable information, future impact studies will have more valid conclusions on the impact of these statutory changes. Specific recommendations follow.

Multiple respondents indicated that they did not believe changes to the ILC eligibility due to HB1 would increase participation because ILC is often seen as a less-desirable option by offenders, courts, and attorneys for a variety of reasons. If the goal is to increase participation in ILC, it will be helpful to **clarify the benefits of ILC.** Specifically, it may be helpful to illustrate what offenders may be a good candidate for ILC and how it may be more beneficial to some than community control supervision, to formalize ILC as a program, and to standardize assessment reports from treatment providers so that courts have enough information to select an appropriate treatment provider.

Additionally, respondents identified the relatively high cost of ILC as a barrier. In order to increase participation, **costs of ILC for courts and participants need to be addressed**. There is a large variability in the ability to fund participation. Some courts have grant funded ILC programs that pay for the resource-heavy programming and assessment while others struggle with the defendant's ability to pay for the initial assessment. Some insurers will cover the cost of assessment and treatment and others will not.

In order to maximize participation by eligible offenders in ILC, it is useful that the opportunity is offered when it is available. In 2021, it was found that many defense attorneys and treatment providers were not aware that ILC could be an option in municipal courts. Further, as information was sought from courts this year, several municipal courts reached out to say that ILC does not apply to municipal courts. Prior to legislative changes in 2018,[32] ILC was a "one and done" opportunity. As such, ILC was not often discussed with misdemeanor defendants as it was thought that this opportunity should be saved in case there was a more serious charge in the future. However, there are no longer any limits to the number of times an offender can participate in ILC. Therefore, it is recommended to **better communicate statutory changes regarding ILC**, particularly among those working in the municipal courts. Educational efforts could be focused on the Association of Municipal/County Judges of Ohio, the defense bar, and treatment provider.

Reliable information is necessary to make valid conclusions about the impact of statutory changes for the effectiveness of ILC. One way to do this is to require **regular and standardized reporting of ILC cases.** Collection of this information could come from additions to the case statistics reports of the general

[31] The full descriptive statistics on the 2022 reporting courts are listed in Appendix C.
[32] Am.Sub.H.B. No. 66, 132 Ohio Laws.

division and municipal courts and include additional disposition categories for ILC cases: post-ILC guilty plea and post-ILC dismissal.

In order to determine the long-term effectiveness of ILC for offenders and for public safety, research should be conducted on outcomes such as recidivism or criminal desistance. One way to assist in this effort may be to **establish reporting from probation departments to evaluate long term effectiveness of ILC**.

While certainly fewer than in the past, some barriers to record sealing identified in the 2021 report still exist, such as the lack of standardized methods for filing records-sealing cases. The different approaches by courts may lead to unintentional misinformation given to those seeking record sealing. While the lack of a unified court system in Ohio prevents mandating a singular approach, it may be helpful to **encourage courts to use standardized record sealing forms**, as the ones that exist in Rule 96 of the Rules of Superintendence for Ohio Courts to make the process easier for attorneys serving clients in multiple counties to advise.

R.C. 2953.31 & 2953.32 Sealing of a Record of Conviction

Modifications to Ohio Revised Code Sections 2953.31 and 2953.32 from Ohio House Bill 1 (133rd General Assembly)

2953.31: Outlines definitions for terms found in ORC 2953.31 through 2953.36, on the topic of the sealing of records of conviction, including specifying "eligible offender" for the purposes of record sealing. Eligible offenders may only seal eligible offenses, as listed in 2953.36.

2953.32: Identifies the timeline for offender eligibility, the considerations of courts and prosecutors, and the process of the courts for sealing a conviction or bail forfeiture record.

What changed and why?

2953.31:

Record Sealing offender eligibility expanded to include:

- Unlimited sealing of convictions if all are F4, F5, or misdemeanors if none are offenses of violence or sex offenses.
- Up to two felony convictions, up to four misdemeanor convictions, or exactly two felonies and two misdemeanors

2953.32:

Application for record sealing can now be made at following times:

- The expiration of three years after final discharge of an F3
- The expiration of one year after final discharge for an eligible F4, F5 or misdemeanor

In late 2022, the General Assembly passed the "Revise the Criminal Law" Bill (SB288),[33] which modified Revised Code sections 2953.31 and 2953.32. These sections were further modified in the and the Biennial Budget Bill (HB33).[34] Given that these changes were not effective until April (for SB288) or October (for HB33) of 2023, they are not evaluated for this report. This report focuses on the impact of HB1 changes in 2022, as statutory changes enacted in 2023 prevent comparison to previous years.[35]

Impact

In the 2021 HB1 Impact Study Report, the work group identified the following as intended outcomes from the legislative changes to R.C. 2953.31 and 2952.32:

- Increase the number of individuals eligible for record sealing and to decrease the amount of time between the conclusion of their sanctions and eligibility in order to decrease barriers to employment.
- Reduce harm done by the "collateral consequences" of conviction, specifically regarding the access to employment, housing, public assistance, and education.

[33] Am. Sub.S.B. No. 288, 134 Ohio Laws 278.
[34] Am.Sub.H.B. No. 33, 135 Ohio Laws 876.
[35] The impact of changes to the statutes due to SB 288 and HB 33 will be included in the report submitted December 31, 2025.

Therefore, if the changes in statute made by HB1 had the intended impact, we would expect **an increase in record sealing motions after the enactment of HB1.** Likewise, an increase in eligibility should also result in an **increase in record sealing motions granted by the court**. At this time there is no way to evaluate if these changes resulted in a reduction in harm of collateral consequences.

Data Sources

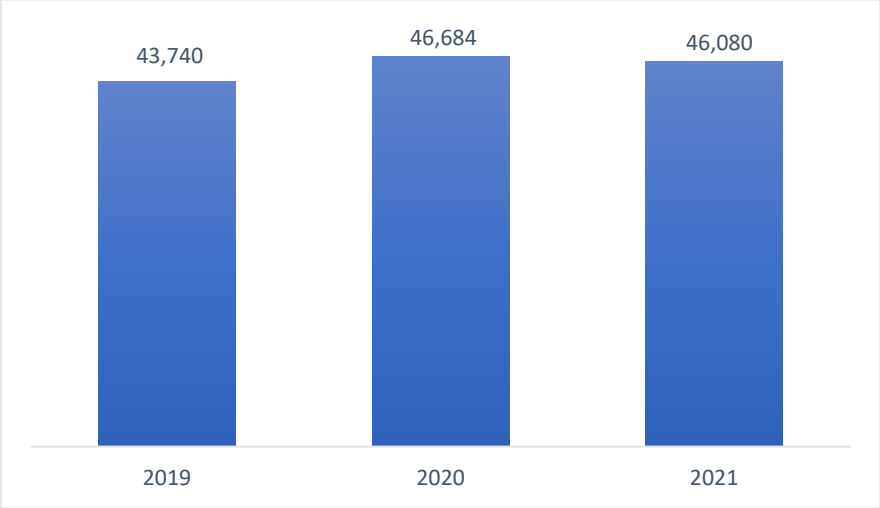
Currently, there is no central source in the state for tracking the number of requests for record sealing or, consequently, the number of motions filed for sealing that were granted or denied each year. To ensure we have as complete of a picture as possible, we gathered multiple sources of information, including from the Bureau of Criminal Investigation (BCI), the Ohio Access to Justice Foundation, and individual courts. The methodologies for each source of information are expounded upon in the Analysis section below.

Analysis

BCI Yearly Record Sealing Orders

The Ohio Attorney General's Bureau of Criminal Investigation serves as Ohio's crime lab and criminal-records keeper. Their office provided calendar year totals for record sealing orders it received from 2019-2021. Figure 5 reflects the number of requests received by BCI from local courts to seal records. These requests are submitted with a sealing order signed by a judge.

Figure 5. Number of orders to seal records received by BCI each year.



The number of record sealing orders remained consistent from 2020 to 2021. Although HB1 took effect in April of 2021, there may be a policy lag in seeing an expansion of record sealing orders on the ground. 2020 and 2021 provide a good baseline for assessing how record sealing orders have changed in 2022 and beyond.

Ohio Access to Justice Foundation

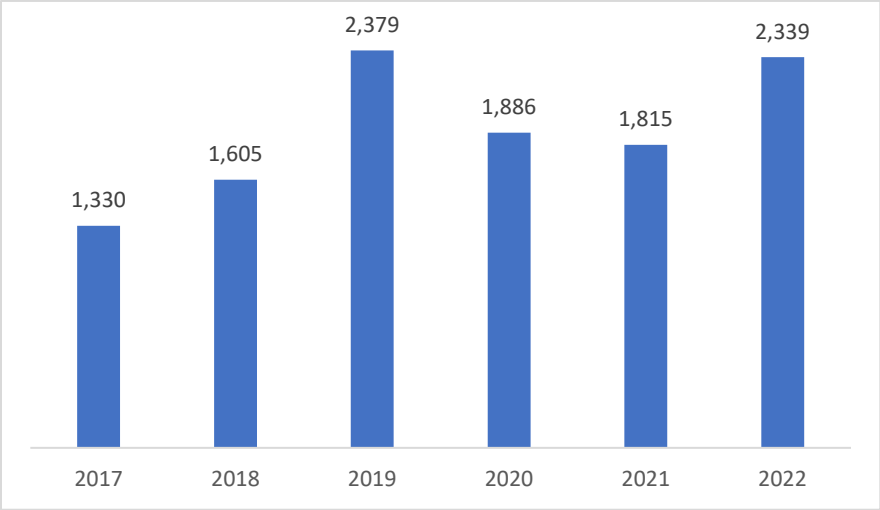
The Ohio Access to Justice Foundation produces numbers on the number of statewide records sealing cases they assist with each year. Per their office, legal aid most commonly connects with Ohioans who need help sealing a criminal record in one of three ways:

1. Dedicated clean slate clinics held throughout the state;
2. Representation on other issues; and,

3. Direct requests for assistance with record sealing through the intake process.

Figure 6 displays the number of record-sealing cases that legal aid handled per year in the state of Ohio.

Figure 6. Number of record sealing cases statewide handled by Legal Aid of Ohio, per year.



The number of record sealing cases dipped in 2020 and 2021, perhaps owing to COVID challenges, and rebounded to 2019 levels in 2022. It should be noted that based on the focus group conducted for the 2021 report, legal aid offices rely on a mix of paid staff and volunteer pro-bono attorneys who donate their time to help clients with record sealing. The numbers above may be constrained by the volunteer time contributed to legal aid offices and may not reflect the total need of those approaching legal aid for help.

Individual Courts

Commission staff reached out to all court administrators with a valid email address on file at each municipal, county, and court of common pleas in Ohio to request a range of information[36] about all motions and orders to seal records for the calendar year of 2022. Note that as part of the 2021 iteration of this impact report, courts were requested to provide full 2021 data when available. Many courts were unable to provide all the pieces of information requested but provided what they could.

A Note on the Court Record Sealing Data

For this report moving forward the burden on courts to collect and report this data must be considered along with the task of manual data entry of record sealing numbers. While a handful of courts submit aggregate annual numbers, many courts provide information at the individual case level, sometimes in the form of a spreadsheet, but often in the form of a PDF or Word listing. These cases must be manually tallied, for the reporting year, along with any historical data provided. As this report continues in future iterations, it needs to be considered the level of continuous pre- and post- HB1 data that can be compiled, as well as the burden on the courts to produce recent data along with historical numbers. In conversations with court staff, many must employ staff or intern time to hand-gather numbers, which often can be a months-long

[36] See Appendix B: Letter to Court Administrators Requesting Data. Commission staff followed up with individual court administrators on an ongoing basis who had not provided data and with those with any questions or concerns with the data request.

process. Future reports must consider the value of this data with the additional work it puts on court staff to gather this information.

