



OHIO

CRIMINAL SENTENCING COMMISSION

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Monitoring Sentencing Reform

2023

An Ohio Criminal Sentencing Commission Report

February 2024

DRAFT

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Executive Summary

Overview

At the November 16, 2023, Ohio Criminal Sentencing Commission (Commission) meeting, it was brought to the Commission's attention that the biennial monitoring report required by Ohio Revised Code Section 181.25(A)(2) was due on January 1, 2023, and was not completed or submitted as required. The Commission directed staff to immediately begin working on the 2023 monitoring report for the Commission's review and potential adoption at the February 16, 2024, meeting. As required by R.C. 181.25(A)(2), Commission staff constructed this report to fully align with the reporting duties as prescribed by R.C. 181.25(A)(2)(a)-(c).

The Commission's enabling statutes were designed around the creation and enactment of Senate Bill 2 (121st General Assembly). The statutory language has largely remained unchanged and continues to reflect the intent to monitor the impact of Senate Bill 2 which was passed nearly 30 years ago. Due in large part to ever-changing criminal law and policy in Ohio, Commission monitoring reports dating back to the 1999 report note the difficulty of evaluating the impact of Senate Bill 2 in a vacuum. By showing trends over time, this monitoring report adopts the model of previous reports. The information contained in this report will serve as a baseline for future analysis by comprehensively collating the best available information to address the reporting requirements of R.C. 181.25(A)(2), thereby illuminating what can and cannot be comprehensively studied based on the practical availability of information.

This report relies on publicly available, readily analyzable information at the federal, state, and local levels. Because Ohio is a "home rule" state, for many of the topic areas covered by this report, statewide standardized and comprehensive data is not available to conduct a more detailed analysis on relevant political subdivisions. Throughout previous monitoring reports, the Commission has repeatedly recommended clarifying the measures on monitoring the impact of Senate Bill 2, and criminal justice law and policy more generally. This report echoes those calls. While the general trends and information presented here offer an overview of what data exists and how it can be understood, it is not particularly useful, relevant, or informative for the General Assembly and stakeholders who wish to understand the effect of policy change on the criminal justice system. Further, with the bevy of changes to Ohio's Criminal Code since July 1, 1996, the study of Senate Bill 2 in a vacuum may no longer be viable or useful. Therefore, the Commission and General Assembly should consider modernization of the Commission's enabling statutes, with an emphasis on reporting that will be impactful and functional for policymaking purposes. Any changes to the reporting requirements of the Commission should also consider what data is practically available, particularly at the local level, and harmonize the availability of that data with the duties to evaluate policy.

Findings

In general, this report contains similar findings to the previous monitoring reports. Among the Ohio Department of Rehabilitation and Corrections prison population, there has been a decreasing percentage of non-violent, non-sex offender F4 and F5 commitments over the last decade. Further, the time served until first release among the prison population has gradually grown from 1.62 years to 2.61 years from 2010 to 2022. This has been paired with a generally increased usage of community control sanctions since 2010. Many of the numbers presented in this report were significantly impacted by the governmental response to COVID-19, which generally led to fewer felony dispositions, felony appeals, prison commitments, and usage of community control sanctions. Further, since the enactment of Senate

Bill 2, criminal appeals did not exponentially increase. These appeals have largely remained stagnant and even decreased in 2020 before increasing slightly in 2021 and 2022. The number of appeals does not account for time and resources spent on each appeal, which is not uniformly tracked by the appellate courts.

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Introduction

Ohio Revised Code 181.25(A)(2) requires the Sentencing Commission (Commission) to monitor the impact of the sentencing structure on and after July 1, 1996 (Senate Bill 2 of the 121st General Assembly) on state and local government and report on it biennially. The aspects of the sentencing structure that the Commission is to report on are contained in four parts of R.C.181.25(A)(2):

1. **R.C. 181.25(A)(2)(a)(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;
2. **R.C. 181.25(A)(2)(a)(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.
3. **R.C. 181.25(A)(2)(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;
4. **R.C. 181.25(A)(2)(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.

This monitoring report is organized in four major sections corresponding to each of the above statutorily mandated study requirements.

Methodology

This monitoring report is not an academic impact evaluation. By showing trends over time, it attempts to gauge the impact of the sentencing structure on and after July 1, 1996, on the various political subdivisions as mandated by the statute. This monitoring report relies upon publicly available data and administrative data provided by state and local agencies. As noted in the Commission's House Bill 1 Impact Report, required by R.C. 181.27, 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.¹ For many of the topic areas covered, statewide aggregated data does not exist, prohibiting a complete study of the impact of Senate Bill 2 on many political subdivisions. Nevertheless, this monitoring report analyzes existing

¹ <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/HB1/ISR2023.pdf>

sources of information to illustrate the potential impact of Senate Bill 2 on Ohio’s sentencing structure.

Historically, the Commission has suggested clarifying the measures for monitoring the impact of Senate Bill 2.² Nearly three decades since the passing of Senate Bill 2, it is difficult to isolate the impacts of the 1996 legislation. This report analyzes the trends of the criminal justice system in relation to the totality of the sentencing structure post- Senate Bill 2. This report focuses on calendar years 2021-2022, as required by the biennial reporting guidelines under R.C. 181.25(A)(2). Where possible, longer-term trends are shown. For future reports, the Commission and the General Assembly should consider what data is collected and available for reporting by state agencies and local political subdivisions when determining which areas of analysis the biennial monitoring reports should focus on. Nearly 30 years since the passage of Senate Bill 2, the statutory elements of these biennial monitoring reports may no longer be relevant or informative. The intent is for this report to serve as a baseline for future analysis and allow for the honing of the reports’ structure.

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² See for example, the Sixth Monitoring Report (2005), https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf

Background

History of Sentencing in Ohio³

1970's

In 1974, Ohio's criminal code was significantly rewritten based upon the Model Penal Code. It retained indeterminate sentencing with the judge selecting the minimum term from a range set by statute for each of four felony levels. The "tough on crime" era began in the late '70s with the enactment of compulsory sentences for certain drug offenses.

1980's

In the '80s, the General Assembly added mandatory prison terms for a broader array of criminal offenses. The signature bill of the era, Senate Bill 199,⁴ mandated longer prison terms for high level "aggravated" felonies, especially on repeat offenses, and for those having firearms while committing felony offenses. Longer mandatory terms were added to misdemeanor law, with increased penalties for impaired drivers. The end result was that eight new sentencing ranges were added to the original four that were contained in the 1974 criminal code.

In the mid '80s, based on the "Governor's Committee on Prison Crowding" report and recommendations, the General Assembly enacted several pieces of legislation that created earned credit programs, fostered more use of halfway houses, encouraged the adoption of parole guidelines, expanded community-based correctional facilities (CBCF's) and enacted provisions to govern sentencing reductions if a prison overcrowding emergency occurs.

1990's

In the '90s, the General Assembly increased the penalties for a number of criminal offenses and reclassified former misdemeanor offenses as felony offenses (such as, domestic violence, nonsupport and impaired driving). In addition, the General Assembly created new mandatory prison terms for sexual offenders. This was also the time of the "Crack Era".

A second Governor's committee, titled the "Governor's Committee on Prison and Jail Crowding", determined systemic change to the state's sentencing structure was needed. Acting on the Committee's recommendations, the General Assembly created the Ohio Criminal Sentencing Commission with the enactment of Senate Bill 258.⁵ The Commission was created to develop a comprehensive plan to deal with crowding and a range of other sentencing goals including public safety, consistency, and proportionality.

The truth in sentencing scheme in Ohio, known as Senate Bill 2,⁶ arose out of the Commission's first report from 1993, "A Plan for Felony Sentencing in Ohio". Senate Bill 2 established a type of determinate

³ Historical information from David Diroll, *Prison Crowding: The Long View* (2011), available at <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/sentencingRecs/MonitoringReport2011.pdf> (accessed Dec. 22, 2023) and Sara Andrews, *Criminal Justice Reform in Ohio* (2019), available at <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/general/CJReformOhioCupp2019.pdf> (accessed Dec. 22, 2023)

⁴ 1982 Am.Sub.S.B. No. 199.

⁵ 1990 Am.Sub.S.B. No. 258

⁶ 1996 Am.Sub.S.B. No. 2

sentencing structure, called a presumptive system, which required minimum sentences from a range of possible penalties. Shortly after its enactment, concerns about the ranges authorized for sexual assaults led to the enactment of follow-up legislation which culminated in lengthy, indeterminate sentences for certain high-level offenders.

2000's

A series of federal Supreme Court decisions⁷ led to two 2006 decisions by the Supreme Court of Ohio, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856 and *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855. *Foster* and *Mathis* changed the guidance given to judges by Senate Bill 2. These decisions held that the statutory guidelines were merely advisory and that trial court judges have the discretion to impose any sentence that falls within the statutory range for an offense.

By 2006, a decade into the implementation of Senate Bill 2, prisons were crowded, there was a push for broader use of indeterminate sentences for high-level felons, and there was a resounding recognition that the felony sentencing structure had become more complex. As a result, Ohio, along with 28 other states, joined the Justice Reinvestment Initiative (JRI).⁸ With the assistance of JRI, and many other policy makers, the General Assembly enacted House Bill 86⁹, House Bill 487¹⁰ and Senate Bill 337¹¹. Among other statutory changes, these bills raised the dollar amount thresholds for felony theft offenses, eliminated disparities in the available penalties for crack and powder cocaine offenses, capped sentence lengths for mid-level felony property and drug offenses, eliminated certain sentence enhancements for drug offenders, created “risk reduction” sentence options, expanded judicial release policies, and the addition of a requirement that courts use validated risk assessment tools.

2015 - Present

Over the course of the last 9 years, the General Assembly has enacted legislation that has expanded criminalization while also expanding opportunities for both non-prison sanctions and sealing or expungements of records. Senate Bill 201¹² required qualifying felony offenses of the first and second degree committed on or after the bill’s effective date to include indeterminate sentences. House Bill 1¹³ created a presumption of eligibility for intervention in lieu of conviction (ILC) for offenders alleging that drug or alcohol abuse was a factor leading to the commission of an F4 or F5 level offense. The bill also expanded opportunities for lower-level offenders to seal their conviction.¹⁴ The main operating budget bill for Fiscal Year 2022, House Bill 110¹⁵, addressed “technical violations” of community control and altered periods of post release control (PRC).

⁷ *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005)

⁸ JRI is a public-private partnership that included the U.S. Justice Department’s Bureau of Justice Assistance, Pew Charitable Trusts, Arnold Ventures, Council of State Governments Justice Institute at Community Resources for Justice, Vera Institute of Justice, and the Crime and Justice Institute.

⁹ 2011 Am.Sub.H.B. No. 86.

¹⁰ 2012 Am.Sub.H.B. No. 487.

¹¹ 2012 Am.Sub.S.B. No. 337.

¹² 2018 Am. Sub. S.B. No. 201.

¹³ 2020 Am.Sub.H.B. No. 1.

¹⁴ For a detailed review of the impacts of HB1, see the Commission’s biennial House Bill 1 Impact Reports: <https://www.supremecourt.ohio.gov/criminal-br-sentencing/publications-information/>

¹⁵ 2021 Am.Sub.H.B. No. 110.

As 2022 came to a close, and the 134TH General Assembly finished its biennium, Senate Bill 288¹⁶ was enacted to address numerous criminal justice issues, including the creation of the offense of strangulation, the repeal of certain sanctions for illegal use or possession of marihuana drug paraphernalia, the removal of the statute of limitations for murder, a requirement that courts impose mandatory prison terms for repeat OVI offenders, and a further expansion of sealing and expungement eligibilities.

It is important to note that the totality of policy changes to Ohio's sentencing structure post- Senate Bill 2 will have an impact on the political subdivisions analyzed in this report. In other words, Senate Bill 2 cannot be evaluated in a vacuum.¹⁷

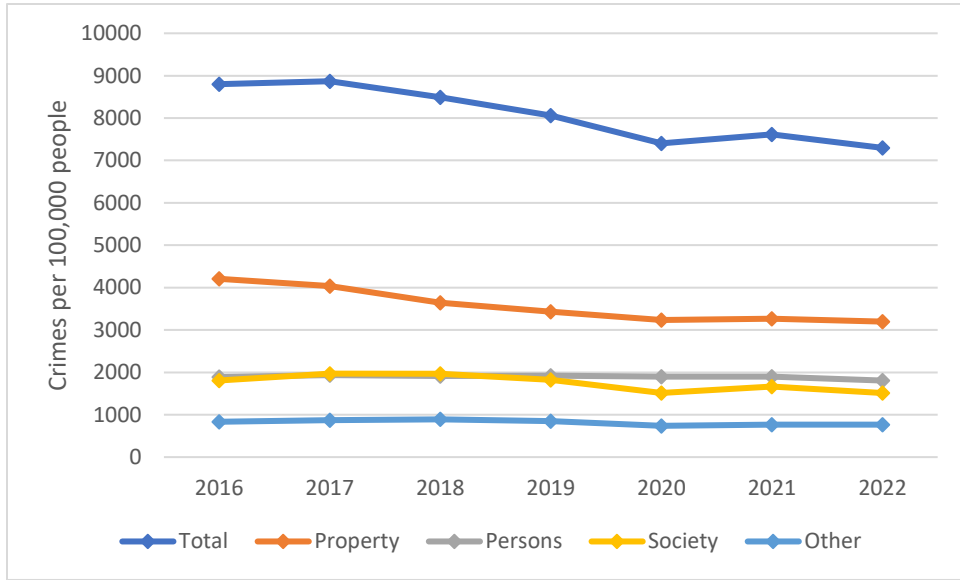
Crime and Case Filings in Ohio

Much of this report focuses on the population and fiscal impact on Ohio's prisons and- on those serving a community sanction. R.C. 181.25(A)(2)(a)(ii) requires this report to assess the fiscal and other impact on local subdivisions such as law enforcement, jails, and the mental health system. In order to provide a baseline context to the figures presented throughout this report, some basic statistics on crime and court filings are presented here. Index crime rate and criminal case filings are common variables used to control or contextualize findings on the impact of laws and policy. Acknowledging that the statutory sentencing structure impacts the crime rate and criminal case loads, these baseline metrics aim to provide a key contextualization for what is happening throughout the criminal justice system. Therefore, these statistics on caseload help ground the analysis on topics like the prison population and those offenders diverted to a community sanction. They also help provide context for the fiscal figures throughout the report.

¹⁶ 2022 Am.Sub.S.B. No. 288.