Analysis on Responding Courts

Table 3 displays the number of courts contacted, as well as the number that supplied data.[37] Additionally, there were a few courts that contacted us to say that it was not possible to provide any of the data we requested. The reasons cited for not being able to provide data was unanimously that their court's case management systems could not produce such reports and that they could not dedicate the staff time to manually compile these reports.

Table 3. Number of Courts Contacted and Providing Record Sealing Data

	Successfully contacted	Responded with Data	Responded to Say They Could Not Provide Data
Common Pleas	75	14	5
Municipal and County Courts	62	13	2
Total	**134**	**27**	**7**

Table 4 shows the number of courts who provided data for both reports and can be compared across time, both pre- and post- HB1. Note that only a few courts provided updated data for the time period between April 12, 2021 and December 31, 2021, or the immediate post-HB1 time period. For the courts who did not provide the post-HB1 2021 data, their 2022 records can be compared from 2018 to 2020, omitting 2021.

Table 4. Courts Providing Record Sealing Data Continuous Data Pre- and Post- HB1

	Provided Pre-HB1 Data	Provided Post HB1 2021 Data	Provided 2022 and Pre-HB1 2021 Data	Provided 2022 Data and All 2021 Data
Common Pleas	12	4	7	3
Municipal and County Courts	10	9	4	3
Total	**22**	**13**	**11**	**6**

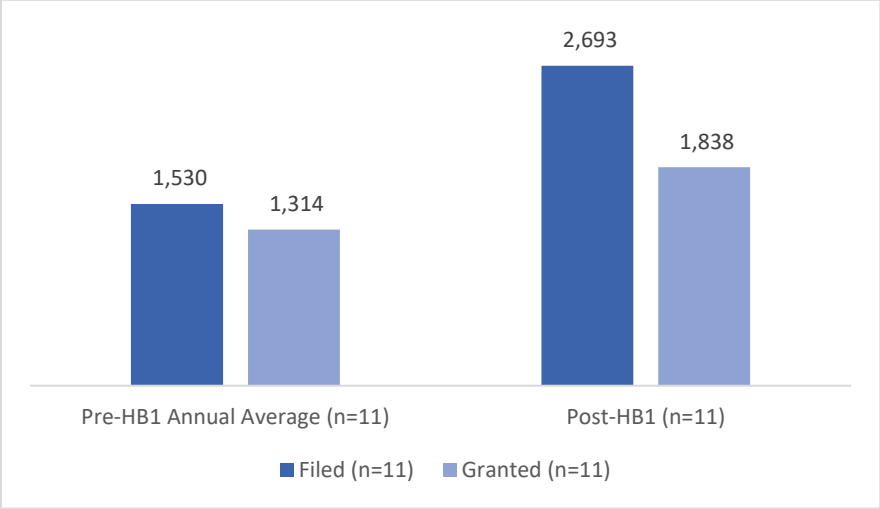
As displayed, 11 courts can be compared pre- and post- HB1, excluding the incomplete 2021 data. Six courts provided continuous data which can be compared fully pre- and post- HB1, which includes full 2021 data. Note also that not every court provided complete data on record sealing motions filed, granted, and denied. In this report, the denominator of courts included in each analysis is always indicated with (n=x). For the sake of continuity and fair comparison across years, analyses focus on the courts who have

[37] A 2023 study by the Drug Enforcement and Policy Center found a similar response rate, with 36 courts providing information on the total number of record sealing applications, and 17 courts providing information on records filed, granted, and denied. See Hrdinova, Jana, *Is Expanding Eligibility Enough?: Improving Record Sealing Access and Transparency in Ohio Courts* (April 7, 2023). Ohio State Legal Studies Research Paper No. 764, Drug Enforcement and Policy Center, April 2023, Available at SSRN: https://ssrn.com/abstract=4412551 or http://dx.doi.org/10.2139/ssrn.4412551

provided some level of pre- and post- HB1 data. The court data provided starting in 2022 will provide a useful baseline for this report moving forward.[38] It should be noted that there are 250 Common Pleas, Municipal, and County courts in Ohio. The 27 courts who provided 2022 data represent nearly 11% of all courts in the state. The 11 courts with pre- and post- HB1 data represent just 4.4% of all courts in the state.

Figure 7 displays the number of record sealing applications received and granted per year, pre- and post-HB1. Note that not all record sealing applications received in a calendar year are resolved in that same year. Similarly, an application that has been granted in a calendar year may have been filed in the preceding year.

Figure 7. Record Sealing Applications Filed and Granted Pre- and Post- HB1 among 11 Reporting Courts

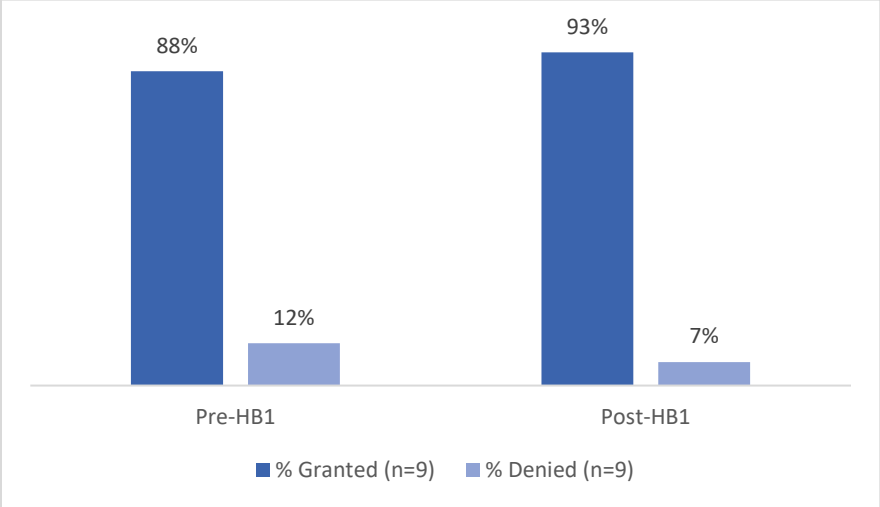


As demonstrated in the graph, the number of record sealing applications nearly doubled after the changes to eligibility in HB1 and the applications granted also noticeably increased in the 11 reporting courts from the pre-HB1 average to 2022. While 10 of the courts in this sample remained relatively steady, one large Common Pleas court nearly doubled its total applications received from its pre-HB1 average to 2022. Although the small sample size limits the conclusions that can be drawn, it is possible that changes from HB1 led to a significant increase in record sealing applications in the state's largest courts. Similarly, the number of applications granted increased from the pre-HB1 average to 2022. This is not all due to the large Common Pleas court. While the large court experienced a 26 percent increase in applications granted from its pre-HB1 average to 2022, the remaining 10 courts experienced a 17 percent increase in the number of record sealing applications granted.

Eight of the 11 courts provided the complete record of orders to seal a record that were denied. Figure 8 displays the percent of record sealings granted and denied per year pre- and post- HB1.

[38] The descriptive statistics of the 2022 court data on record sealing are presented in Appendix E. Analysis of the six courts providing continuous data is included in Appendix F.

Figure 8. Percentage of Record Sealing Cases Granted and Denied, Pre- and Post-HB, Among Eight Reporting Courts.



Overall, the percentage of record sealing applications granted increased pre- to post-HB1, while the total number of record sealing applications increased by 18% from the pre-HB1 average to post-HB1. This suggests that the expansion of record sealing eligibility since the enactment of HB1 has led to an increase in both applications and the rate at which record sealing motions are granted.

Conclusions & Recommendations

Information provided by legal aid and local courts suggest that the expansion of eligibility for record sealing has had the intended impact, with an overall increase in record sealing motions. Furthermore, the percent of applications denied decreased following the statutory changes, among reporting courts.

With changes to the eligibility for record sealing in HB1, and more recently with increase eligibility and the introduction of expungement in SB 88, the General Assembly has made further efforts to clarify eligibility and decrease the barriers to record sealing—and expungement—in order to attempt to decrease the collateral consequences of a criminal conviction.[39]

However, there are still improvements that can be made to advance these efforts. Many of the recommendations from the 2021 HB1 Impact Study Report are still relevant for this report and tend to fall into two categories: making information more available, reliable, and easy to share and simplifying the process to access sealing.

As illustrated by the multiple qualifications of the information presented here, in order to continue to evaluate the impact of these changes to record sealing—and, in the next report, expungement—reliable information is necessary. One way to do this is to require **regular and standardized reporting of record sealing motions.** At the same time, it is important to not add to the workload of courts. To this end, it is suggested that collection of this information could come from additions to the case statistics reports of the general division and municipal courts. Existing research that suggests that increased access to record sealing and expungement assists in decreasing the "collateral consequences" of a criminal conviction, but

[39] For a summary of changes to R.C. 2953.31 and 2953.32 from SB288 and HB33, please see Appendix G.

there is no way to evaluate if that is true for Ohio.[40] Therefore, it is recommended that there is **protected access to anonymized sealed records to evaluate the impact of record sealing and expungement over time**.

While certainly fewer than in the past, some barriers to record sealing identified in the 2021 report still exist, such as the lack of standardized methods for filing records-sealing cases. The different approaches by courts may lead to unintentional misinformation given to those seeking record sealing. While the lack of a unified court system in Ohio prevents mandating a singular approach, it may be helpful to **encourage courts to use standardized record sealing forms**, as the ones that exist in Rule 96 of the Rules of Superintendence for Ohio Courts to make the process easier for attorneys serving clients in multiple counties to advise.

Even with the recent changes to clarify sealing and expungement in SB288, there remain some issues within the statutes that could be clarified to **simplify the process** and increase consistency across the state. For example, clarify the definition of "final discharge," centralize the process for those with convictions in multiple courts, and clarify the eligibility for those with OVI and companion felonies in the same case. If record sealing and expungement is effective, automatic expungement or record sealing is the best way to simplify the process and increase the benefits. This could be applied first for the **automatic sealing of non-convictions** and second to consider **automatic expungement or record sealing for certain convictions after a certain time period.**[41]

Finally, given the significant expansion in eligibility and the introduction of expungement in Ohio, it is still recommended to **increase education** for offenders, attorneys, and court personnel.

[40] See Appendix H for a review of research on the impact of record sealing on collateral consequences.
[41] See Appendix H for a discussion of automatic expungement laws in Michigan and Pennsylvania.

R.C. 5119.93 & 5119.94 Involuntary Commitment to Treatment in Probate Courts

Modifications to Ohio Revised Code Sections 5119.93 and 5119.94 from Ohio House Bill 1 (133rd General Assembly)

5119.93: The process by which a spouse, relative, or guardian may file a petition in probate court to initiate proceedings for treatment of an individual suffering from alcohol and other drug abuse.

5119.94: Outlines the initiation of proceedings by the court after receiving a petition for involuntary commitment to treatment, including the respondent's right to a hearing and the requirement for the court to make an evidentiary finding on the necessity of treatment. Includes consequences if a respondent fails to comply with court orders.

What changed?

5119.93:

The new legislation included more funding options for petitioners, including documentation that insurance would cover these costs, or other documentation that the petitioner or respondent will be able to cover some of the costs rather than the original requirement to pay the court 50 percent of treatment and exam costs. The legislation also removed the requirement of the petitioner to pay a filing fee under Sec. 5122.11.

The bill included the requirement that the petition be kept confidential. If petition includes belief that respondent is suffering from opioid/opiate abuse, petition shall include evidence of overdose and revival by opioid antagonist, overdose in a vehicle, or overdosing in presence of minor.[42] A physician who is responsible for admitting persons to treatment may complete the certificate, if they examine the respondent.

5119.94:

If evidence of an opioid use disorder is presented at the hearing in the form of overdose and revival by opioid antagonist, overdose in a vehicle, or overdosing in presence of minor, this satisfies the court's evidentiary requirement of clear and convincing evidence that the respondent may reasonably benefit from treatment. If treatment is ordered, the court must specify type of treatment, type of aftercare required, and the duration of aftercare (between three and six months). The court may order periodic mental health examinations to determine if treatment is necessary. HB1 removed the requirement that the respondent be given a physical examination by a physician within 24 hours of the hearing date. If a respondent does not complete treatment, they are in contempt of court and a summons may be issued. If the respondent fails to appear as directed in the summons, they may be transported to the previously ordered treatment facility or hospital for treatment. Costs of this transport are to be added to the costs of treatment.

Impact

As identified by the 2021 workgroup, the changes to R.C. 5119.93 and 5119.94 in HB1 were intended to enable family members to get help for those with substance-use disorders when a respondent is in

[42] R.C. 5119.93(B)(7).

imminent danger. Largely, the changes hoped to accomplish this by making the options more financially accessible. The changes also gave courts enforcement power if the respondent did not complete ordered treatment.

Therefore, if these statutory changes had the intended impact, we would **expect an increase in the number of individuals involuntarily committed for treatment**.

Data & Analysis

The original statute allowing for involuntary commitment to treatment went into effect September 29, 2013.[43] In 2021, discussions with those in probate courts and members of the treatment community estimated that the total number of cases from this original statute were extremely low, ranging from five to fifteen total cases statewide in the preceding eight years.

The original report identified several barriers contributing to the limited use of involuntary commitment to treatment statutes. In sum, from the report, "the three most-discussed barriers were lack of available facilities, the effectiveness of involuntary treatment, and the cost of treatment.[44]" While statutory changes in HB1 improved accessibility to involuntary commitment to treatment in several ways, notably: (1) allowing proof of insurance as payment for treatment and (2) the ability for judges to issue a warrant for those who leave treatment were identified as improvements by respondents, most of practitioners interviewed "saw the barriers to utilizing the statute as still too large to make an impact in substance use."[45]

To assess any changes among probate courts as a result of HB1, an email correspondence was sent out to all probate judges soliciting feedback on their experience with the statute.[46] In total, seven probate judges responded to the inquiry. Of those that responded, two judges stated that they had used the statute a combined total of three times since the passage of House Bill 1. The remaining five judges responded that the statute had not been used at all. Two of those judges had indicated that they had seen no filings before HB1. A summary of the responses as to why the statue has not been used more widely is compiled below:[47]

> *"The statute is not known about locally."*
>
> *"While several individuals have asked about it and been directed to the forms, no one has completed it. The response we've received from everyone was that they cannot or will not agree to be financially responsible for the cost of treatment."*
>
> *"The statute lacks any "teeth", and the system we have for treatment of mental health and addiction does not allow for "locked facilities." Therefore, anyone a judge orders to get involuntary treatment can easily leave the facilities that are not locked down. The patient knows that there is really no consequence to them not staying. That is not a fault of the facilities, it is just the nature of the treatment. I really don't see anything that can help this situation until a new system is put into place that allows for individuals to be kept involuntarily. And that is going*

[43] See R.C. 5119.93 and 5119.94
[44] *HB1 Impact Study Report,* (January 2022) p. 86.
[45] *HB1 Impact Study Report,* (January 2022) p. 89.
[46] See Appendix I.
[47] The responses were edited for length and clarity.

to take a monumental shift in the medical/treatment field, a whole lot of money, and a different way to treating folks with drug and alcohol problems."

Conclusions and Recommendations

While the seven judges replying to the inquiry about involuntary commitment to treatment only reported the statute being used three times since the effective date of HB1 in April 2021, this is more than what was anecdotally reported in 2021. It could be argued, then, that these changes have had their intended impact.

Numbers are simply one way to indicate impact. Though the volume of those impacted by these changes may not be large, it is important to note that the true impact to each of these families may be immeasurable. As mentioned in the 2021 report,[48]

> *While no respondents saw this statute as helping a large amount of people with substance-use disorders before they become criminal-justice involved, nearly all agreed that it could be used to help some individuals and families affected by substance use. Respondents emphasized that these statutes could give some hope to families and parents who "feel like they've tried everything."*

However, as the responses to the recent email inquiry indicate, there are significant barriers remaining to greater utilization of these statutes. In order to inform those that could benefit from theses statutes, it is necessary to **strategize with justice partners how to make families aware of involuntary commitment to treatment options** and it is recommended to **expand education to judges to make them aware of changes to this law and encourage them regarding its potential**.

Further, respondents this year and in 2021 highlight the difficulties in implementation. Therefore, it is suggested to **simplify forms for commitment**, by developing strategies to create more effective partnerships with probate courts and treatment facilities or Medicaid and regional facilities. Additionally, cost remains an issue, and while changes to the statute allowed proof of insurance as a substitute for prepayment, nearly all respondents replied that this does not go far enough in addressing the cost barrier.

Finally, as with the evaluation of impact of the other statutory changes in this report, accurately understanding the impact relies on the collection of reliable information. It is recommended that there be avenues for **regular and standardized reporting of Involuntary Commitment to Treatment cases by probate courts.** This could involve adding Involuntary Commitment to Treatment as it is own unique case type on the quarterly probate court case statistics report.

[48] *HB1 Impact Study Report*, (January 2022), p. 89.

Overall Conclusions and Recommendations

Requiring the Commission to "commence a study of the impact of sections relevant to the actin in which this section is enacted, including but not limited to changes to sections 109.11, 2929.15, 2951.041, 2953.31, 2953.32, 5119.93, and 5119.94 of the Revised Code, and continue studying that impact on an ongoing basis" is an excellent example of continuous evaluation of changes to criminal justice policy. It is important to not only make changes that are believed to enhance public safety and access to justice, but to monitor those changes to understand their true impact. Then, if there are unintended consequences or if the impact is not what was envisioned, future policy changes can be based on this information.

As an example, in the inaugural HB1 report, one of the recommendations to "simplify the process" was to standardize fees for record sealing. While there was a $50 record sealing application fee across the state, courts were able to add their own fees which were reported to us as often ranging from $150 to $400, making sealing cost prohibitive to some. Senate Bill 288, effective April of 2023, addressed this barrier by capping court fees to $50 for record sealing.

The effectiveness of this, and future impact evaluations, relies upon the availability of reliable information. Many of the recommendations in the separate sections of this report suggest a required reporting or sharing of information so that there will be more evidence on which to base the conclusions. It is important to note that reporting requirements are also not always easy to meet, particularly for local agencies with limited resources. For example, a revision of the case statistics reporting to expand to include record sealing, ILC, and involuntary commitment to treatment involves a change to the capabilities of courts' case management systems. The cost per court will vary, but it will likely be several thousand dollars per court to make these changes. **In order to adequately evaluate changes to the criminal justice system, including the impact of changes examined here, there needs to be adequate funding to local entities to enable the collection of necessary information.**

The Commission should work with the General Assembly to clarify and provide guidance to the nature and structure of this report moving forward. Currently, legislation mandates that the Commission continue to issue a report on the impact of House Bill 1 every two years, without a sunset provision.

Appendix A. Summary of Appellate Cases for the definition of "Technical Violations," 2022-2023

First District Court of Appeals

State v. Elliot, 2023-Ohio-1459. Decided May 3, 2023. Defendant was found guilty of nontechnical violations for failing to comply with court-ordered treatment and failing to pay restitution. The conditions were found to be nontechnical as they were tailored to address the defendant's misconduct. Therefore, the court was not limited by R.C. 2929.15(B)(1)(c)(ii) that it imposes a sentence of not more than 180 days.

Second District Court of Appeals

State v. Parker, 2022-Ohio-1115. Decided April 1, 2022. Defendant was placed on community control for F4 Trespass in a Habitation and a misdemeanor count of criminal damaging and given conditions that included assessments and counseling for substance abuse, anger management, and mental health, as well as a requirement they adhere to state and federal law. The defendant was revoked and sent to prison after violations were filed for a domestic violence incident, failing to pay court costs, and failing to complete the required assessments. The Court found the violations were not technical in nature, finding the defendant's refusal to participate and new criminal offenses.

Third District Court of Appeals

State v. Everett, 2023-Ohio-1243. Decided April 17, 2023. Defendant was placed on community control for F5 Aggravated Possession of Drugs. Defendant absconded after only two weeks on community control. Defendant also refused to complete requested drug screen and had previous drug convictions in Michigan, where he absconded. Defendant's overall pattern of behavior and the cumulative effect of the violations demonstrated a failure to participate in his community control sanction as a whole.

State v. Wallace, 2023-Ohio-676. Decided March 6, 2023. Defendant was placed on community control for F4 Corrupting Another With Drugs. Defendant was found to have violated his Community Control by absconding and was revoked and sentenced to prison for 9 months. The Court of Appeals held that absconding was proven and that it was a nontechnical violation. The Court sustained the imposition of 9 months in prison.

Fourth District Court of Appeals

State v. Mehl, 2022-Ohio-1154. Decided March 29, 2022. Defendant was placed on community control for F2 burglary and was violated from community control several times, each with additional treatment conditions placed on the defendant. The defendant had community control revoked and a four-year prison term imposed, and while the defendant admitted the violations were not technical in nature, the Court engaged in a thorough analysis of the issue in the decision. Ultimately the sentence was upheld as not contrary to law.

Sixth District Court of Appeals

State v. Wodarski, 2022-Ohio-1428. Decided April 29, 2022. Defendant was place on community control for 3 F5s – Unauthorized Use of Motor Vehicle, Identity Fraud and Receiving Stolen Property. Defendant's community control was revoked for technical violations and the court sentenced defendant to 90 days on each felony and that the time was to run concurrent for a total of 270 days. Appellate

court held that nothing in the statute precluded consecutive sentences and that the 90-day cap applies to each underlying felony conviction.

Twelfth District Court of Appeals

State v. Demangone, 2023-Ohio-2522. Decided July 24, 2023. Defendant pled guilty to F4 Trespass in a Habitation. Defendant's community control was revoked, and he was sentenced to 18 months in prison. Defendant's actions demonstrated his refusal to participate in a community control condition that had been specifically tailored to his misconduct. Defendant's conduct demonstrated his refusal to participate in the imposed community control condition and this refusal demonstrated the defendant had abandoned the objective of his community control.

Appendix B. Data Request Letter to Court Administrators

Dear Court Administrator,

As you may know, the 133rd General Assembly passed House Bill 1, and Governor DeWine signed it into law in January 2021. HB1 made a number of adjustments to criminal justice policy, including obligating the Ohio Criminal Sentencing Commission to evaluate the impact of the legislation, per ORC 181.27.