¹⁷ For a lengthier discussion of the history of Ohio's sentencing structure see: Felony Sentencing in Ohio: Then, Now, and Now What? (2022), <https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/Materials/2022/December/SentencingRoundtableReport.pdf> ; The Commission's previous Monitoring Reports also discuss at length the intended outcomes of Senate Bill 2 and the impact at each reports period of publication: <https://www.supremecourt.ohio.gov/criminal-br-sentencing/publications-information/>

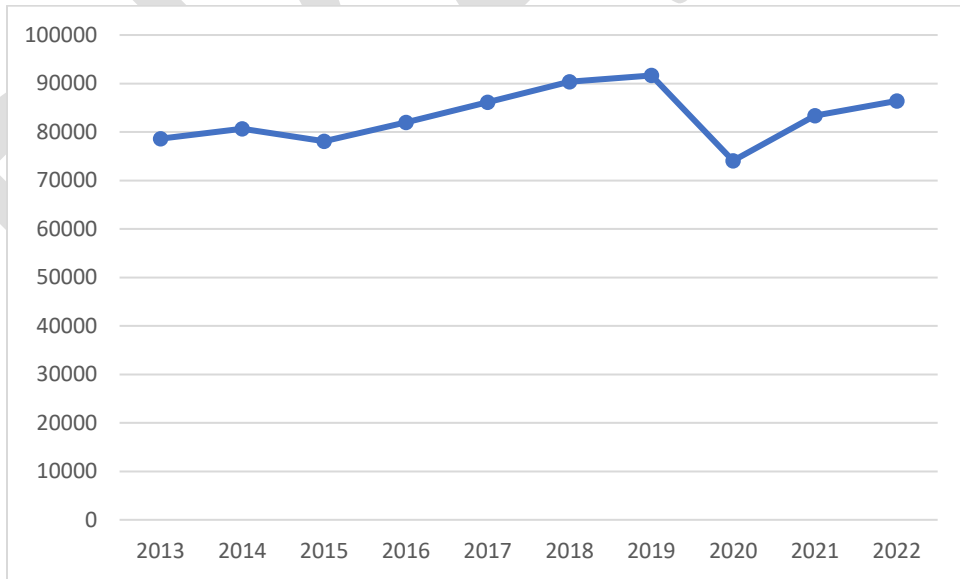
Figure 1. OIBRS Index Crime Rate, 2016-2022



Source: Ohio Office of Criminal Justice Services, Crime in Ohio

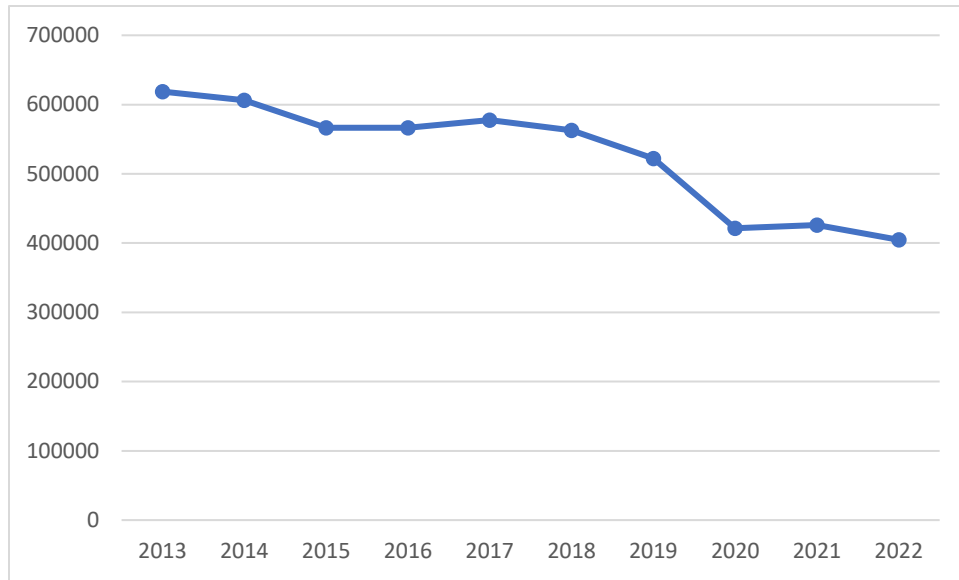
As illustrated, the index crime rate in Ohio has gradually decreased in the past six years, with property crimes representing the largest decrease and crimes against persons and society largely holding steady.

Figure 2. Total Incoming Criminal Cases, Common Pleas Courts, 2013-2022



Source: Office of Court Services, State of Ohio Court Statistics

Figure 3. Total Incoming Criminal Cases, Municipal and County Courts, 2013-2022



Source: Office of Court Services, State of Ohio Court Statistics

From 2015 through 2019, common pleas courts in Ohio experienced a steady uptick in criminal caseloads. During the COVID-19 pandemic, which began to impact courts in early 2020, the common pleas courts had a drastically reduced incoming caseload. Caseloads began to rebound in 2021 to pre-COVID levels. Throughout the 2010s, municipal and county courts in Ohio experienced a steady decline in incoming criminal cases, with a drastic decrease in cases during COVID. Since 2020, the number of incoming cases has largely remained the same.

As stated, criminal law and policy impacts crime and case load statistics. Further, the crime rate and number of criminal cases that reach Ohio's trial courts also impacts the metrics discussed in the following sections of this report. While the index crime rate has slightly decreased, the felony caseload has slightly increased. This, matched with a steady decline in incoming municipal and county court cases, suggests that the common pleas courts are processing felony-level crimes consistent with the index crime rate, while the decrease in property crime may explain the decrease in municipal and county court caseloads.

R.C. 181.25(A)(2)(a)(i) Offenders Serving a Term of Community Control post-S.B.2.

Overview

The statute requires a report on “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.” Previous Monitoring Reports have interpreted this section of the statute as assessing the impact of offenders who normally would have received a prison sentence prior to Senate Bill 22 but who are now sentenced to a term of community control. As noted in previous Monitoring Reports, an intended outcome of Senate Bill 2 was to divert more nonviolent felony offenders away from prison to CBCFs and other community control sanctions.¹⁸

Impact on Community Corrections

The following graphics are constructed from data or extant figures provided by the Ohio Department of Rehabilitation and Corrections (ODRC). These trends are intended to illustrate the population diverted to community control sanctions rather than terms of prison incarceration. A full analysis of ODRC’s prison population is highlighted in the third section of this report.

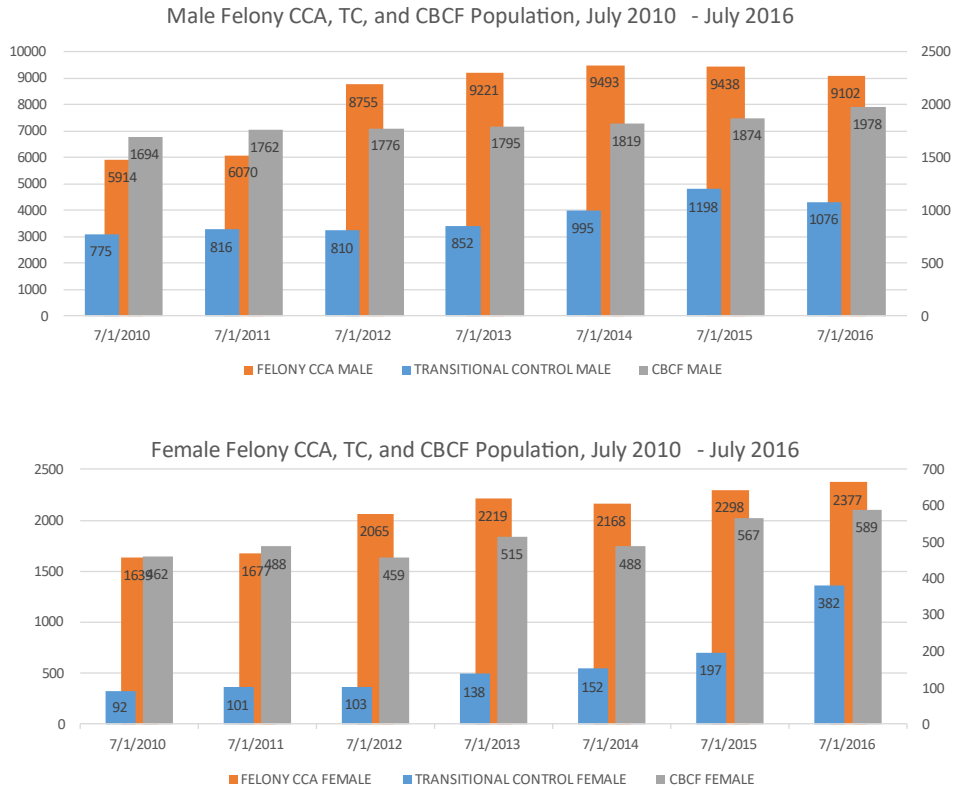
The Bureau of Community Sanctions (BCS) supports community corrections programs in Ohio through the administration of grant and contract funds to local jurisdictions that offer non-residential and residential community supervision programs for adults who may otherwise be incarcerated in local jails or state prisons.¹⁹ Residential programs funded by BCS include Community Based Correctional Facilities (CBCF), Halfway Houses (HWH), Community Residential Centers (CRC), Community Transitional Housing Program (CTHP) and Permanent Supportive Housing (PSH). Nonresidential Community Corrections Act grant funded programs include Probation, Prosecutorial Diversion, Treatment Programs, Electronic Monitoring, and Community Work Service. Additional grant programs administered through BCS include Justice Reinvestment and Incentive Grants (JRIG), Targeted Community Alternatives to Prison (T-CAP) and Probation Services Grants (PSG). Among other duties, BCS is responsible for monitoring these grant and contract expenditures and program utilization. BCS reports on the number of participants served through these programs annually.

¹⁸ See for example, the Sixth Monitoring Report (2005).

https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf

¹⁹ Ohio Department of Rehabilitation and Correction, Bureau of Community Sanctions 2022 Annual Report. <https://drc.ohio.gov/about/resource/reports/community-sanction-reports/bcs-annual-fy-2022>

Figure 4: ODRC CCA, TC, and CBCF Population, July 2010 – July 2016



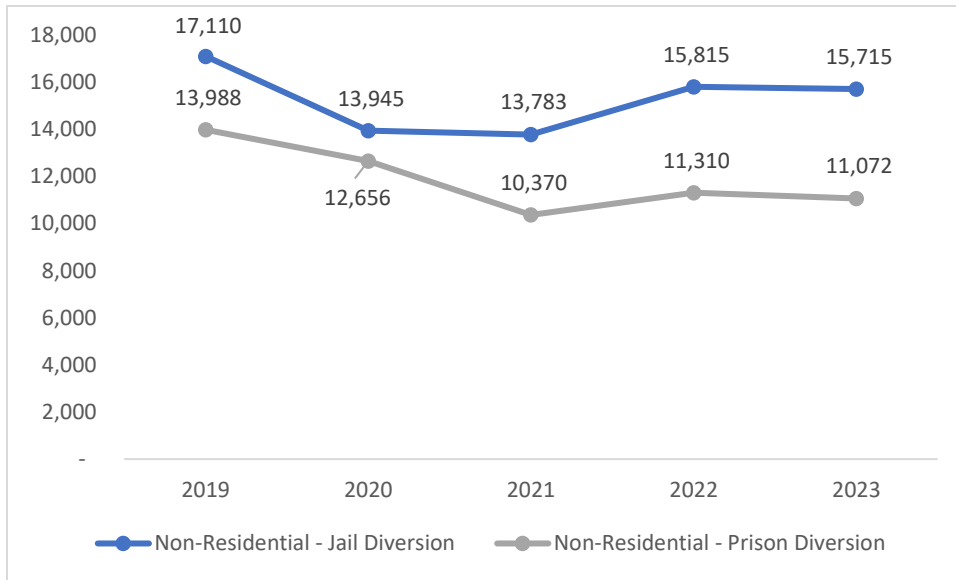
Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation

Figure 4, provided by ODRC, illustrates a population count on CCA, TC, and CBC participants from 2010-2016. The figures show participation rising in each of these programs over the six-year time period. This increase in participation suggests an increased use of community control sanctions rather than incarceration, an intended outcome of Senate Bill 2 and other key legislation passed since 1996.

Figures 5, 6, and 7 illustrate the total admissions to BCS programs from 2019 through 2023. Note that Figures 5, 6, and 7 are total admissions over a year, rather than a point-in-time population count displayed in Figure 4.

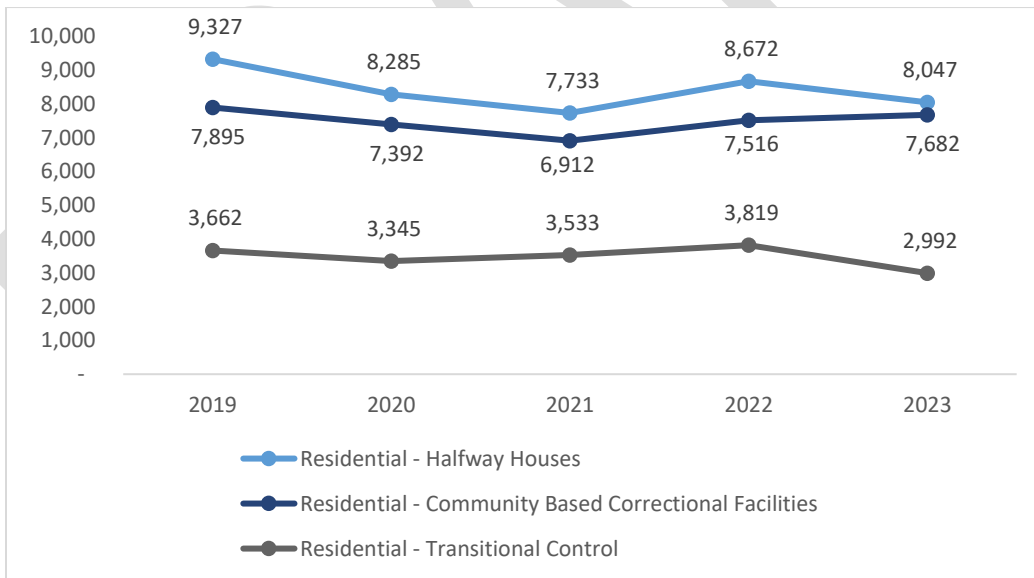
As demonstrated in Figure 5, admissions to the non-residential grant programs for jail and prison diversion decreased slightly during COVID, rebounding post-2020 to slightly below their pre-COVID levels. Figure 6 displays similar trends for halfway houses and community based correctional facilities. Participation in transitional control held steady through COVID but experienced a slight dip in admissions in 2023.