Our first report on the impact of the changes to House Bill 1 was released in January 2022, and is available on the Commission's website. The legislation mandates the Commission to study the impact of the bill on an ongoing basis, producing a report of the findings every two years.

Among these provisions of HB1 are changes to record sealing eligibility and the use of intervention in lieu of conviction (ILC). In order to best understand the impact of the changes to local jurisdictions, we will need information from courts.

To this end, we are requesting anonymized information from you on motions for record sealing and ILC for the entire calendar year of 2022. The list below is a list of data points we would like to collect, but we are aware the this may not be possible for many courts to provide. Please provide information for any of these data points that are accessible to you. Likewise, if you are able to supply information only in the form of aggregate reports (e.g. total number of motions filed, number of motions granted, etc.), that information will still be helpful for the evaluation.

Motions to seal:

- Date the motion was filed
- If the motion was granted
- If the motion was denied, reason (eligibility or on merit)
- Felony offense and/or offense level attempting to be sealed
- Demographics of offender (e.g. dob, race, gender, etc.)
- Date of conviction for sealed offense
- Date motion granted or denied
- Any new convictions after sealing

ILC:

- Date ILC requested
- Date ILC granted
- If denied, why
- Offense and/or offense level
- Reason for ILC (substance use, mental illness, intellectual disability, victim of human trafficking)
- Type of ILC supervision/program ordered
- Conditions of ILC
- Length of ILC imposed
- Dates of ILC entry and exit
- ILC placement (facility)
- ILC program exit type (e.g. successful, unsuccessful, other sanction, etc.)
- Demographics
- Defendant risk assessment score
- ILC record ordered sealed
- New convictions during ILC including offense
- New convictions after successful ILC completion

We appreciate the time it may take to compile the information and understand that for some courts it may be difficult or impossible to obtain. If it is not possible for you to generate the information, please let us know – again, that scenario is important for the overall evaluation of impact.

Please send the information in a format easiest for you – whether that be a word document, pdf, response to this email or excel spreadsheet to the Ohio Criminal Sentencing Commission. We kindly ask that you include contact information for any follow up that may be necessary in your response. **We are asking that the information be provided by October 31, 2023, if possible**. We appreciate your help and hope to hear from you soon.

If you have any questions, please do not hesitate to contact me at todd.ives@sc.ohio.gov, or reach out to the Commission's office email: ocsc@sc.ohio.gov, or reply to this email. You may also reach me via phone at 614.387.9306.

Sincerely,

Todd Ives

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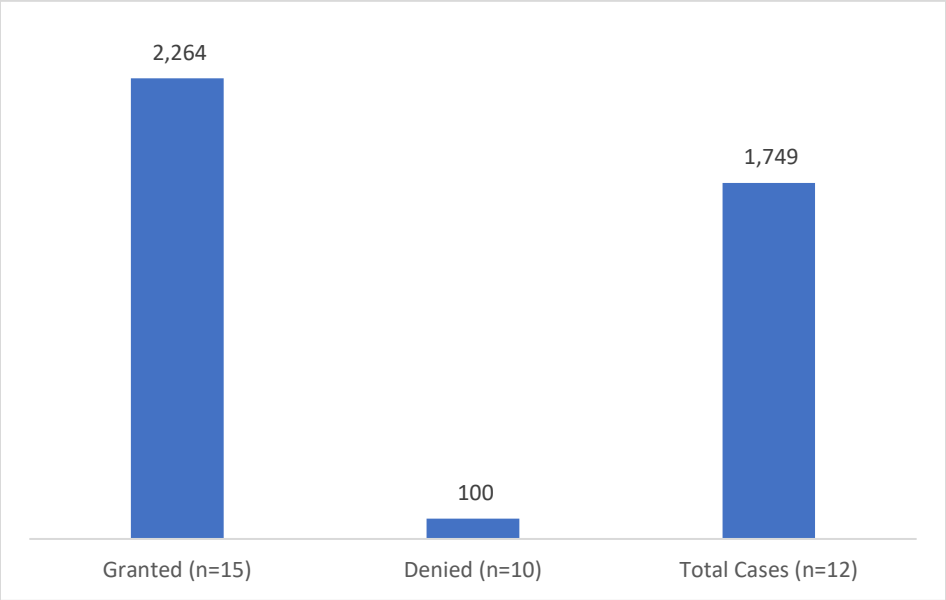
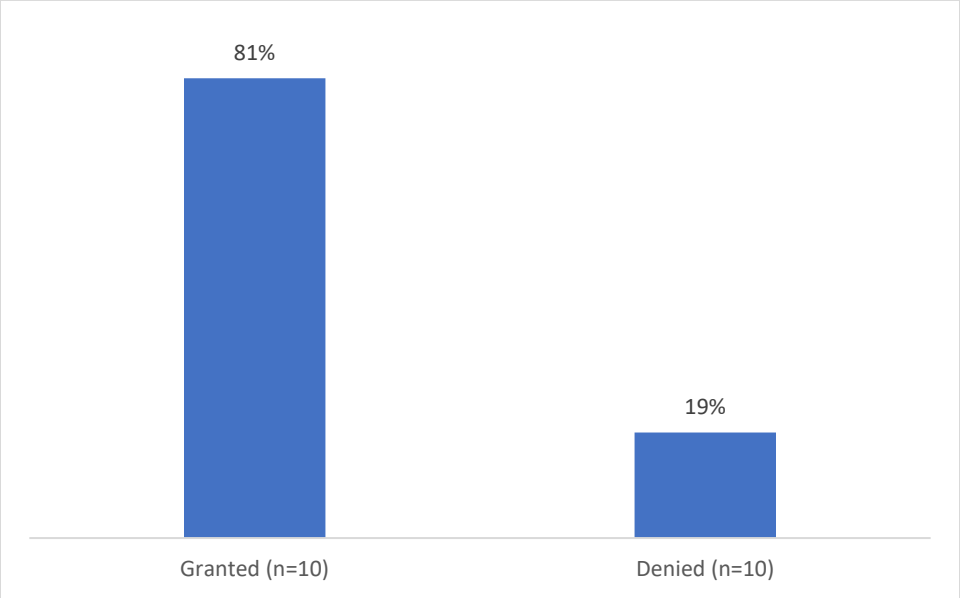
www.supremecourt.ohio.gov

Appendix C. 2022 ILC Court Data

ILC Cases Granted, Denied, and Filed Among 15 Reporting Courts

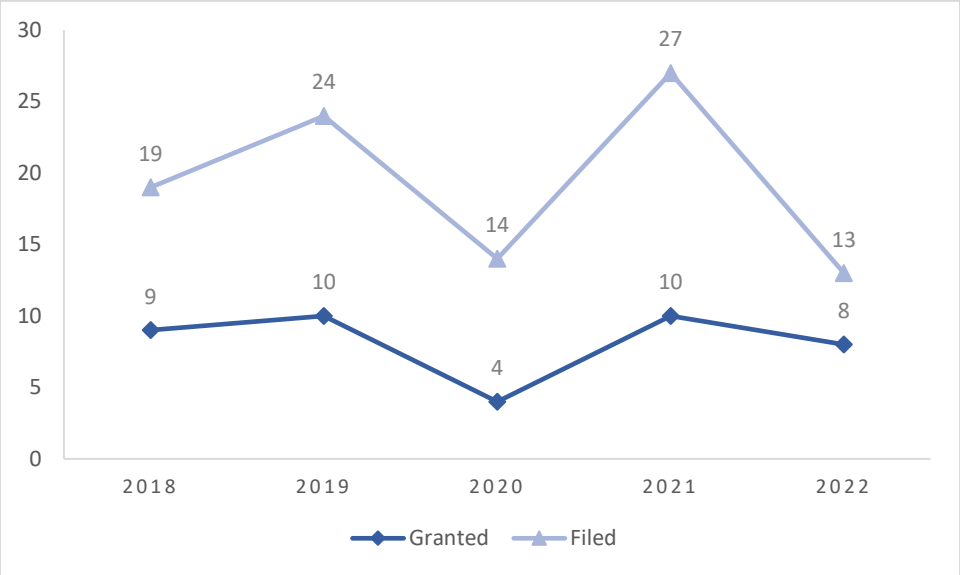


Percentage of ILC Cases Granted and Denied Among 10 Reporting Courts

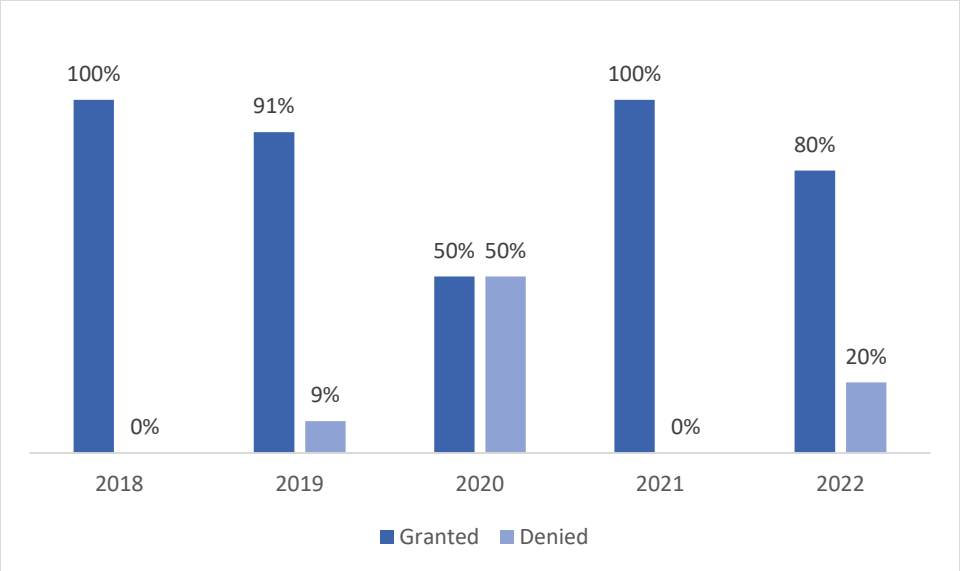


Appendix D. ILC Data from Continuously Reporting Courts

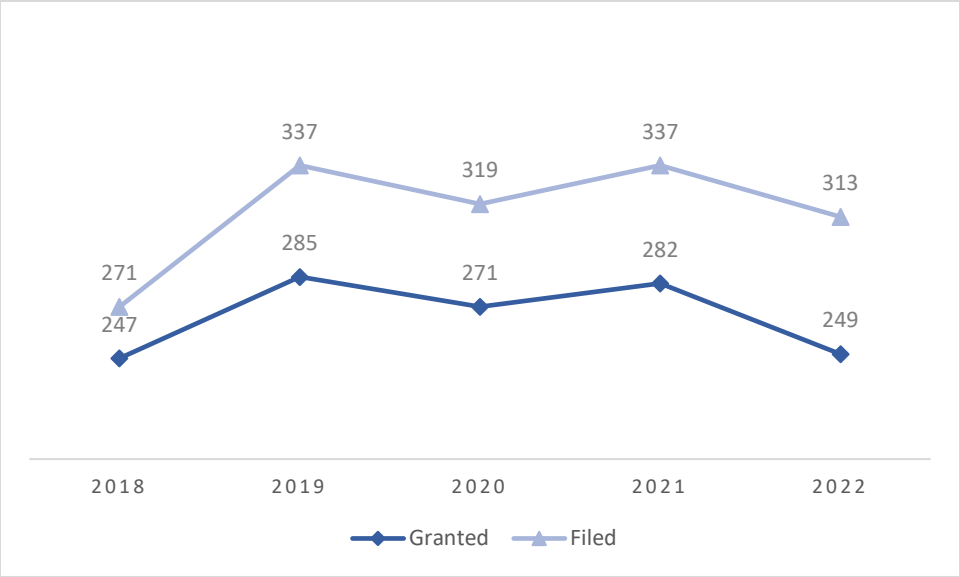
ILC Applications Filed and Granted, Court with 10-30 Annual Cases (n=1)



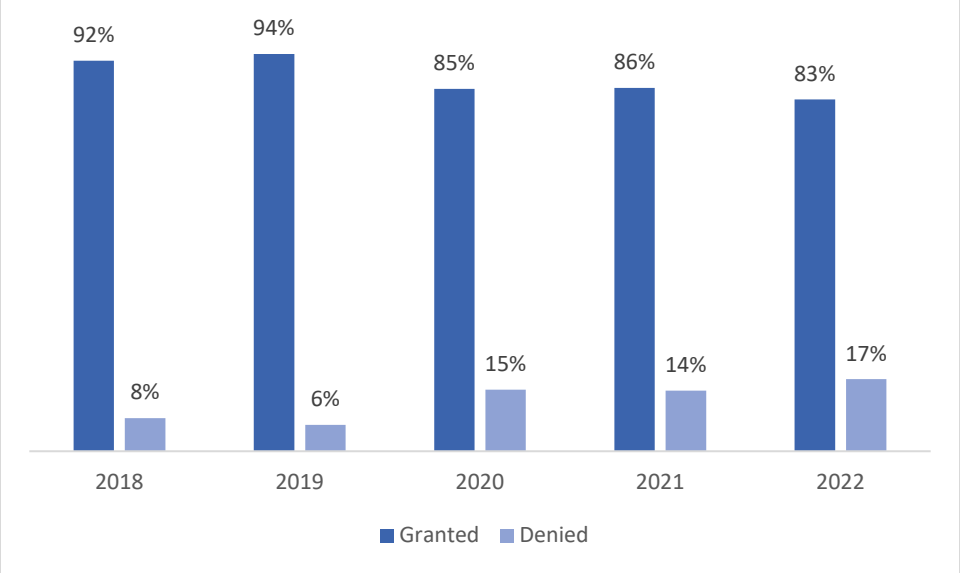
Percentage of ILC Cases Granted and Denied, Court with 10-30 Cases (n=1)



ILC Applications Filed and Granted, Court with 200-400 Annual Cases (n=1)

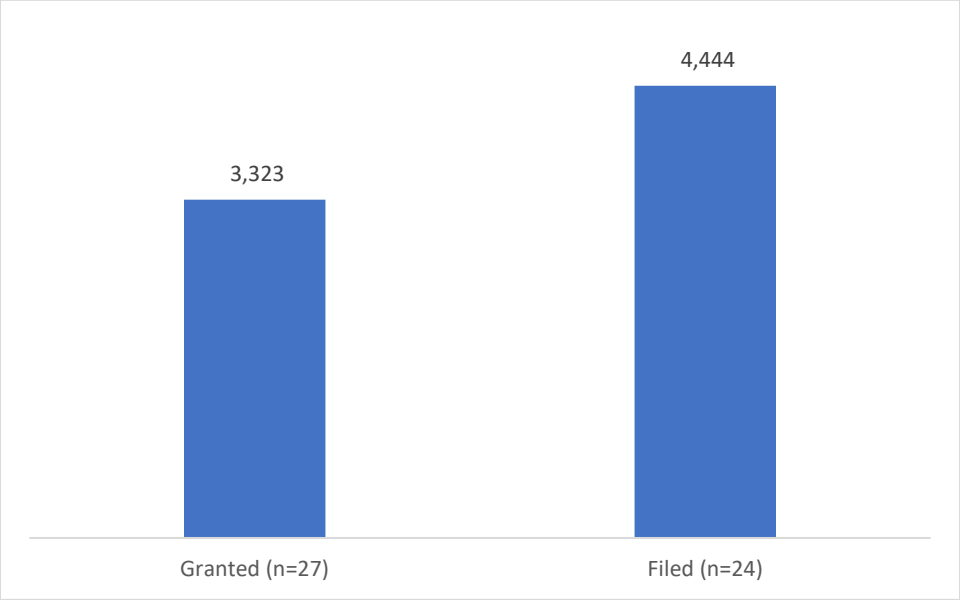


Percentage of ILC Cases Granted and Denied, Court with 200-400 Cases (n=1)

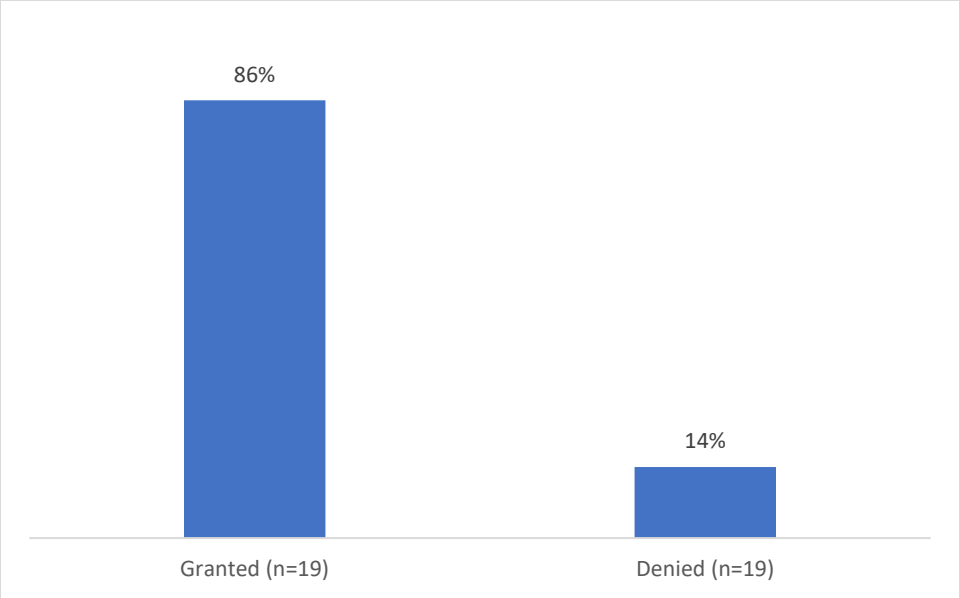


Appendix E. 2022 Court Record Sealing Data

Record Sealing Cases Granted and Filed Among 27 Reporting Courts

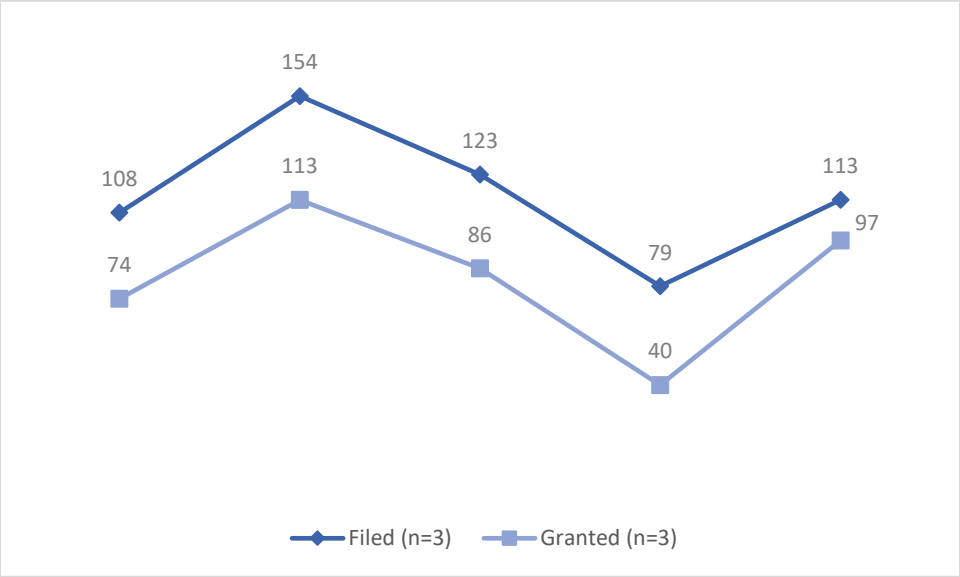


Percentage of Record Sealing Cases Granted and Denied Among 19 Reporting Courts

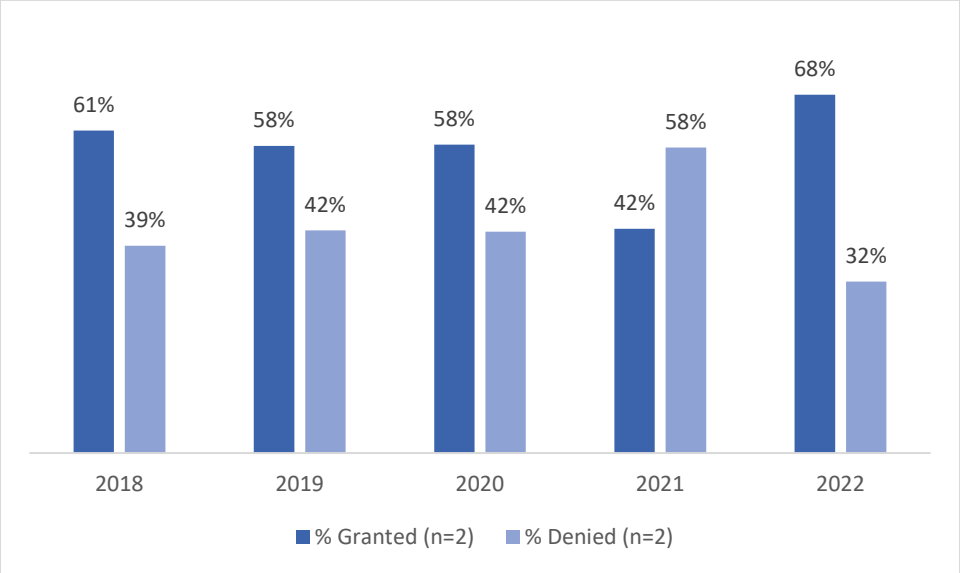


Appendix F. Record Sealing Among Courts with Continuous Data

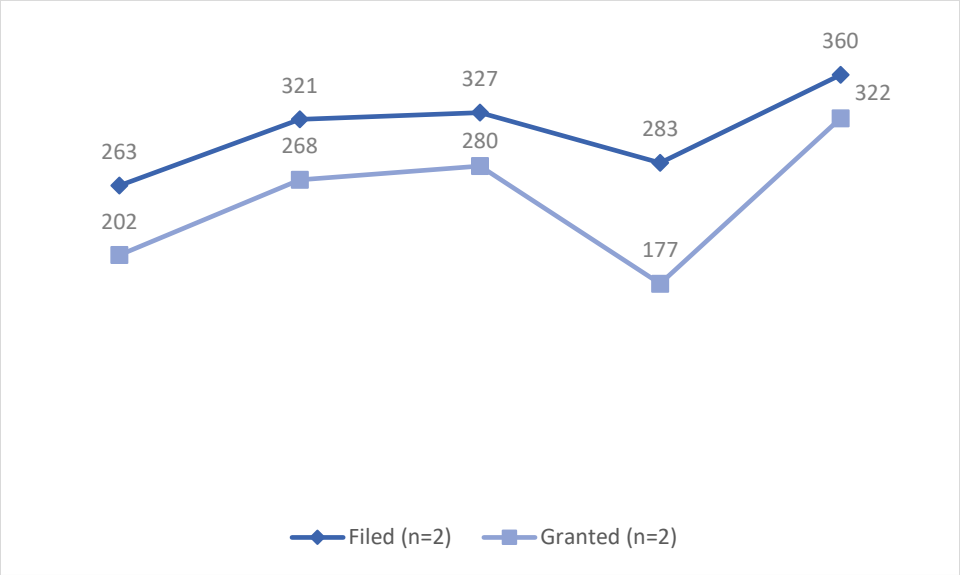
Record Sealing Motions Filed and Granted Among Courts with 0-100 Annual Cases (n=3)