Figure 5: Non-Residential CCA Grants, Annual Participants Admitted, 2019-2023



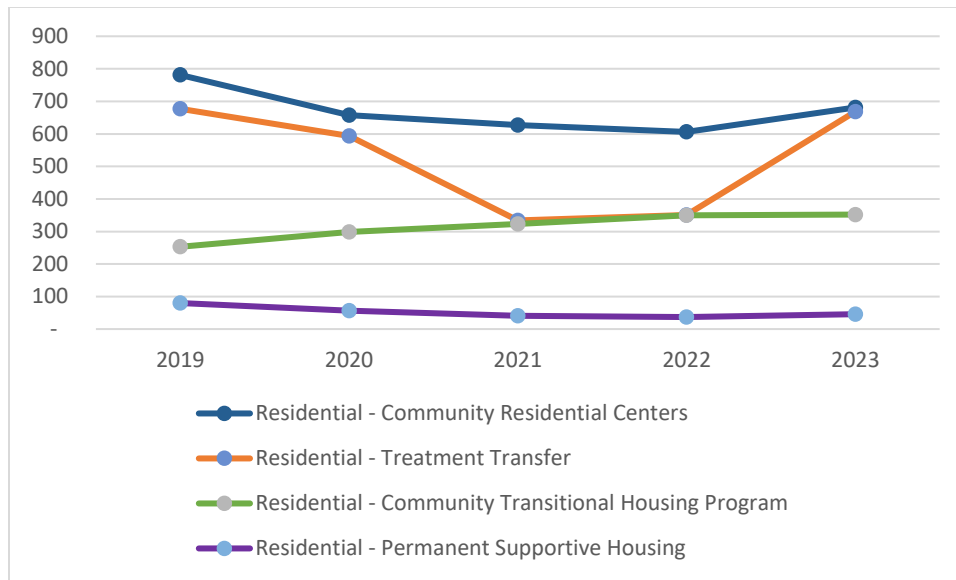
Source: ODRC Bureau of Community Sanctions, Annual Reports (2019-2023)

Figure 6. Residential BCS Grants, Annual Participants Admitted, 2019-2023 (HFH, CBCF, TC)



Source: ODRC Bureau of Community Sanctions, Annual Reports (2019-2023)

Figure 7. Residential BCS Grants, Annual Participants Admitted, 2019-2023 (CRC, TT, CTHP, PSH)



Source: ODRC Bureau of Community Sanctions, Annual Reports (2019-2023)

Table 1 displays changes in average time served among ODRC’s prison population, and the percentage of new commitments who are non-violent, non-sex offender F4s and F5s.

Table 1: Change in Selected ODRC Population Metrics, 2010-2022

Year	Time Served (years) Until First Release (CY; exc. Parole)	Percent Of New Commitments - Nonviolent/Non-Sex Offender F4/F5
2010	1.62	0.427
2011	1.78	
2012	1.88	
2013	1.93	
2014	1.96	
2015	2.01	0.373
2016	2.07	
2017	2.14	
2018	2.24	
2019	2.35	
2020	2.49	
2021	2.73	
2022	2.61	0.245

Conclusion

In the long term, the trends of increased usage of community control sanctions, COVID notwithstanding, have been paired with longer time-served and fewer non-violent/non-sex offender inmates in the prison population. As displayed in Table 1, the average time served from 2010 to 2022 increased by nearly a year. At the same time, the percentage of new commitments of nonviolent/non-sex offender F4s and F5s decreased from 42.7% in 2010 to just 24.5% in 2022. This suggests that Ohio's sentencing structure post-Senate Bill 2 has diverted more non-violent, low-level offenders from prison to a community control sanction.

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R.C. 181.25(A)(2)(a)(ii) Fiscal and other impact on political subdivisions and other relevant aspects of local government

Overview

This provision requires a report on “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.”

Previous Monitoring Reports have largely avoided showing direct trends of the sentencing structures impact on budgetary and fiscal trends. This report will show general trends as it relates to financial impacts of Ohio’s sentencing structure on local governments. Due to Ohio’s complex and ever-changing sentencing structure post-Senate Bill 2, and the variety of intertwined inputs that affect local budgets, it is challenging to assign specific impacts to local fiscal measures. Further, local governments and political subdivisions are funded through a variety of federal, state, and local sources. Because there is no standardized, analyzable repository of local spending and revenues, this report relies on information gathered from a variety of sources including the U.S. Census Bureau, U.S. Bureau of Labor Statistics, and the state budget, among others. These sources can illustrate high level trends in how funds are spent across the state by the relevant political subdivisions.

The Fiscal Impact of Major Criminal Justice Legislation from Fiscal Years 2021-2023

R.C. 103.143 requires the Legislative Budget Office (LBO), located within the Legislative Service Commission (LSC), to determine whether a local impact statement is required for each bill introduced and referred to a House or Senate committee. The LBO provides a detailed fiscal note analyzing a bill’s fiscal impact on state and local government. To that end, two major criminal justice bills were enacted from fiscal years 2021-23, Ohio House Bill 1 (133rd General Assembly) and Senate Bill 288 (134th General Assembly). A quick summary of each these local impact statements is contained below.²⁰

Ohio House Bill 1 (133rd General Assembly)

The bill generally broadened intervention in lieu of conviction (ILC), which may have increased the workload and operating expenses of county and municipal criminal justice systems, including courts, prosecutors, and indigent defense. The LBO concluded that the magnitude of this change was indeterminate. The Commission’s analysis of House Bill 1 in 2021 and 2023 concluded that the bill may not have significantly broadened usage of ILC.²¹ The LBO also determined that thousands of additional offenders may become eligible for record sealing, which could increase associated costs for courts, prosecutors, and probation departments. The Commission’s analysis of House Bill 1 found that record sealing applications appeared to be increasing, but also that it is difficult to assess the impact to localities

²⁰ See Fiscal Note & Local Impact Statement – H.B. 1 133rd General Assembly.

<https://www.legislature.ohio.gov/download?key=15430&format=pdf> and Fiscal Note and Local Impact Statement S.B. 288 – 134th General Assembly. <https://www.legislature.ohio.gov/download?key=20284&format=pdf> for further details.

²¹ See HB1 Impact Study Report (2022 and 2023). <https://www.supremecourt.ohio.gov/criminal-br-sentencing/publications-information/>

because record sealing information is not readily analyzable at the local level. House Bill 1 also sought to expand involuntary commitment to treatment, but the Commission found that this statute is still scarcely used.

Ohio Senate Bill 288 (134th General Assembly)

This bill further expanded opportunities for sealing a record of conviction, which may result in an increase in the workloads and operating costs of courts, prosecutors, and probation departments. Because the bill went into effect midway through 2023, its current impact is still indeterminate. The bill also contained a new strangulation offense that will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses can instead be charged as a felony offense. This may shift the costs and caseload of processing such cases from the municipal and county court to common pleas level.

State Funding by County

Every year the LSC produces a *State Spending by County* report²² using data from state agencies and the Ohio Administrative Knowledge System (OAKS). This report attempts to show how state funds are distributed among the 88 counties. The report provides details for two types of expenditures, subsidy and capital. Subsidy includes state payments for supplementing the costs of public services. Capital consists of state disbursements for the acquisition, construction, or improvement of physical assets such as land, buildings, and infrastructure. The State Spending by County report summarizes statewide spending to all of the counties as a whole on relevant functional categories, namely Mental Health and Addiction services, and Justice and Corrections. All of the graphics presented below exclude federal COVID relief funding.

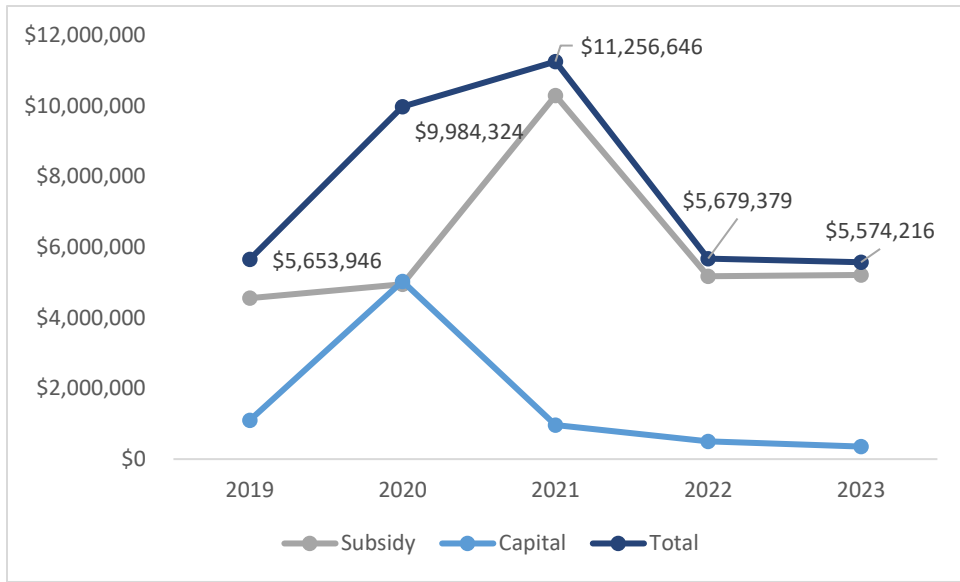
Figure 8. State Spending by County, Attorney General, FY 2019-2023



Source: Legislative Service Commission, *State Spending by County Report, 2019-2023*

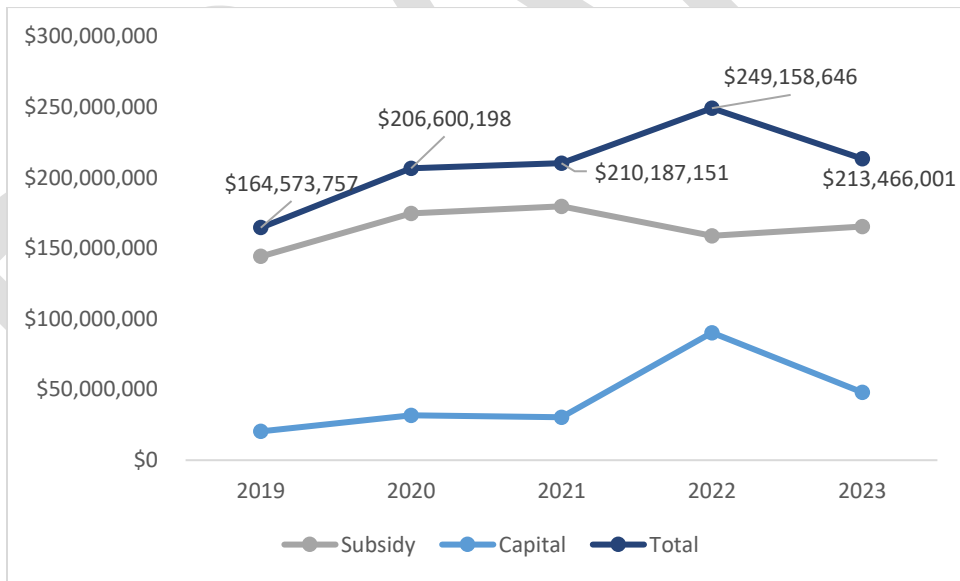
²² See <https://www.lsc.ohio.gov/budget/state-spending-by-county>

Figure 9. State Spending by County, Judiciary/Supreme Court, FY 2019-2023



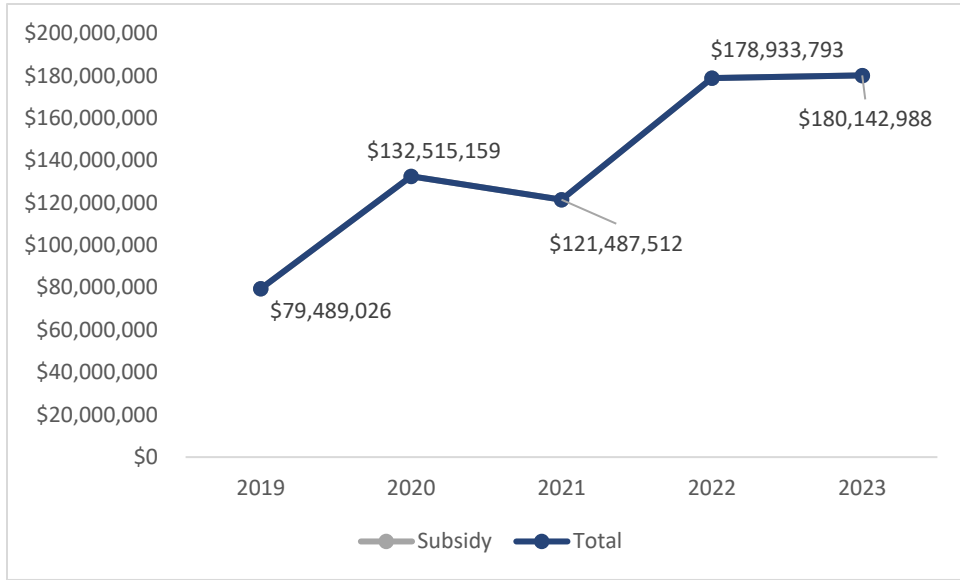
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

Figure 10. State Spending by County, Mental Health and Addiction Services, FY 2019-2023



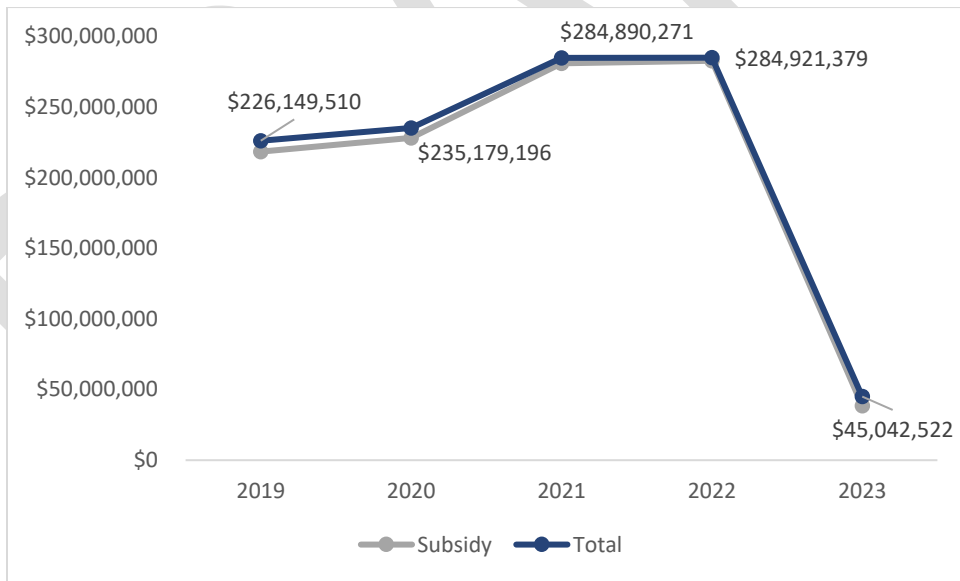
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

Figure 11. State Spending by County, Public Defender, FY 2019-2023



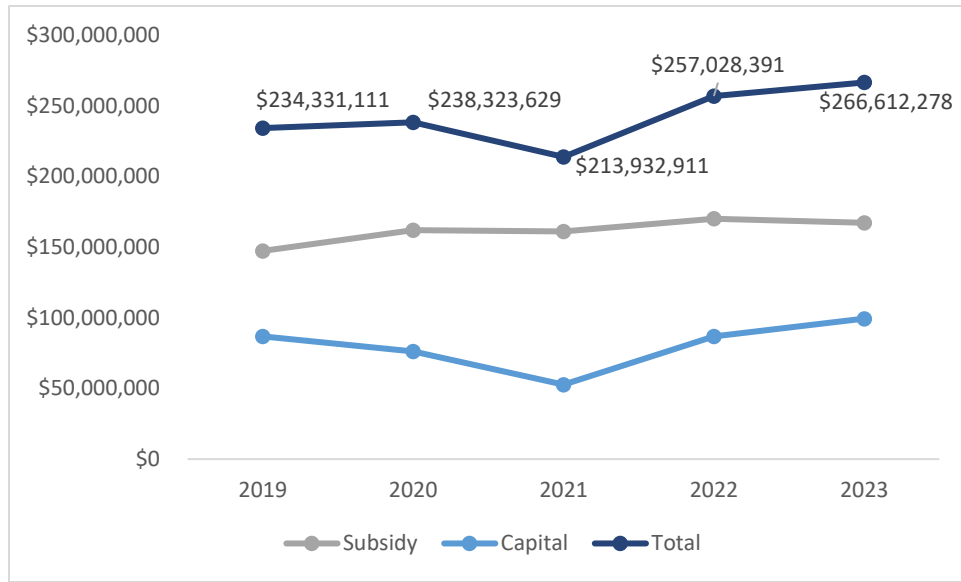
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

Figure 12. State Spending by County, Public Safety, FY 2019-2023



Source: Legislative Service Commission, State Spending by County Report, 2019-2023

Figure 13. State Spending by County, Rehabilitation and Correction, FY 2019-2023

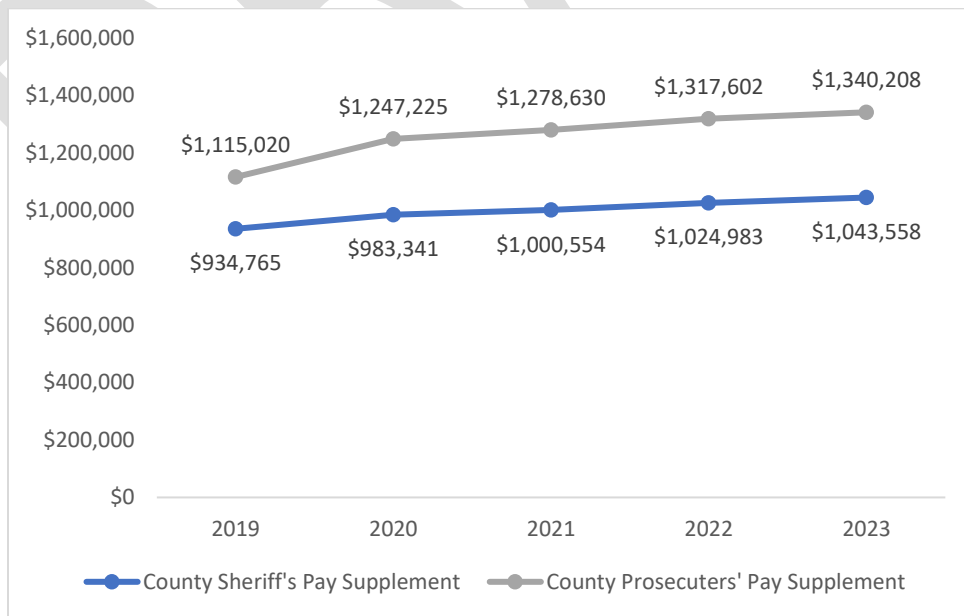


Source: Legislative Service Commission, State Spending by County Report, 2019-2023

State of Ohio – Budget Line Items

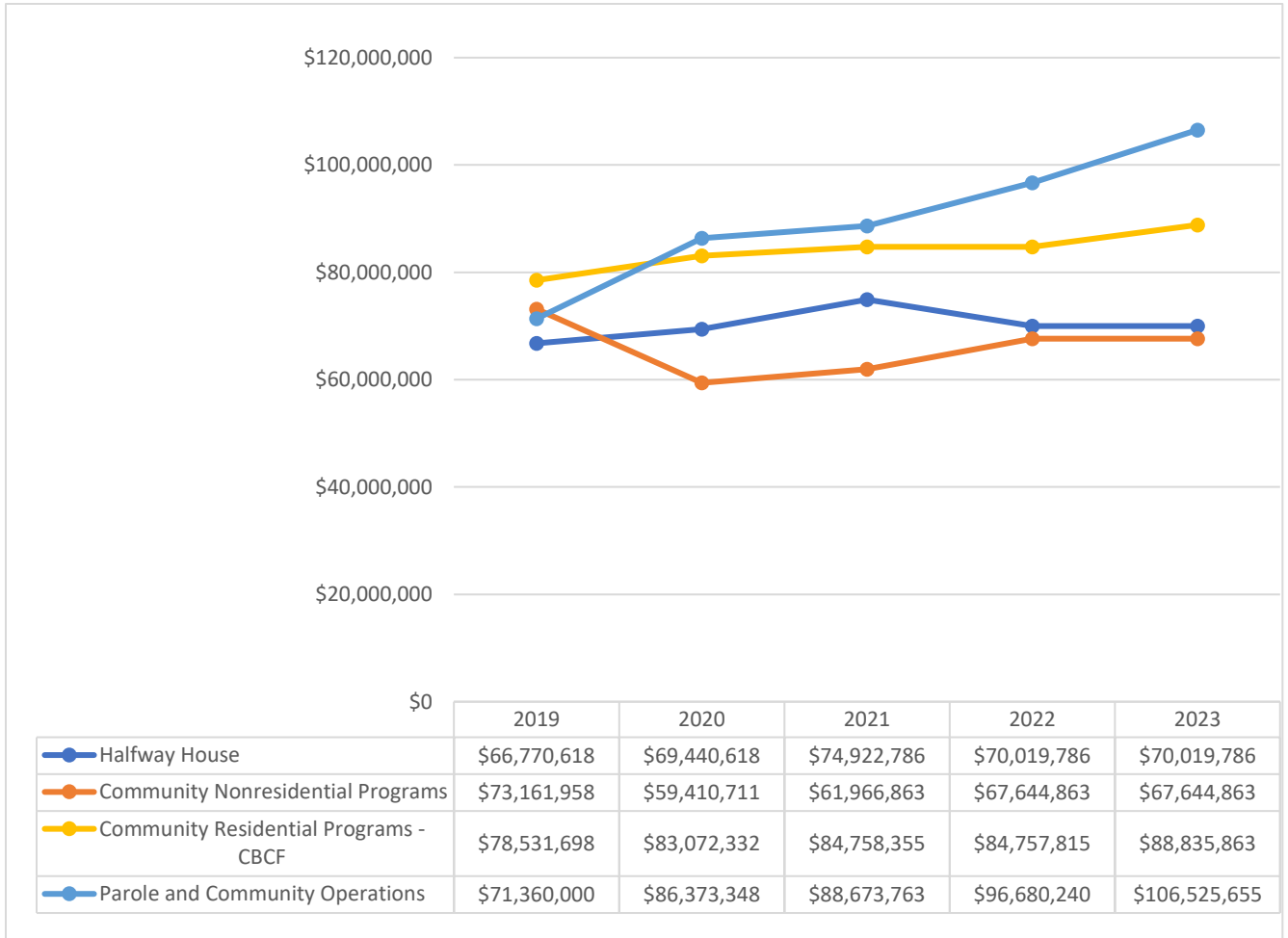
State agency budgetary documents often contain line items for funding to the counties. The following tables illustrate some of these funding items to provide more detail on the state spending by county charts. Note that these figures are already captured in the state spending by county report and are illustrated here to provide a finer detail of that funding. This grouping of charts is not comprehensive and is intended to capture slices of funding to the statutorily mandated political subdivisions to study.

Figure 15. Attorney General's Office County Pay Supplements, FY 2019-FY2023



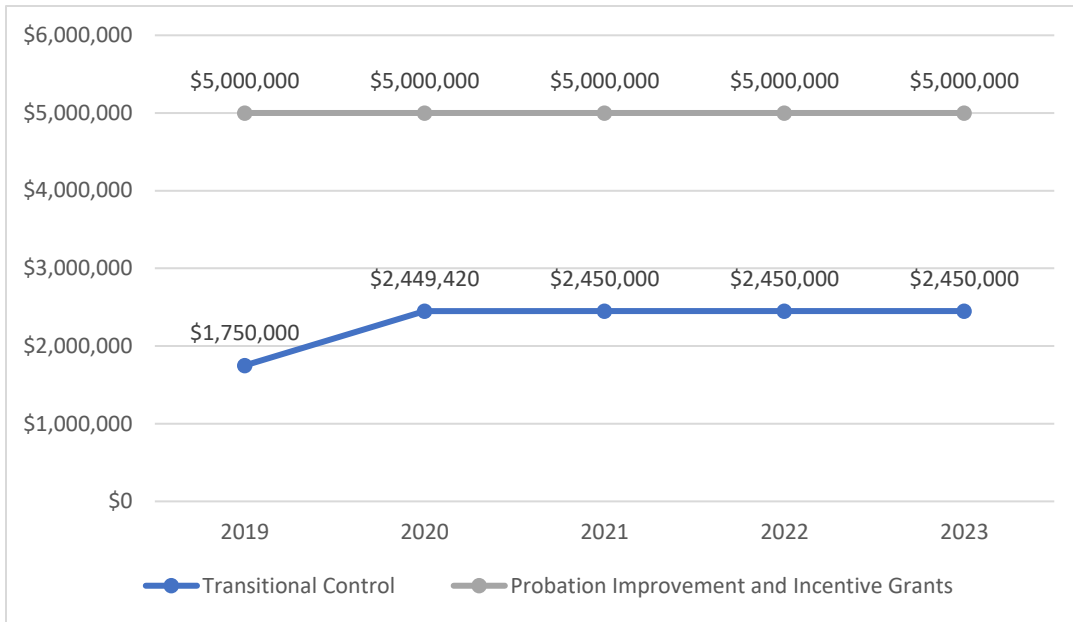
Source: Legislative Budget Office, Greenbooks

Figure 16. ODRC GRF Appropriations Parole and Community Services, FY 2019-2023



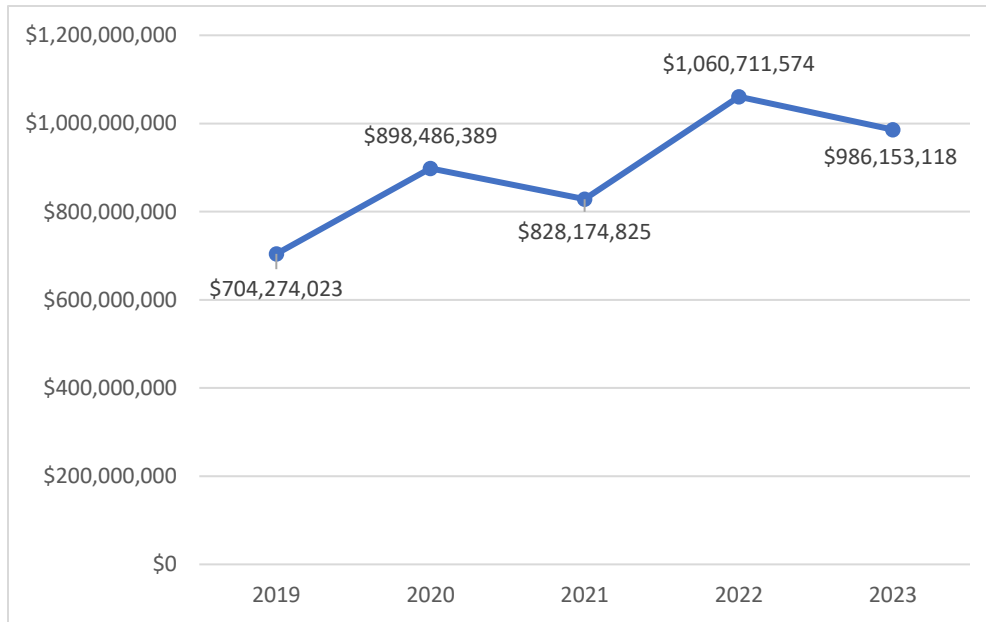
Source: Legislative Budget Office, Greenbook

Figure 17. ODRC DPF Appropriations Parole and Community Services, FY 2019-2023



Source: Legislative Budget Office, Greenbook

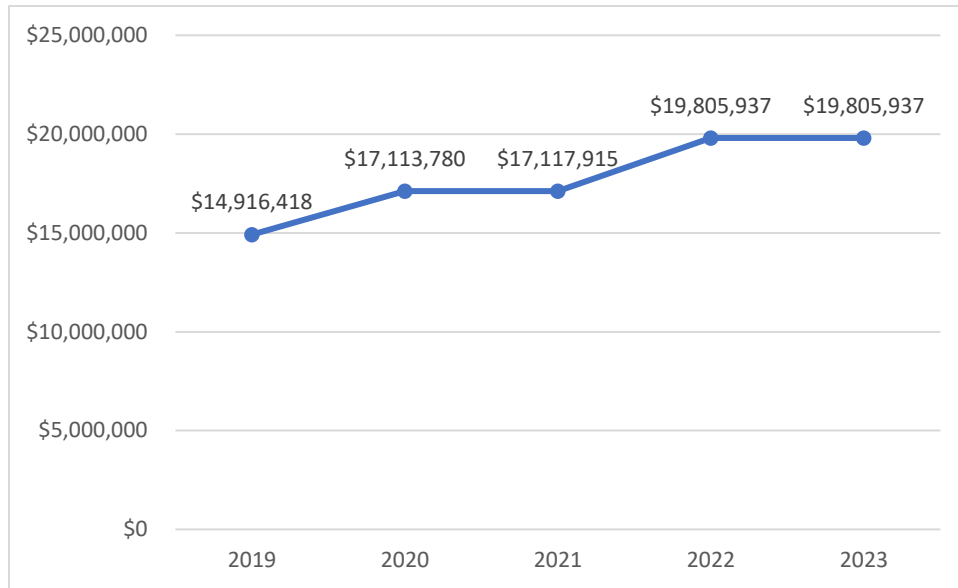
Figure 18. OMHAS Total Appropriation, FY 2019-2023²³



Source: Legislative Budget Office, Greenbook

²³ The total appropriation for the Ohio Department of Mental Health and Addiction Services (OMHAS) includes a variety of line items used toward funding mental health and substance use treatment. Each year funding for certain programs or areas within this purview may change categories or be funded by different Appropriation Line Items (ALI). The largest portion of OMHAS funding comes from the GRF fund but also includes Dedicated Purpose Funds (DPF), Internal Service Activity (ISA), and Federal (FED) funding. Some of the highlighted areas for funding during the time frame of this report include: capital funding for community assistance projects such as recovery housing, medication-assisted treatment and drug court specialization docket programs, substance abuse stabilization centers and substance use disorder treatment, psychotropic drug reimbursement programs which reimburses county jails for psychotropic medication dispensed to inmates, hospital services, prevention services such as early identification of behavioral health disorders and suicide prevention, social services, mental health, and substance abuse grant funding, and many more general or specialized programs. The department also earmarks funds each year for criminal justice services. These are used in part to pay costs for forensic competency and not guilty by reason of insanity (NGRI) evaluations for common please courts. This line item also includes funding for forensic monitoring and tracking of individuals on conditional release, forensic training, specialized re-entry services, and grants for addiction services alternatives. This line item also funds medication-assisted treatment (MAT) programs for drug court specialized docket programs and support for mental health courts.

Figure 19. OMHAS Criminal Justice Services Funding FY 2019-FY2023



Source: Legislative Budget Office, Greenbook

In addition to the general funding shown above, there has been major capital improvement funding for local jails and correctional facilities across the past four General Assembly sessions. State funding for local jails and correctional facilities is listed in the following table.