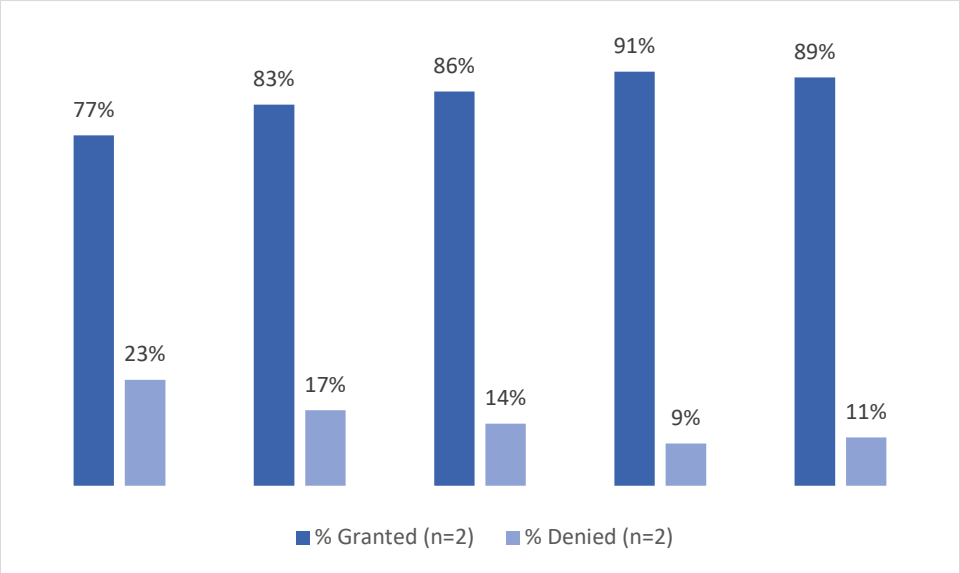
Percentage of Motions Granted and Denied Among Courts with 0-100 Cases (n=2)



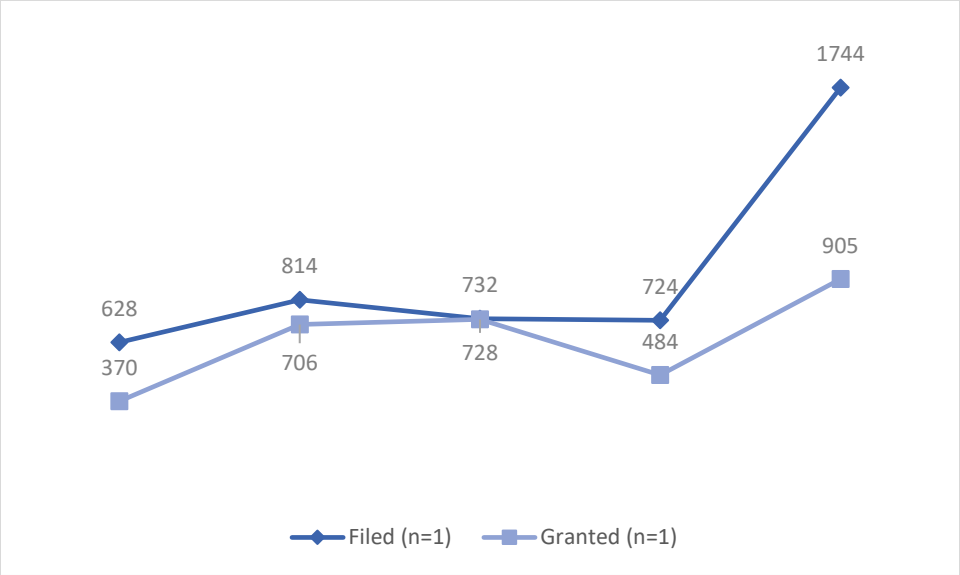
Record Sealing Motions Filed and Granted Among Courts with 100-250 Annual Cases (n=2)



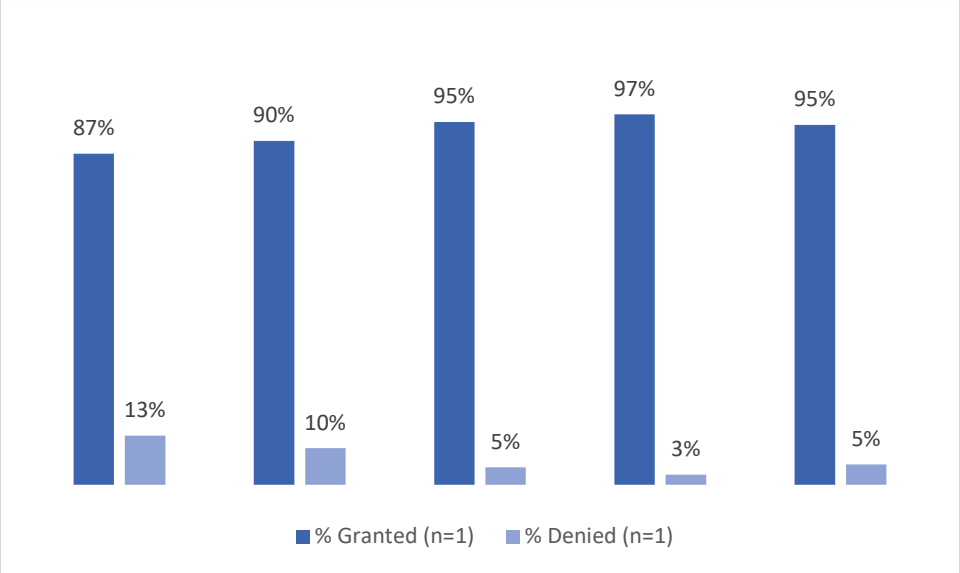
Percentage of Motions Granted and Denied Among Courts with 100-250 Cases (n=2)



Record Sealing Motions Filed and Granted Among Courts with 500+ Annual Cases (n=1)



Percentage of Motions Granted and Denied Among Courts with 500+ Cases (n=1)



Appendix G. Statutory Changes in R.C. 2953.31 and 2953.32 Since HB1[49]

The most notable statutory changes since the inaugural HB1 report have been made to record sealing and record expungement. The bulk of these modifications were included in Senate Bill 288 (SB288),[50] which was signed at the end of 2022 and made effective in early 2023. However, further clarifications were made in House Bill 33, effective October 2023.[51] The sections below summarize the changes and specify the section or division of the revised code in which they are located.

For a more in-depth analysis of the current record sealing and expungement process, please see the Adult Rights Restoration Guide.[52]

Definitions

"Sealing" a record means that the record is kept in a separate file, but not permanently deleted. All index records are, however, to be deleted. The proceedings are deemed not to have occurred.

To "expunge" a record means that the record should be destroyed, deleted, and erased so that the record is permanently irretrievable. This definition is located in 2953.31(B).

Fees

Filing fees for record sealing and expungement requests are capped at $50, regardless of the number of offenses the application seeks to seal or expunge. Local courts may collect an additional fee for sealing and expungement, but these costs are limited to $50.

There is also a change in how the funds are to be distributed: three-fifths of the fee collected are to be paid into the state treasury, with half of that amount going to the attorney general reimbursement fund. Two-fifths of the fee collected are to be paid into the general revenue fund of either the county or municipal corporation. These changes are found in R.C. 2953.32(D)(3).

Expanded Eligibility

Eligibility for record sealing and expungement was expanded under these pieces of legislation. While the definition of "eligible offender" is removed,[53] there are still lists of offenses that are excluded from sealing and expungement (see "Prohibited Offenses" below).

Regardless of how many convictions an offender has and the makeup of those convictions, all offenders are eligible to have records sealed, as long as the offense is eligible. Offenders are now eligible to have up

[49] Am.Sub.H.B. No. 1, 133 Ohio Laws. Effective April 12, 2021.
[50] Am.Sub.S.B. No. 288, 134 Ohio Laws.
[51] Am.Sub.H.B. No. 33, 135 Ohio Laws.
[52] Ohio Criminal Sentencing Commission and the Ohio Judicial Conference, *Adult Rights Restoration and Record Sealing,* (October 2023). Available at: https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/judPractitioner/adultRightsRestoration.pdf.
[53] Prior to the passage of SB288, this definition was located in R.C. 2953.31(A)(1).

to two felonies of the third degree sealed. The specific change with regard to the felonies of the third degree is found in R.C. 2953.32(A)(1)(g).

This legislation allows for any offender to request expungement of their sealed records. Minor misdemeanors are eligible to be expunged six months after final discharge. Misdemeanors are eligible to be expunged one year after final discharge. Felonies are eligible to be expunged ten years after the offense was eligible to be sealed. These changes are specified in R.C. 2953.32(B)(1).

Prohibited Offenses

These laws modified the list of offenses that are ineligible to be sealed or expunged. Most notably, these changes are: lowering the threshold for ineligible offenses based on victim age (from 16 years old to 13 years old), removing misdemeanor offenses of violence from a list of ineligible offenses, and adding domestic violence and violating a protection order as ineligible offenses. The changes also streamline the list of sexually oriented offenses that are ineligible by removing specific crimes and now states that offenders who committed sexually oriented offenses and were subject to R.C. Chapter 2950 are ineligible. This list of ineligible offenses is now found in R.C. 2953.32(A)(1)(a) through (f).

Timing of Hearing

After a request for sealing or expungement is made, courts are now required to set a hearing not less than forty-five days and not more than ninety days from the date the application was filed. This change is located in R.C. 2953.32(C).

When the request involves an offense with a victim, courts are now required to notify the prosecutor no less than 60 days prior to the hearing, as stated in R.C. 2930.171(A).

Prosecutor Requirements

Under the changes made by SB288, prosecutors are required to file a written objection with the court no later than thirty days prior to the sealing or expungement hearing date. Prosecutors are also required to provide a notice of the application and the date of the hearing to the victim of the offense. These changes are found in 2953.32(C).

Hearing Changes

Courts are now required to consider whether or not the victim objected and to consider the reasons against granting the application as specified by the victim in their objection. These are specified in R.C. 2953.32(D)(1)(3).

Governor's Pardons

Though not a change to R.C. 2953.31 or 2953.31, SB288 added R.C. 2953.33(C), which allows for the sealing and expunging of governor pardons. An offender granted an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent can now apply for an order to seal. The application may be filed at any time after the absolute and entire pardon or partial pardon, and at any time after the conditions of a pardon upon conditions precedent or subsequent have been met.