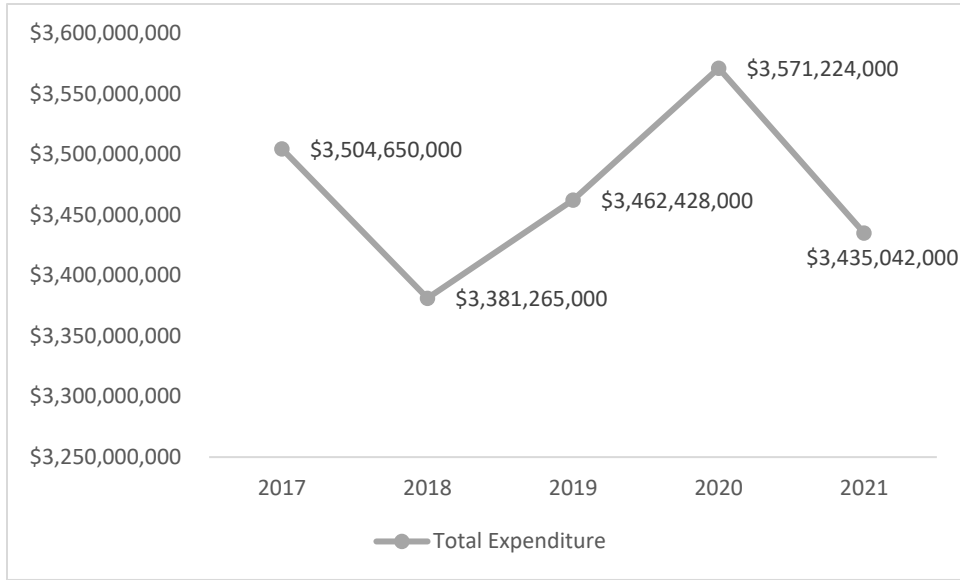
Table 2. Capital Improvement Funding for Jails and Local Correctional Facilities, FY 2019-2024

Project Description	2017-2019 (132nd GA – HB 529)	2019-2020 (133rd GA – SB 310)	2021-2022 (134th GA – HB687)	2023-2024 (135th GA – HB33)
Cuyahoga County Mental Health Jail Diversion Facility	\$700,000	\$700,000	\$700,000	
DRC Adult Correctional Building Fund - Local Jails	\$4,525,000	\$51,054,000	\$50,575,000	
DPF Local Jail Grants				\$75,000,000
DRC Adult Correctional Building Fund - CBCFs	\$14,000,000	\$5,400,000	\$6,323,500	
DRC Adult Correctional Building Fund - Community Residential Programs	\$782,000	\$2,950,000	\$4,561,000	
DRC Adult Correctional Building Fund - Ohio River Valley Jail Facility	\$1,250,000			
Hamilton County Justice Center Capacity and Recovery Expansion	\$2,500,000			
Warren County Jail Interceptor Center	\$750,000			
Barberton Municipal Jail	\$500,000			
Columbiana County Jail	\$250,000			
Fayette County Adult Detention Facility	\$225,000	\$65,000	\$65,000	
Tuscarawas County Jail	\$200,000			
Allen County Jail Facility/Justice Center	\$100,000	\$250,000		
Vinton County Justice Center		\$200,000	\$200,000	
Logan County Jail		\$139,000	\$139,000	
Holmes County Jail		\$100,000	\$100,000	
Medina County Jail		\$100,000	\$100,000	
Noble County Justice Center		\$100,000	\$100,000	
Wyandot County Jail		\$100,000	\$100,000	
Butler County Correctional Complex Medical Unit			\$500,000	
Crestline Jail Renovation			\$75,000	

[US Census Bureau: Annual Survey of Local Government Finances](#)

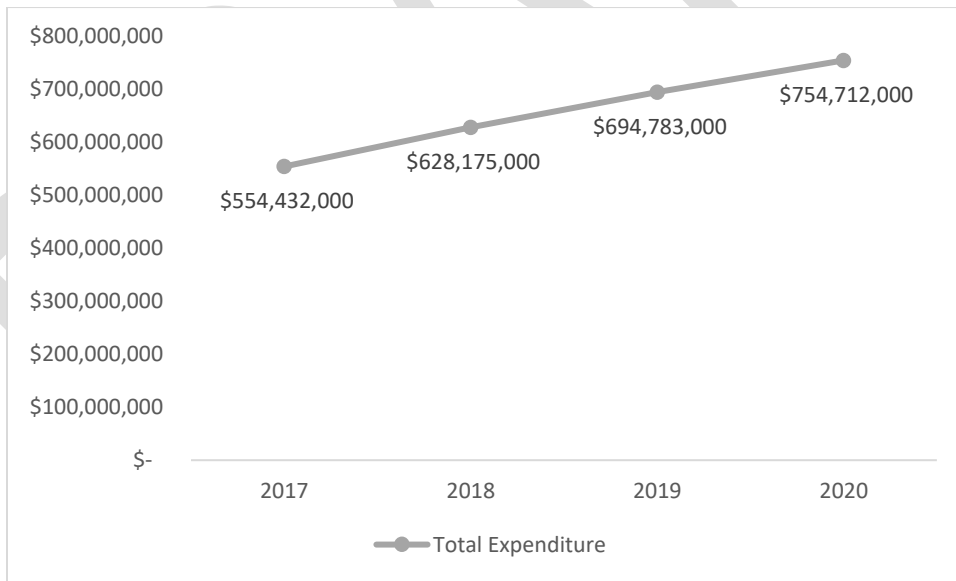
The U.S. Census Bureau’s Annual Survey of Local Government Finances is the only known comprehensive source of state and local government finance data collected on a national scale using uniform definitions, concepts, and procedures. The survey obtains data on revenues, expenditures, debt and assets of counties, cities, township governments, special districts, and dependent agencies when information is not available elsewhere. The following tables show only local expenditures on relevant fiscal categories.

Figure 20. Local Government Expenditures, Police Protection, 2017-2021



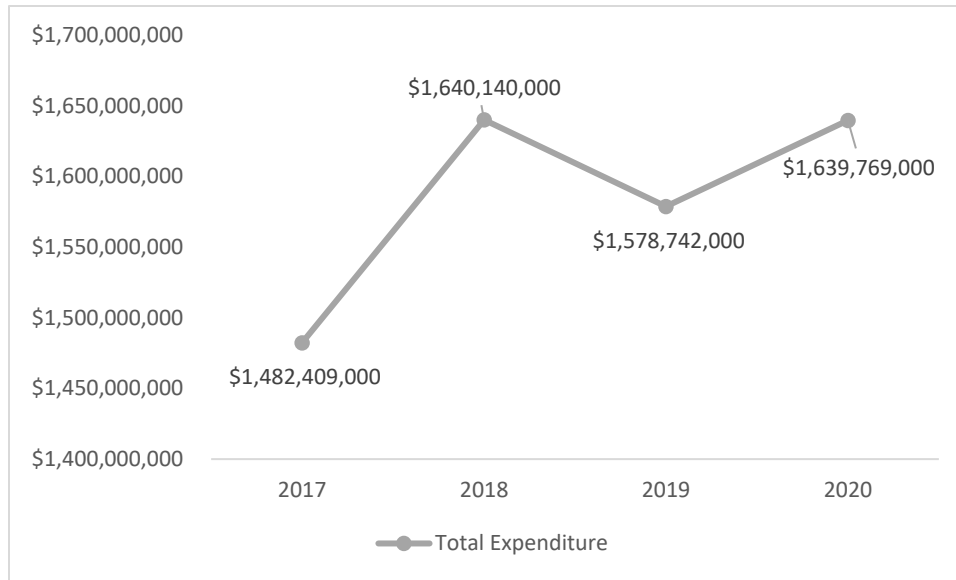
Source: US Census Bureau State and Local Government Finance Historical Datasets and Tables

Figure 21. Local Government Expenditures, Corrections, 2017-2021



Source: US Census Bureau State and Local Government Finance Historical Datasets and Tables

Figure 22. Local Government Expenditures, Judicial and Legal System, 2017-2021

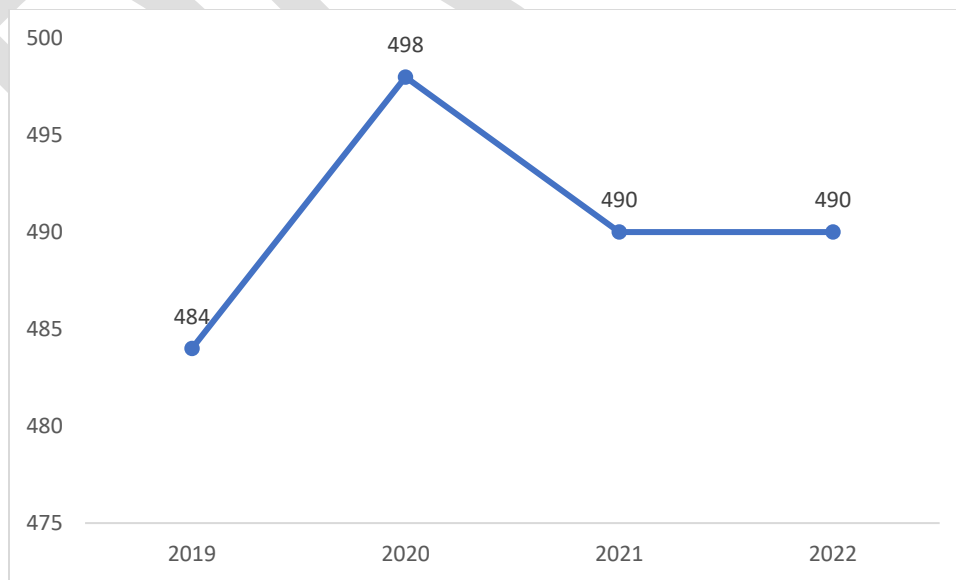


Source: US Census Bureau State and Local Government Finance Historical Datasets and Tables

[US Bureau of Labor Statistics, Occupational Employment and Wage Statistics](#)

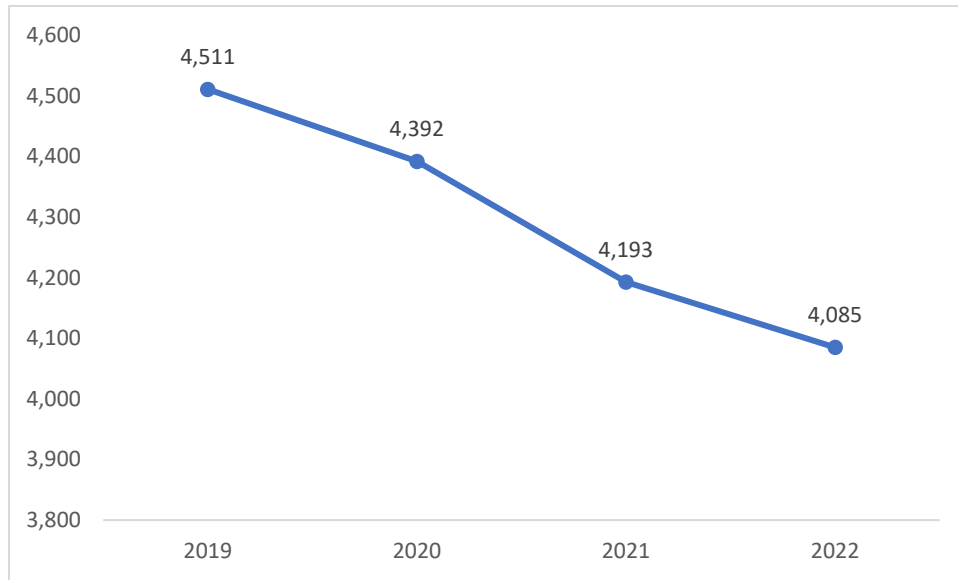
The Occupational Employment and Wage Statistics (OEWS) program provides wage and employment estimates by state and industry. The following tables show employment statistics for select categories at the local government level, statewide, except for the mental health and substance abuse treatment workers, which are displayed at the privately-owned industry level. Note that the law enforcement data comes from the Federal Bureau of Investigation's Uniform Crime Reporting, which tracks the number of sworn law enforcement officers each year.

Figure 23. Average Annual Employment, Local Parole and Probation Offices, 2019-2022



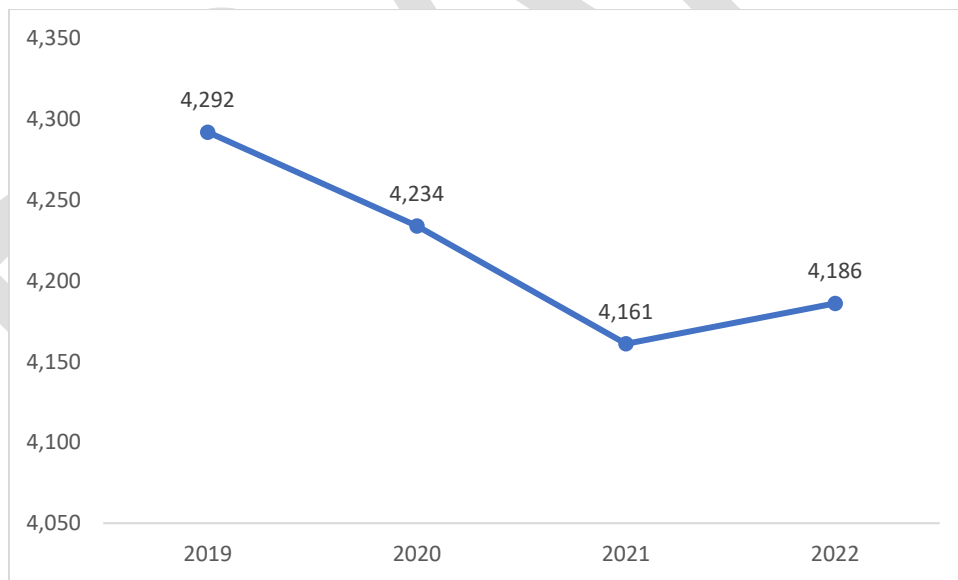
Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics

Figure 24. Average Annual Employment, Local Correctional Institutions, 2019-2022



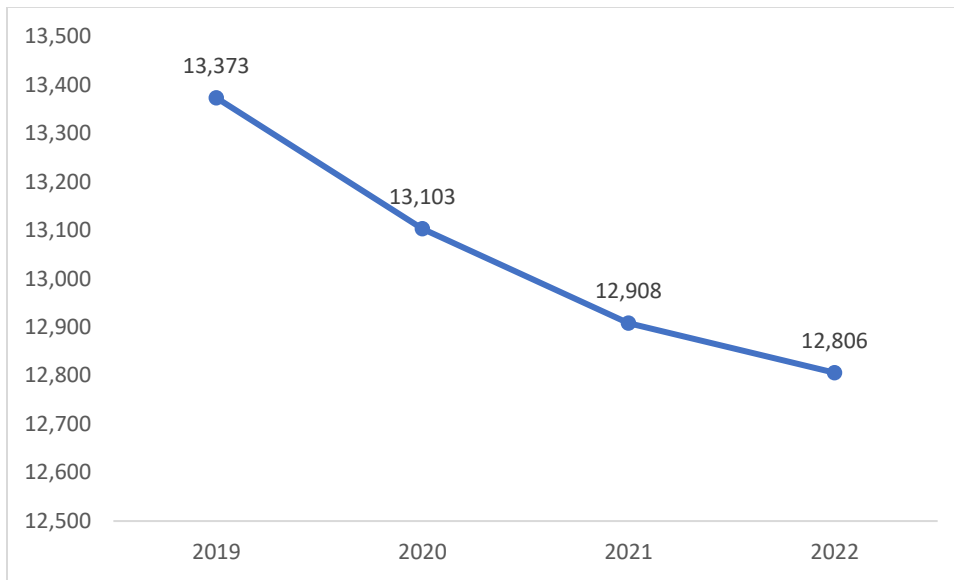
Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics

Figure 25. Average Annual Employment, Local Legal Counsel and Prosecution, 2019-2022



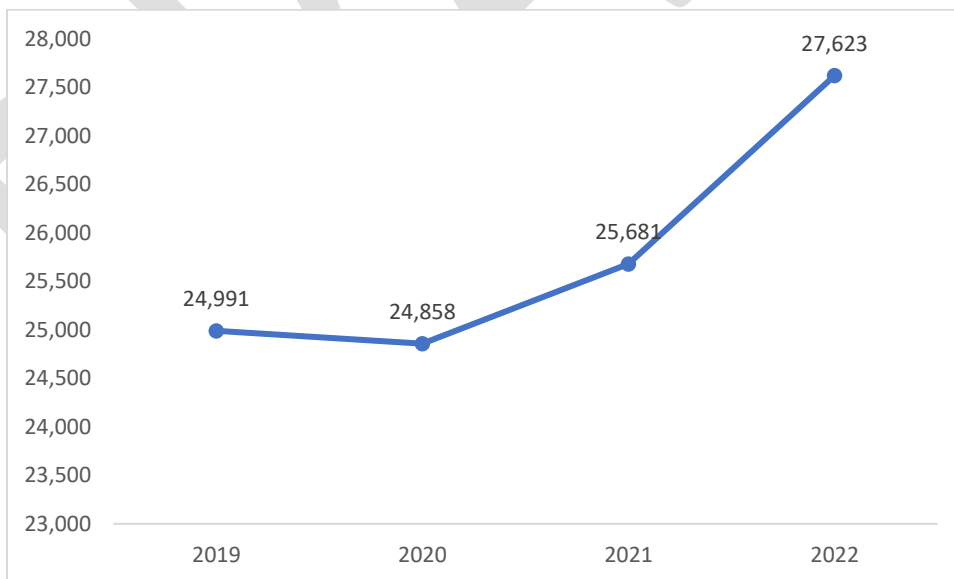
Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics

Figure 26. Average Annual Employment, Local Courts, 2019-2022



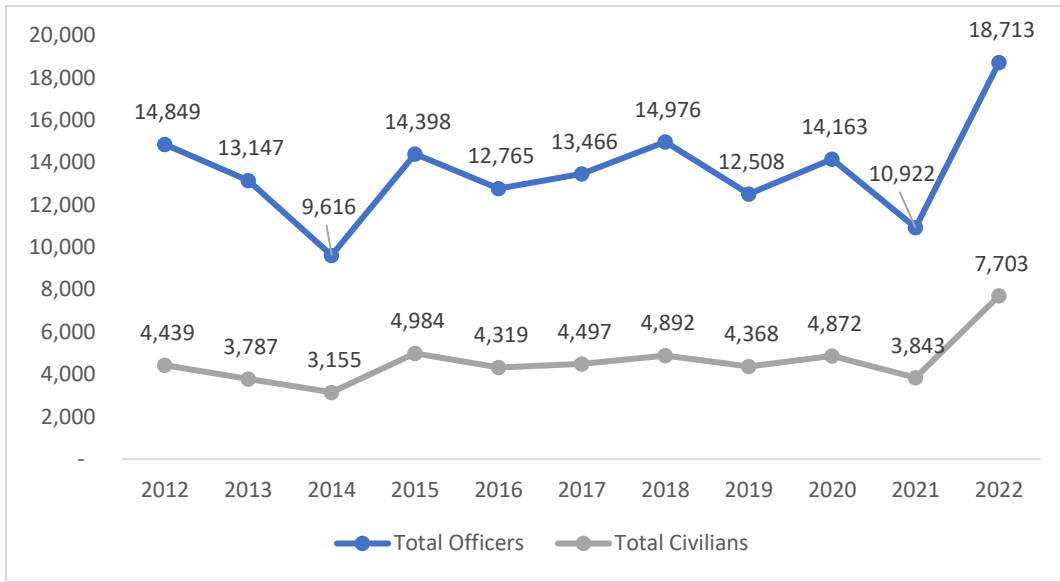
Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics

Figure 27. Average Annual Employment, Residential, Outpatient, and Hospital Mental Health and Substance Abuse Providers, 2019-2022



Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics

Figure 28. Sworn Law Enforcement Employees, Civilian and Officer, 2012-2022



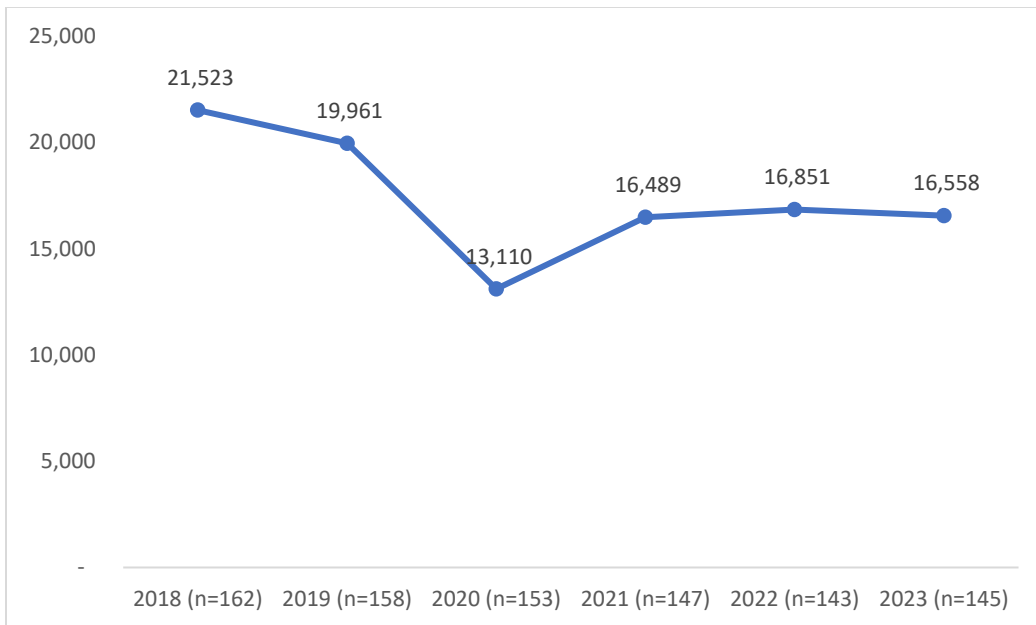
Source: Federal Bureau of Investigation, Uniform Crime Reporting, Police Employee Data

Jail Population Metrics

The Ohio Department of Rehabilitation and Correction’s Bureau of Adult Detention keeps annual data reports on jails across Ohio. The following graphic displays the average daily inmate count from years 2018-2023.²⁴

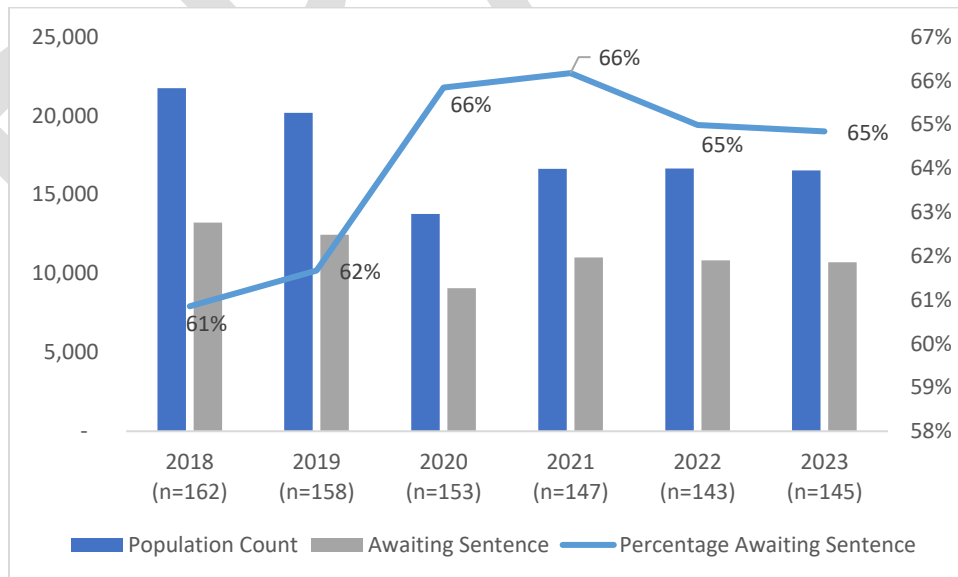
²⁴ Please note: The data listed on this table is solely determined and self-reported by the listed jails. DRC has not evaluated the accuracy of any of these figures and reserves the opportunity to analyze and confirm their accuracy.

Figure 29: Average Daily Jail Inmate Count, 2018-2023 (Number of Jails in Parentheses)



Source: Ohio Department of Rehabilitation and Correction, Bureau of Adult Detention

Figure 30. Jail Population Count on Inspection Day, Total Jail Population Compared to Inmates Awaiting a Sentence, 2018-2023 (Number of Jails in Parentheses)



Source: Ohio Department of Rehabilitation and Correction, Bureau of Adult Detention

Conclusion

This section of the report is intended to give a general overview of the fiscal state of the criminal justice system at the local level, using the best available aggregate data. It is impossible to analyze these trends in a vacuum, as budgetary and employment figures are influenced by factors beyond the sentencing structure of Ohio. Future iterations of this report should be guided by what data is actually available for reporting and also useful to the Commission and General Assembly. This could include narrowing in on topic areas, rather than the sentencing structure as a whole, or analyzing specific bills.

DRAFT

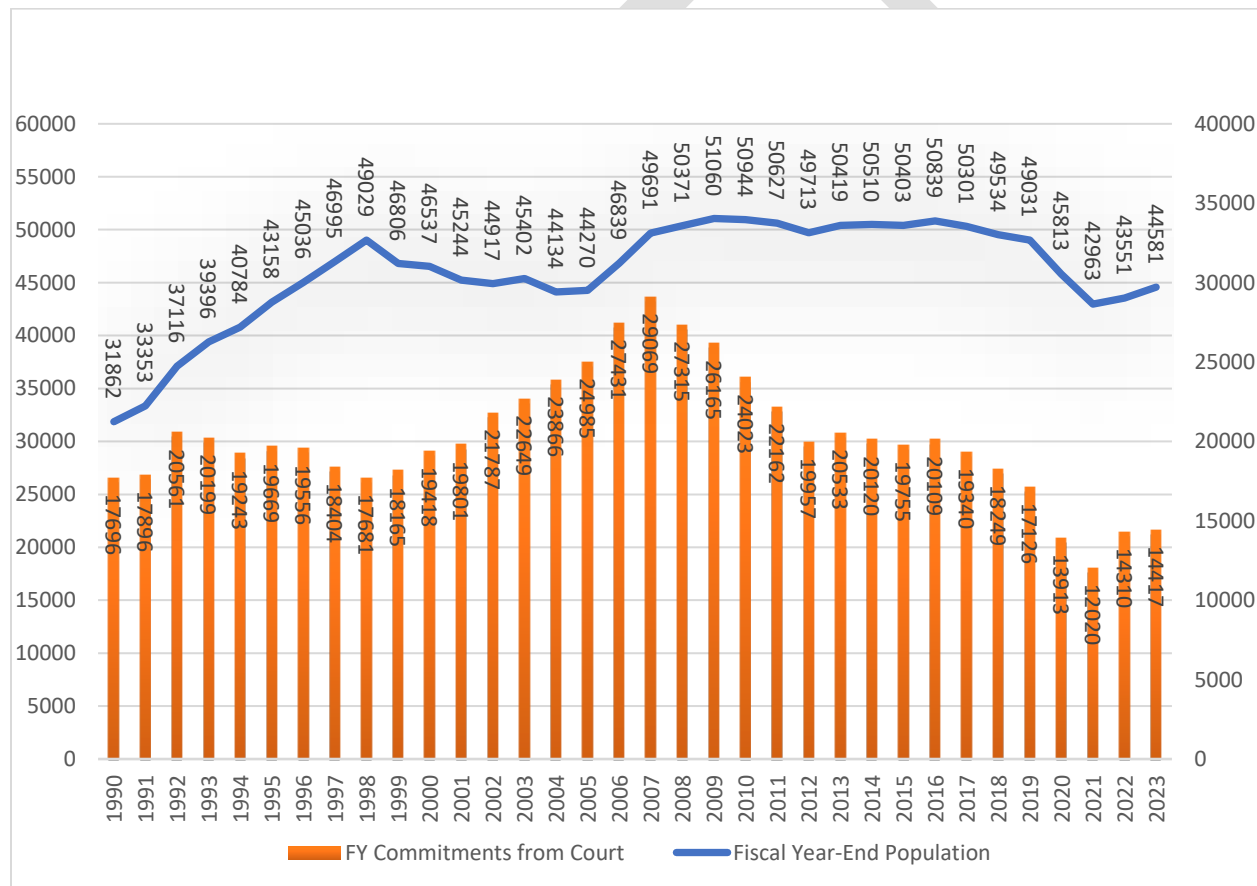
R.C. 181.25(A)(2)(b) The Impact on State Correctional Institutions

Overview

This provision requires a report on “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.” The following graphics present a variety of trends concerning the population at state correctional facilities. The information contained in this section has been provided by the Ohio Department of Rehabilitation and Correction or has been gathered from its public reports.

Starting more generally, Figure 31 displays the prison population over time as well as the number of new commitments from courts.