Prosecutor Initiated Sealing

An additional change related to R.C. 2953.31 and R.C. 2953.32 now allows prosecutors to request sealing or expungement of a record. The prosecutor's request only applies to cases that pertain to a conviction of a low-level controlled substance offense (a fourth-degree or minor misdemeanor violation of Chapter

2925.). The procedures for this type of request, which are nearly identical to the procedures of an offender-initiated request (examples of differences include: addition of the option for an offender to object, allowing the court the discretion to waive the fee, and requirements for the prosecutor to notify the offender at their last known address or by any other means of contact) is found in R.C. 2953.39.

Appendix H. Opportunities and Benefits for Expanded Record Sealing

Efforts to expand eligibility for the sealing of criminal records are not unique to Ohio. Several states such as Michigan, Pennsylvania, Connecticut, Louisiana, Vermont have made efforts to expand eligibility as well as facilitate the automatic sealing or expungement of certain records. A technical report by the SEARCH Group offers an in-depth review of 11 states efforts to implement record sealing legislation.[54] Below is an overview of recent legislative changes in Pennsylvania and Michigan as well as research addressing potential benefits and concerns of expanded criminal record sealing. This report has been updated with additional research since 2021.

Expanding Eligibility for Sealed Records: Michigan and Pennsylvania

Michigan Clean Slate

A 2017 study conducted in Michigan attempted to identify the contributing factors in the uptake rate.[55] The study estimated that only approximately "6.5% of all eligible individuals receive expungement within five years of the date they qualify for one."[56] While 74% of applications for expungement were successfully granted between 2016 and 2017 alone, records showed that over 91% of eligible applicants do not even attempt the process.[57] This reveals the largest barrier to expungement participation and a product of the study, "When criminal justice relief mechanisms require individuals to go through application procedures, many people who might benefit from them will not do so."[58] On April 11, 2023, as part of Michigan's clean slate legislation, the process to automatically expunge certain convictions without an application was rolled out.[59]

In Michigan, the passage of a "Clean Slate" legislation expanded those eligible for record sealing and outlined a process for automatic record sealing. The new legislation allows up to two felonies and four misdemeanors[60] to be automatically sealed following a waiting period. Misdemeanors which result in a sentence less than 93 days, however, may be sealed without limit. In a similar vein, misdemeanors which result in a sentence greater than 1 year are managed identically to felony convictions and contribute to the number of felonies which may be sealed.[61] Otherwise, the waiting period is seven years for misdemeanors and ten years for felonies. The waiting period begins either after the imposition of the sentence, or the completion of any term of imprisonment, whichever occurs later. Some offenses are excluded from eligibility, such as life offenses, some traffic offenses, and sexual offenses. [62]

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[54] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf

[55] Uptake rate is defined as the rate at which those who are legally eligible for expungements actually receive them. Prescott, JJ and Sonja Starr. 2020. "*Expungement of Criminal Convictions: An Empirical Study*." Harvard Law Review 133:2461-2555.

[56] Prescott and Starr, 2020, pg. 2466

[57] Prescott and Starr, 2020, pg. 2489

[58] Prescott and Starr, 2020, pg. 2478

[59] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf

[60] The limit of four misdemeanors are those offenses punishable by 93 days or more, there "appears to be no limit on the automatic expungement of misdemeanors punishable by less than 93 days." Kamau Sandiford, Clean Slate Program Manager, Safe & Just Michigan. Personal Communication, November 30, 2021.

[61] Ibid.

[62] MCL 780.621g(5).

Similarly, Michiganders are now eligible to apply for up to three eligible felonies sealed and expands the opportunity for an unlimited number of misdemeanors to be set aside. It also incorporated into its expungement package, a provision titled "One Bad Night," which allows for numerous convictions, felony, and misdemeanor, to be treated as one conviction for the purposes of applications for expungement. [63] The package maintained a narrower encompassment based on stakeholders and push-back from legislators and excluded crimes of the violent nature, sexual offenses, offenses committed with a dangerous weapon, and offenses with maximum imprisonment sentences of 10 years or more. Recently, many traffic offenses have been made eligible for expungement, except a 2nd DUI, violations by a Commercial Driver License endorsed operator, and an offense that causes injury or death. However, the applicant's driving record will still display the infraction. Michiganders are also eligible to apply for marijuana-related convictions before December 6, 2016 to be expunged if the alleged offense would not have been a crime following the day that marijuana laws were amended.[64,65]

Michigan Implementation

Michigan counties were allotted a 2-year gap to formulate a tangible plan for implementation. The Clean Slate Pilot Program was granted a $4 million dollar buffer to be used as "stop gap" for expungements until the law goes into effect in 2023.[66] It reallocated this grant utilizing its Michigan Works! Agencies (MWA's) located around the state. Currently, 16 MWA's are utilizing $125,000 per location to cover additional staff time, documentation, and court fees associated with the expungement process until its automated aspect is fully functioning. The remaining $2,000,000 is divided up per agency on a formula promulgated by the state, to determine "potential participation" per agency, to maximize the available services.

Governor Whitmer's proposed 2022 budget allotted $20.1 million towards developing criminal record expungement infrastructure throughout various administrations in Michigan.[67] On April 11, 2023, Michigan's Clean Slate program of automatic record expungement was officially activated. The state estimated over 1 million residents would have convictions sealed under the program, and 400,000 residents would subsequently have records which were conviction-free.[68]

Michigan identifies potential activities and positions that assist in implementing the program in each of the MWA successfully. The state gives specific recommendations that can be used at the discretion of each MWA to individualize how each will function most efficiently.

Included in the recommendations is the establishment of, "… an MWA staff position to act as an Expungement Navigator."[69] The duties of such a position would include, but are not limited to, "evaluating criminal records for eligibility, making contact and referrals to local prosecuting attorneys and public

[63] Norman, Michael *Automatic Expungement: Expectations vs. Reality,* 2021.
[64] Staff of Site 9&10 News, *Michigan House Passes New DUI Expungement Bill,* 9&10 News, 2021.
[65] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[66] McClallen, Scott, *$4 million to help Michiganders expunge records via Clean Slate Pilot program,* The Center Square, 2021.
[67] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[68] LeBlanc, Beth. *The Detroit News*. 2023. https://www.detroitnews.com/story/news/politics/michigan/2023/04/10/1-million-residents-to-see-convictions-automatically-expunged-under-michigan-law/70100953007/
[69] Department of Labor and Economic Opportunity, *Clean Slate Pilot Program,* 2020.

defenders' offices, participant program registration, referral to other MWA program or legal staff, preparation of required documents, and obtaining required certifications."

Other suggestions include reaching out and contracting a relationship with an attorney or law office that has experience with expungements and criminal law, or "…establishing an attorney position within the MWA or the additional support for an attorney already employed by the MWA or the local government entity."[70]

Further suggestions come in the form of outreach for the MWA programs which can include activities, events, and means of circulating information.[71] Each MWA is required to submit a plan of action that details what programs it plans to implement, as well as new positions that will be created, and an overall plan of action describing the two-year transition.

Automatic expungement in Pennsylvania

Pennsylvania's automatic system allows for the expungement of, nonviolent misdemeanors after 10 years if the former offender doesn't have a subsequent conviction.[72] The state also implemented the program to seal a backlog of cases that had already passed their eligibility to be expunged. Since June 2019, the automated sealing has sealed more than 40 million cases and aided over 1.2 million Pennsylvanians.[73]

Under Pennsylvania's initial 2018 Clean Slate Act, an individual was sometimes ineligible to have a record sealed if they had outstanding court costs and fees. Philadelphia's District Attorney's Office "found that 50% (or 9.2 million) of otherwise eligible misdemeanor convictions" were disqualified from automatic record sealing due to such debts, with inability to pay being one of the chief causes.[74] As such, in October 2020, Pennsylvania passed a bill that eliminated the requirement that fines and court costs must be paid to courts before a case could be sealed, though unpaid restitution remains an exception to this legislation.[75]

In Ohio, application for sealing or expungement is only available after an allotted amount of time has passed since the conclusion of the sentence. Moreover, currently there is no clear standard for what that "conclusion" is. Outstanding fines and court fees may lengthen this period, thus prolonging the beginning of the eligibility period.

Pennsylvania Implementation

In 2018 Pennsylvania's stunning breakthrough was described by former legal aid attorney, Rebecca Vallas, as "…a coalition… that really paved the way for that national bipartisan support that we've seen following Pennsylvania's wake."[76] Pennsylvania saw unannounced support from both, "Democrats and Republicans, as well as… communities, business, law enforcement, and even professional football players— [All of whom] joined Community Legal Services and CAP in advancing the first ever clean slate bill in the

[70] Department of Labor and Economic Opportunity, 2020.
[71] Department of Labor and Economic Opportunity, 2020.
[72] Jackson, Angie, *It May Become Easier to Clear Criminal History in Michigan,* Detroit Free Press, 2019.
[73] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[74] Ibid.
[75] Courtney, R. *You Can Clear Your Record Even If You Owe Court Fines and Costs Starting Next Year,* Community Legal Services of Pennsylvania, 2020
[76] Jackson, 2019.

country."[77] The Justice Action Network, Pennsylvania Chamber of Business of Industry, and the Pennsylvania District Attorneys Association were also among the bill's supporters.[78]

Data collected between 2018 and 2021 is indicative of the impact of Pennsylvania's Clean Slate legislation. Throughout this period, 106,444 Pennsylvania records were sealed under Clean Slate's automated process while 1,995 records were sealed by petition. Further, petitions accounted for only 2% of the approximately 108,000 misdemeanor records sealed in Pennsylvania during this time frame.[79]

In 2021, the total cost of Pennsylvania's Clean Slate Act was given to be in excess of $4 million. Implementation was estimated to have cost $3.8 million despite the Pennsylvania Supreme Court's having previously initiated efforts "to automate and modernize its court records systems."[80] Though Pennsylvania utilized a 1-year timeline in operationalizing its Clean Slate Act, Pennsylvania recommends other states establish a 2- to 3-year timeline when implementing similar legislation to allow time to manage unforeseen obstacles. Pennsylvania's future plans for Clean Slate include the potential expansion of those eligible for automatic record sealing and the shortening of waiting periods before individuals are eligible to have their records sealed.

Economic Impacts of Sealing a Criminal Record

There are numerous potential positive impacts to increasing the number of people eligible for record sealing. Most notably, the sealing of a criminal record can expand employment opportunities for former offenders and consequently add more individuals to the labor market, something that is particularly necessary following the COVID-19 pandemic.

Employment

Employers are often unlikely to hire those with criminal records, even if they are minor criminal offenses. The University of Michigan published that the probability of employment alone rose by 6.5% within the first year of obtaining a clean record, with wages increasing by almost 22%.[81] Similarly, studies in California demonstrated annual incomes rising by $6,190.[82] Increased employment rates and wages, more than nonfactors, are significant in preventing recidivism. A study conducted in Illinois, Texas, and Ohio found that incarcerated individuals employed two months after release were less likely to recidivate than those who were unemployed, with the probability of recidivism further decreasing as individuals' wages increased.[83]

Additionally, the relief provided by record sealing has been shown to directly affect historically disadvantaged groups. Studies advise that, "Because of disproportionate policing and criminalization of certain groups, including people of color, youth, LGBTQ+ individuals, and people with disabilities, those

[77] Amaning, Akua, *Advancing Clean Slate: The Need for Automatic Record Clearance During the Coronavirus Pandemic,* Center for American Progress, 2020.
[78] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf.
[79] Ibid.
[80] Ibid.
[81] Gullen, Jamie, *Why Clear a Record? The Life-Changing Impact of Expungement,* Community Legal Services of Philadelphia, 2018, pg. 4.
[82] Gullen, Jamie, 2018, pg. 4.
[83] Visher, C. Debus, S. & Yahner, J. The Urban Institute Justice Policy Center. *Employment after Prison. A longitudinal Study of Releases in Three States*. 2008.

who are already most likely to face discrimination and poverty are also most likely to have arrest records."[84] As a result, there is also a general increase in quality of life among those with sealed records.