Figure 31. FY Custody Population Count and New Court Commitments, 1990 - 2023



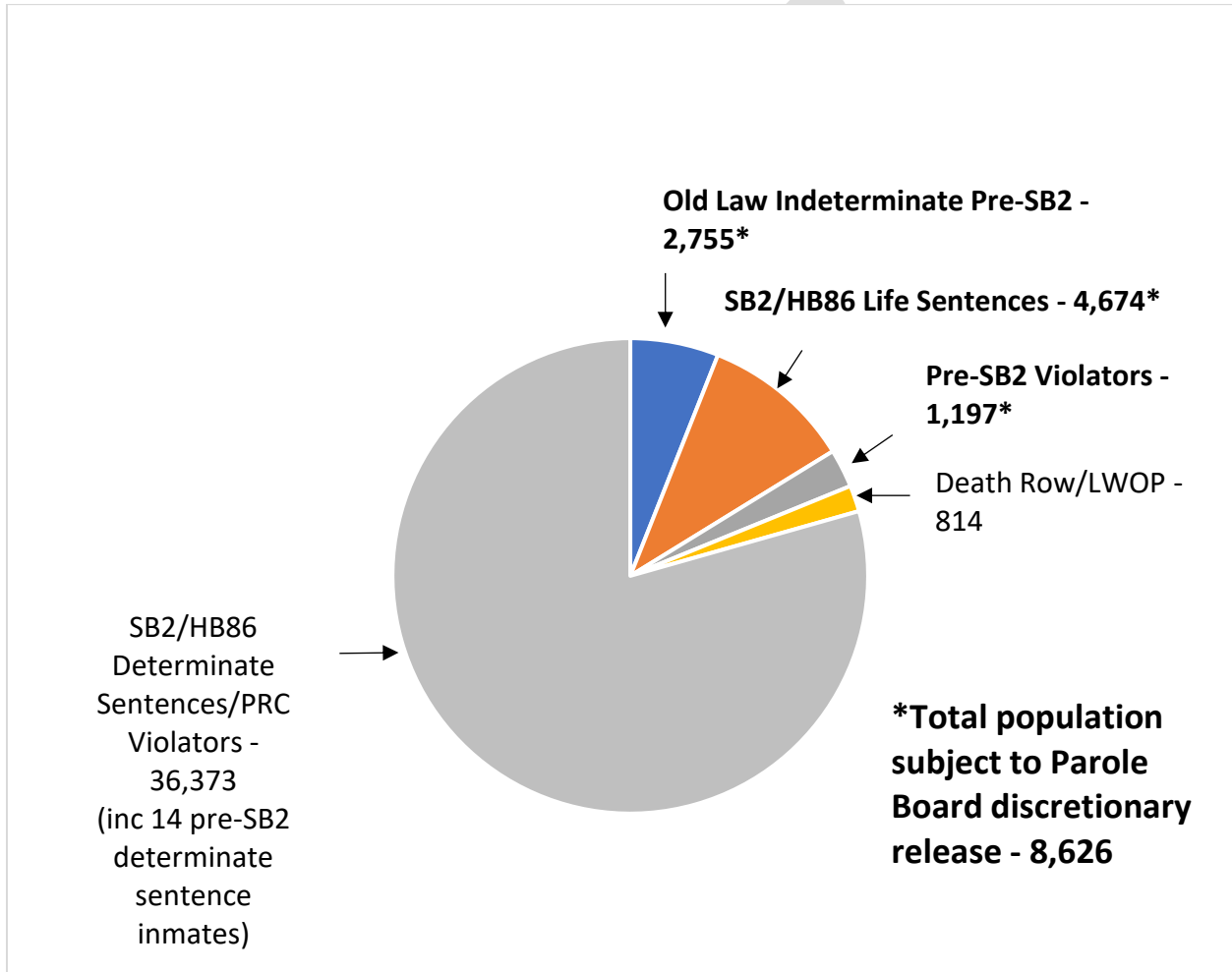
Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation

As previous monitoring reports of the Commission have commented on, the ODRC custody population began to steadily decrease following the passage of Senate Bill 2, until the *State v Foster* decision in 2006. *Foster* was accompanied by a rise in prison admissions and population. The number of new commitments from 2007 until 2019 gradually dropped, although the population remained relatively unchanged, except for a population decrease from 2017 to 2019 of over 1,000 inmates. The largest

decrease in the prison population in recent history came with the COVID-19 pandemic in 2020, where the prison population dropped to a low point of just under 43,000 in 2021. New commitments also reached a low point of 12,000 in 2021. From 2022-23, new commitments and prison population have picked up, but each remain well below pre-pandemic levels.

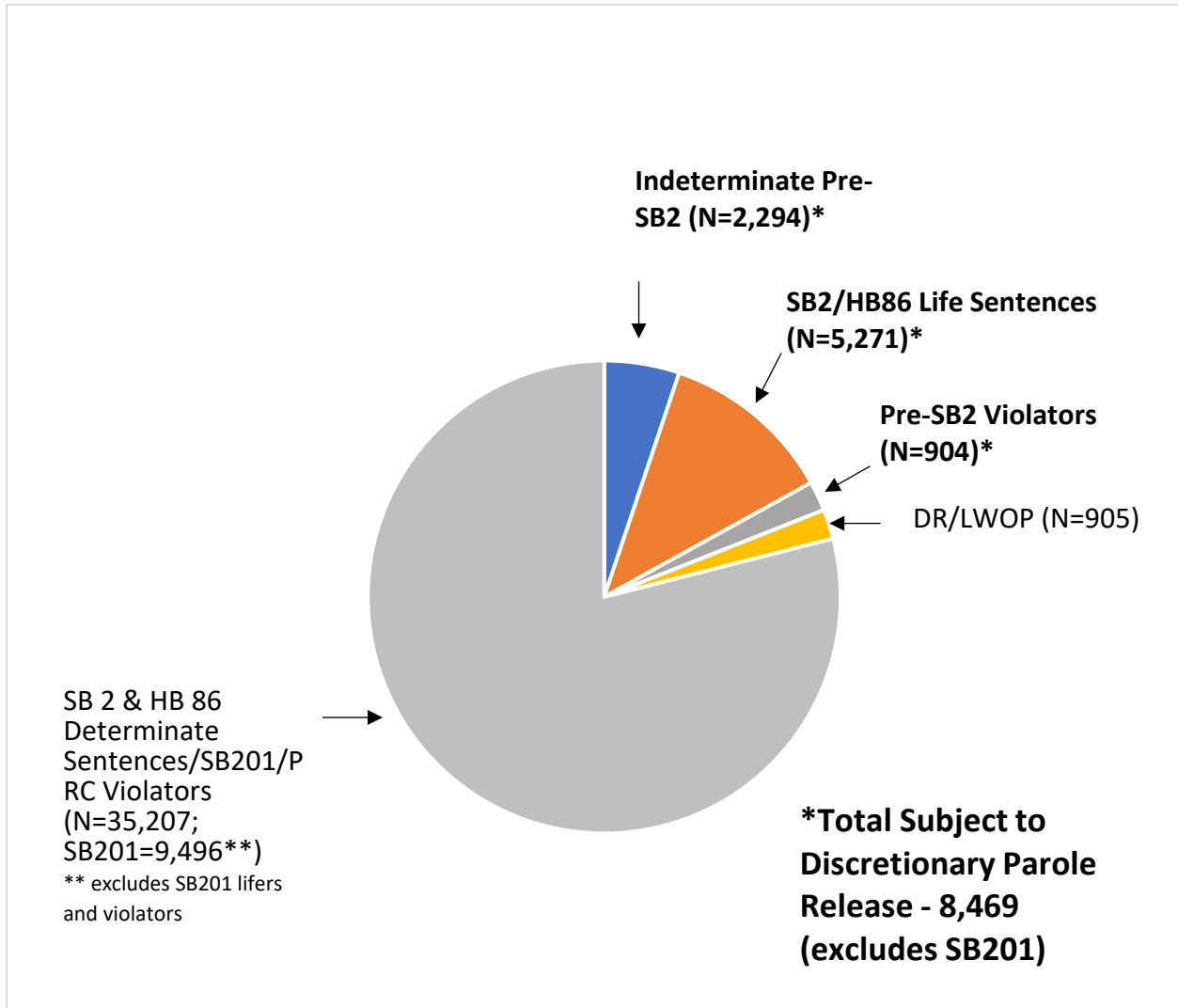
The next set of figures focuses on ODRC inmates by old law and new law status as well as sentence type, from 2020 to 2023.

Figure 32. Distribution of DRC Custody Population by Sentence Type and Old Law/New Law Status, July 1, 2020 (N=45,813)



Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation

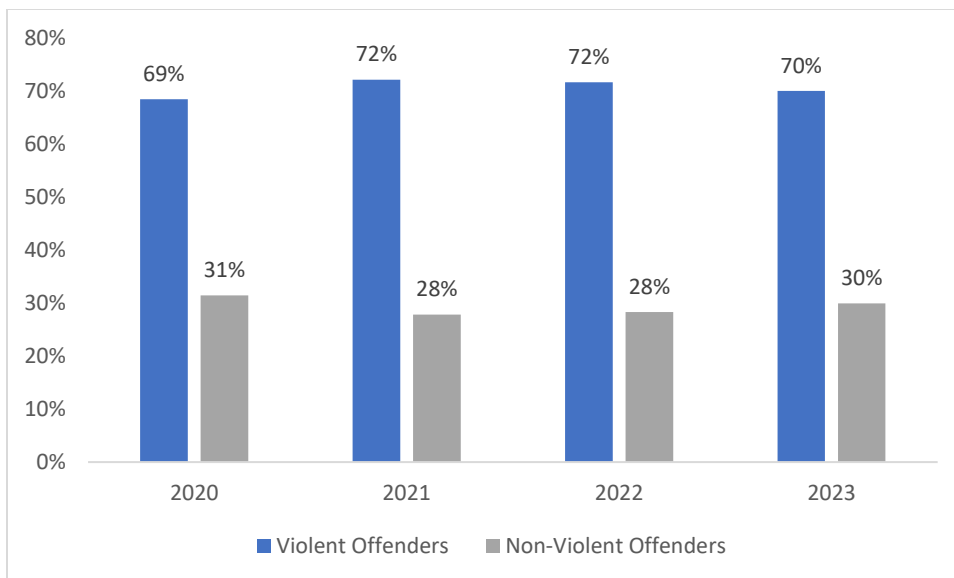
Figure 33. Distribution of DRC Custody Population by Sentence Type and Old Law/New Law Status, July 1, 2023 (N=44,581)



Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation

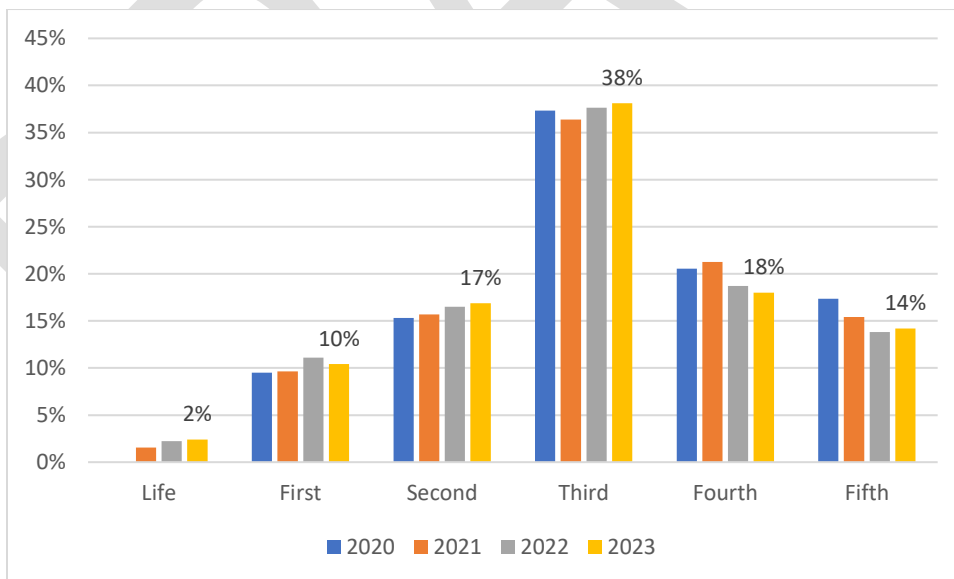
The next set of figures illustrate the trends of the ODRC custody population by violent/nonviolent status, felony level of most serious offense, and the most serious offense type, from calendar year 2020 to 2023.

Figure 34. Percentage of Violent vs Nonviolent Offenders in ODRC Custody Population, 2020-2023



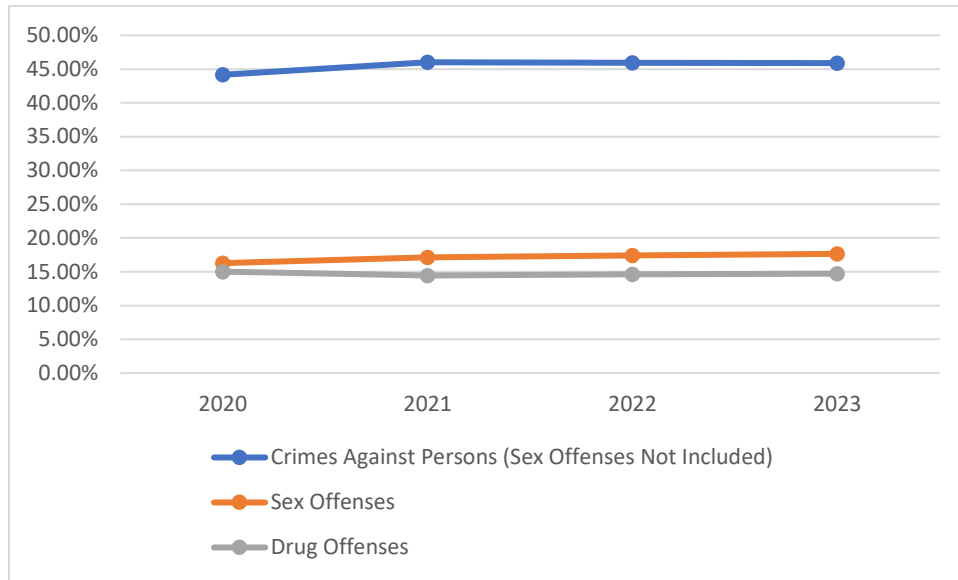
Source: Ohio Department of Rehabilitation and Correction, Annual Reports

Figure 35. Percentage of Annual Commitments by Felony Level of Most Serious Offense, 2020-2023



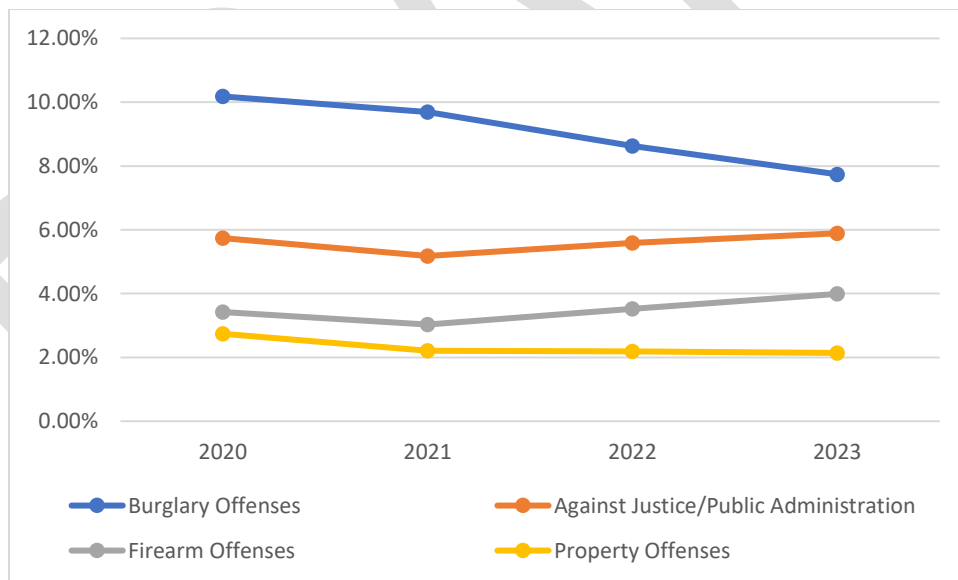
Source: Ohio Department of Rehabilitation and Correction, Annual Reports