The general knowledge regarding expungements from an employer's perspective is a difficult statistic to measure, however new studies reveal a range of attitudes taken on by employers towards knowingly hiring individuals with criminal records.

Some argue that employers have a right to know the detailed extent of a potential hire's criminal history. Retired police officer, John Cluster, who recently opposed Maryland's expungement legislation, claims that expungement "Could give business owners the wrong impression about a job seeker, a view he had based on looking at the records of people who had been arrested multiple times…"[85] One individual Cluster elaborated on had 26 convictions, and Maryland law would allow him to seal 23 of them.[86] Cluster claims this is unfair to those hiring, because they are under the assumption that the criminal history of individuals is minimal, due to the majority of convictions that qualify to be sealed. In an effort to address such concerns, states like Pennsylvania offer liability protection to employers who hire individuals with a partially sealed record as a result of their Clean Slate bill.[87]

Conversely, a study conducted by the Society for Human Resource Management and the Charles Koch Institute found that, "…employees, managers, and Human Resources professionals, are open to working with and hiring people with criminal histories."[88] A consensus regarding the high rates of unemployment is causing businesses to discover labor and untapped skill in alternative sources, including those individuals that may hold some sort of a criminal history. In fact, according to the study conducted, "Within organizations that have hired those with a criminal record, employers rate the value workers with a criminal record bring to the organization as similar to or greater than that of those without a record."[89] Further research also supports the employability of those with prior convictions. One study found that, in the first year following the sealing of their criminal records, individuals experienced a 13 percent increase in their probability of being employed and a 23 percent increase in their average quarterly wages.[90]

A breakthrough example of this statistic in-action is demonstrated in the restaurant industry by Hot Chicken Takeover, founded in Columbus, OH. Individuals that are hired often have a criminal record, have been previously incarcerated, or face some other barrier to obtaining steady work. Customers willingly and eagerly support this business with the understanding it is run by previous offenders. In 2013, the company profited $6 million in sales between its three locations. Hot Chicken Takeover maintained an employee turnover rate of approximately 40%, a statistic that is well below industry averages in retail and food service. [91] The expansion of expungements would only prove further that the rate and quality of work is not determined by a record, but those skills and talents showcased when given an equal chance at employment.

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[84] Gullen, Jamie, 2018, pg. 7.
[85] Beitsch, 2016.
[86] Beitsch, 2016.
[87] SEARCH, *Technical and Operational Challenges of Implementing Clean Slate.* 2023. https://www.search.org/files/pdf/Tech_Op_Challenges_Clean_Slate_TechnicalAppendix.pdf
[88] SHRM, *Workers with Criminal Records,* Society for Human Resource Management, 2018.
[89] SHRM, 2018.
[90] Prescott, J.J. and Starr, Sonja B., *Expungement of Criminal Convictions: An Empirical Study* Harvard Law Review, Vol. 133, No. 8, pp.2460-555 (June 2020), http://dx.doi.org/10.2139/ssrn.3353620.
[91] Eaton, Dan *Hot Chicken Takeover staffing up for regional expansion,* Columbus Business First, 2019.

Economic Recovery Post-COVID-19

The U.S. Bureau of Labor Statistics reported as of April 2023 the total number of job openings were estimated at 10.1 million.[92] Specifically in job arenas such as educational services, and other services,[93] numbers in these industries skyrocketed coming out of the year of hardships caused by the 2020 pandemic. Sociologists and other researchers discovered that people had new approaches to job searching and work expectations due to the new realities caused by the unprecedented year. They explain that more people are making family and at-home or virtual work a priority, leaving an abundance of open positions in industries such as restaurant and food service, education, and even health care.[94] For over 70 million Americans who have a criminal or arrest record, but cannot land certain types of employment due to these records, it creates a large and detrimental gap in job openings and potential hires. This gap exists during a time when their labor contribution is so desperately needed.

Many states are uniting new expungement legislation with plans of action to tackle economy recoupment. A group of economists found that "…the cost of barring these individuals [with criminal records] from the workforce is roughly $78 to $87 billion in lost gross domestic product annually."[95]A further study conducted in Pennsylvania found that, "By putting to work just 100 [currently unemployed former inmates] in Philadelphia, it would increase their lifetime earnings by approximately $55 million, income contributions by $1.9 million, and sales tax contributions by $770,000."[96] These numbers demonstrate the abundant impact the previously incarcerated can have economically, and also the impacts a record can have on obtaining certain employment.

New York has agreed with the case made for expungements as a route to economic relief. New York state senator, Zellnor Myrie, was quoted, "We cannot have true economic recovery in the state if we're telling 2.3 million New Yorkers 'Sorry, we don't want your services…I view this much as an economic boon and recovery tool, especially in the age of Covid-19."[97]

Can a Criminal Record Ever Truly be Sealed?

While the economic benefits of a sealed criminal record are well documented at an individual and societal level, there are challenges to truly removing a criminal record from the public. The internet creates a unique challenge to confronting the legislative expansion of record sealing. A simple Google search can help potential employers locate criminal history information from news websites, mugshot photos, and even private companies that house records. James Jacobs, New York University law professor claims, "It's impossible to expunge information in this cyber age."[98] The issue is that the government is publishing criminal records and previous convictions, and since it is public record, there is currently no repercussions

[92] U.S. Bureau of Labor Statistics, *Job Openings and Labor Turnover Summary,* United States Department of Labor, 2023.

[93] "Establishments in this sector are primarily engaged in activities, such as equipment and machinery repairing, promoting or administering religious activities, grantmaking, advocacy, providing dry cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services, and dating services" https://www.bls.gov/iag/tgs/iag81.htm.

[94] Long, Heather, *It's not a 'labor shortage.' It's a great reassessment of work in America.* The Washington Post, 2021 .

[95] Lo, Kenny, *Expunging and Sealing Criminal Records,* Center for American Progress, 2020.

[96] Office of the Deputy Mayor for Public Safety, *Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia,* Economy League Greater Philadelphia, 2011.

[97] Weisstuch, Liza, *To Boost Hiring, New York Makes Case for 'Clean Slate,'* Bloomberg CityLab, 2021.

[98] Thompson, Christie, *Five Things You Didn't Know About Clearing Your Record,* The Marshall Project, 2015.

for sites that continue to hold that information forever, even when an expungement has occurred. The problem with legislation to expand record sealing rests on, "The idea that there only exists one single criminal record, when, dozens of pieces of digital information relaly an arrest or conviction across public and private sources."[99]

The issue is complex. The public has a right, and it is "essential to democracy" to have access to public records. However, when the public records are no longer accurate and their status is voided, the common good is not being protected by the government any longer, but rather harming those who are affected by its consequences. Several solutions proposed by researchers include: reclassification of some pre-convictions as private,[100] or regulating some aspects of criminal data "from its point of origin" that would reduce the need for down-the-road remedies, such as expungements, and demonstrate that sealing records is worth the time and undertaking. [101]

Public Safety Concerns

A common source of concern over expanded criminal record sealing is public safety. A common critique is that by expunging records automatically, people who pose a substantial risk to society will "slip through the cracks." The argument usually includes the potential threat those with criminal records pose to, "…public safety, employers, landlords, colleges, and the general public…"[102] Furthermore, some maintain that the public has a right to know about a person's criminal history.[103] Researchers have determined that the recidivism rates for individuals with criminal records do not reflect this type of threat to the general welfare of society. In fact, Michigan found that of those people who get their records sealed, a little more than 4% of them are convicted of new crimes within 5 years of expungement,[104] leaving 96% of those who had their record expunged, crime-free.[105] Moreover, one study found that only 0.6% of individuals with sealed records were convicted of a violent crime – with the majority of reconvictions consisting of nonviolent misdemeanors.[106]

Researchers hypothesized a few reasons why the recidivism rates are so low among those with sealed records such as: the group qualifying for sealing are generally low-risk offenders to begin with, the individuals that successfully navigate the expungement process have, "resources, motivation and persistence"[107] that allow them to succeed, and at the point many people are eligible for expungement, their likelihood of reoffending has passed the highest point. [108] Additionally, reoffending is more likely to

[99] Lageson, Sarah Esther, *There's No Such Thing as Expunging a Criminal Record Anymore,* Future Tense, 2019.
[100] Lageson, 2019.
[101] Lageson, 2019.
[102] Lo, 2020.
[103] Lo, 2020.
[104] Jackson, 2019.
[105] Lo, 2020.
[106] Prescott, J.J. "Expungement of Criminal Convictions: An Empirical Study." Sonja B. Starr, co-author. Harv. L. Rev. 133, no. 8 (2020): 2460-555.
[107] Starr, 2020.
[108] "The relationship between aging and criminal activity has been noted since the beginnings of criminology…the proportion of the population involved with crime tends to peak in adolescence or early adulthood and then decline with age." Jeffery T. Ulmer and Darrell Steffensmeier, *The Age and Crime Relationship,* The Pennsylvania State University, 2014.

happen within the first year or two after conviction or release from incarceration, therefore if someone is eligible for sealing due to a lack of subsequent conviction, they are much less likely to recidivate. [109]

Conclusion

Since the enactment of HB1, Ohio has continued to take steps to expand record sealing opportunities. The state, however, has an opportunity to follow states such as Michigan and Pennsylvania in further reforming and expanding the opportunities to seal criminal records. Other states such as New Jersey have followed the actions taken by these leading states and opened the door to an automatic expansion. Ohio would be taking a reformative step in criminal justice reform and furthering their goals of rehabilitation, while also making a proactive decision to help boost the economy in giving these individuals a fair chance at better employment. Based on the studies that have been conducted, the risk is relatively low, yet the potential gain is high.

[109] Starr, Sonja B. *Expungement Reform in Arizona: The Empirical Case for a Clean Slate,* Arizona State Law Journal, 2020.

Appendix I. Email Correspondence with Probate Judges

Dear Probate Judges,

In 2021 Ohio House Bill 1 (133rd GA) was enacted into law. Among other changes, the bill revised O.R.C. 5119.93 and 5119.94 to remove some barriers for the use of involuntary commitment to treatment in probate courts.

This bill also requires the Ohio Criminal Sentencing Commission to study and report on its impacts. To that end, we would like to know if you have seen any changes in the numbers of petitions for treatment, or if you have noticed barriers that have prevented the use of this statute.

Please send any information that you would like to share about your experience with these changes to:
Todd Ives, Research Specialist
Ohio Criminal Sentencing Commission
Todd.Ives@sc.ohio.gov
614.387.9306

We can set up a call to receive feedback over phone or virtually at your convenience. Or, if written feedback on your experience is more efficient, please feel free to send it via email. I appreciate your time and attention on this matter.

If you are interested in the original report of the impact of HB1, you can find the report here.

Thank you,

Todd Ives

OHIO
CRIMINAL SENTENCING COMMISSION

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