Figure 36. Percentage of ODRC Inmates by Most Serious Offense Type, 2020-2023



Source: Ohio Department of Rehabilitation and Correction, Institutional Census Reports

Figure 37. Percentage of ODRC Inmates by Most Serious Offense Type, 2020-2023



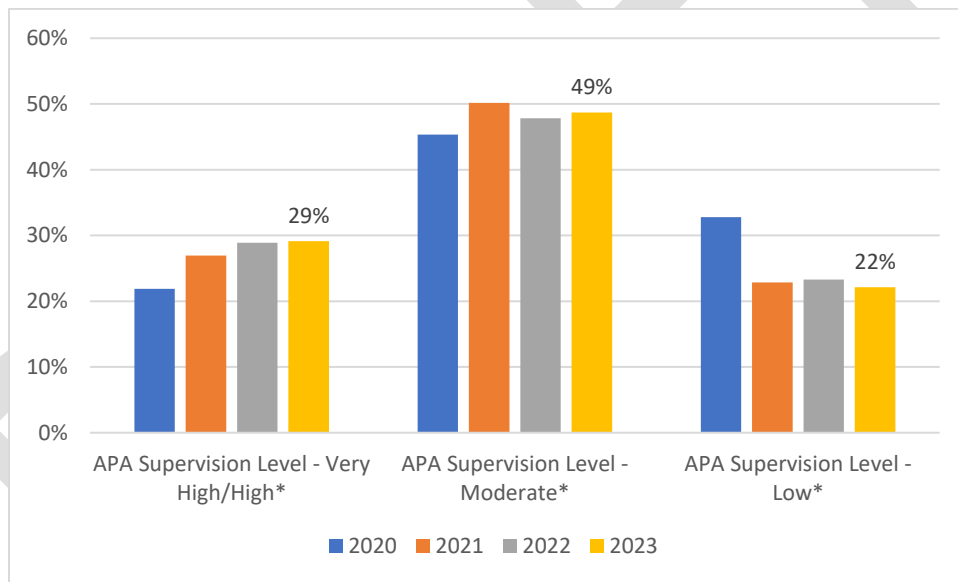
Source: Ohio Department of Rehabilitation and Correction, Institutional Census Reports

The next set of figures illustrate the trends of the ODRC supervision population by supervision type and level from 2020 to 2023.

Table 3. Individuals under Adult Parole Authority Supervision, 2020-2023

	2020	2021	2022	2023
Total Individuals under APA Supervision	31,735	29,631	27,956	25,037
Individuals under APA Supervision - Risk Reduction	88	64	48	39
Individuals under APA Supervision - Treatment in Lieu	730	605	410	310
Individuals under APA Supervision - Compact Parole	960	909	586	733
Individuals under APA Supervision - IPP/Probation		39	25	19
Individuals under APA Supervision - Judicial Release	786	618	381	247
Individuals under APA Supervision - Compact Probation	2,877	2,539	3,091	3,160
Individuals under APA Supervision - Parole	553	595	592	563
Individuals under APA Supervision - Community Control	4,821	4,004	3,122	2,513
Individuals under APA Supervision - Post Release Control	20,920	20,258	19,586	17,406
Individuals under APA Supervision - Not Reported			115	47

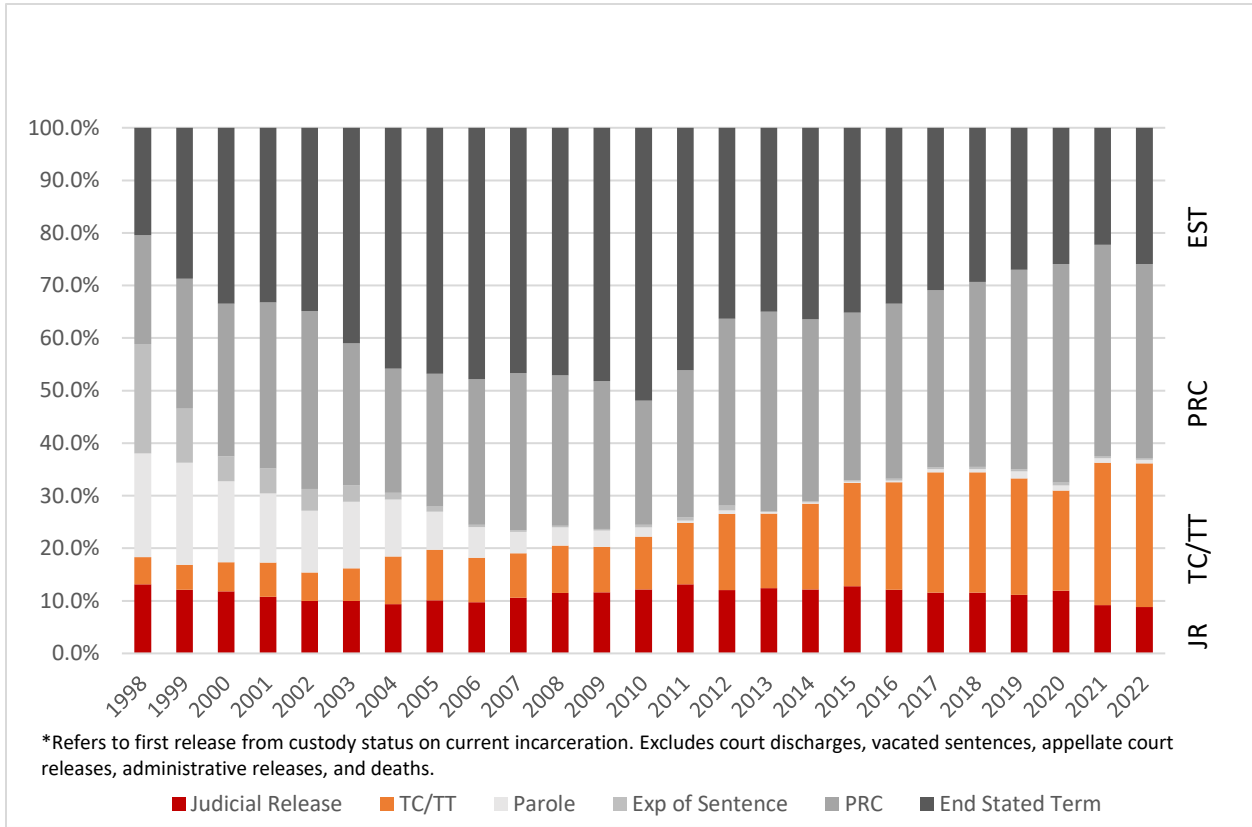
Figure 38. Percentage of Individuals Under Adult Parole Authority Supervision Among Very High/High, Moderate, and Low supervision levels, 2020-2023



Source, Ohio Department of Rehabilitation and Correction, Annual Reports

The last figure presents the distribution of ODRC releases by release type.

Figure 39. Percent Distribution of DRC Releases* by Release Type, 1998 - 2022



Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation

Conclusion

The prison population was most dramatically impacted following the COVID-19 pandemic. The prison population remains well-below pre-pandemic levels, while those under Adult Parole Authority supervision have also decreased. As described in previous sections, Senate Bill 2 has generally met its intended effect. Over the last two decades, inmates in ODRC custody are more serious offenders serving longer sentences.

R.C. 181.25(A)(2)(c) The Impact on Appellate Courts

Overview

This final provision requires that the Commission assess, “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.”

In review of the Commission’s past monitoring reports, a seemingly unintended consequence of Senate Bill 2 was an exponential increase in criminal appeals. After the passage of Senate Bill 2, which created a formal sentencing appeals mechanism, the legislature also created an “Appeals Cost Oversight Committee”. Part of the Commission’s statutory duties was to study the anticipated increase in appeals case filings, and any additional costs to Ohio’s appellate court system. The legislature allocated \$2 million to the Commission for reimbursement to courts for the expected increase in costs of appeals. While there was a spike in appeals in 1997, in 1998 the Commission concluded that the prediction of a dramatic increase in appellate cases would not happen, and the Oversight Committee abolished (after meeting only once) and the Commission returned the \$2 million to the General Revenue Fund (GRF).²⁵ The Commission continued to track criminal appeals, and over time, while criminal appeals have largely held steady over the last two decades, civil appeals have decreased. Therefore, the portion of criminal appeals as a percentage of overall appeals has slightly increased.

Incoming Criminal Appeals Among Ohio’s Appellate Courts

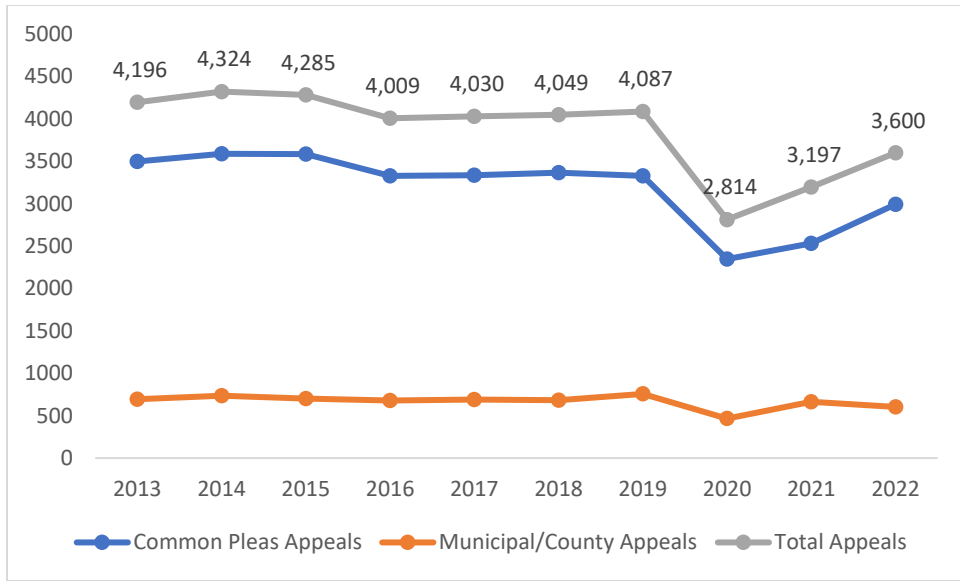
The below graphics present trends on criminal appeals in Ohio’s appellate courts. The statute calls for evaluating the number of sentence-based appeals. This number is difficult to isolate for a variety of reasons. A An offender could initially file an appeal intending to challenge the trial court’s sentence, but, after reviewing the record, decide not to challenge the sentence. Likewise, a defendant could file an appeal intending to challenge an evidentiary ruling but, after reviewing the record, decide to also challenge the sentence. In summary, purely sentence-based appeals are not currently tracked and are challenging to isolate in the reporting. Below, metrics on criminal appeals are presented to give an overview of Ohio’s appellate caseload. This information is presented from the Office of Court Services, State of Ohio Court Statistics division.

Note that these broad statistics give a general idea about caseloads at the appellate level. Appellate courts currently do not track cost or time spent on criminal appeals. While the number of criminal appeals may remain static, it is possible that courts are spending more time on each case. One such factor might be the proliferation of video evidence in criminal cases which may increase the time and resources needed to process a criminal appeal.

²⁵ See the Sixth Monitoring Report (2005).

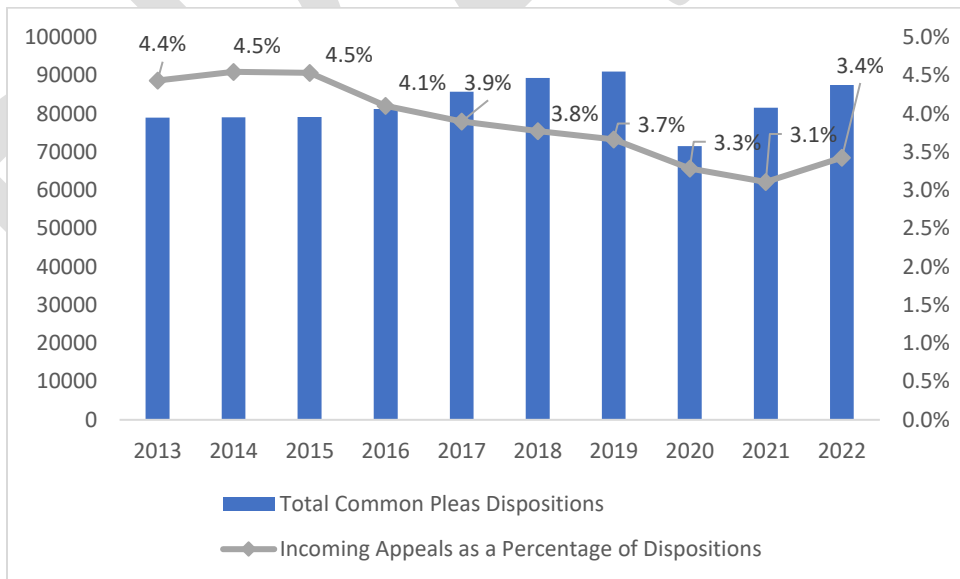
https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf

Figure 40. Incoming Criminal Appeals, Common Pleas and Municipal/County Courts, 2013-2022



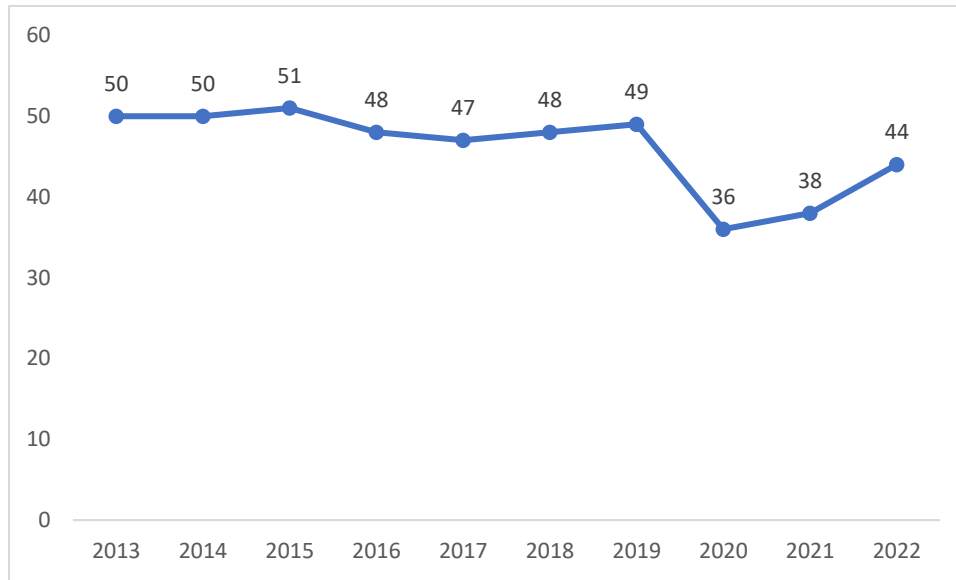
Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics

Figure 41. Incoming Appeals of Common Pleas Courts, as a Percentage of Common Pleas Dispositions, 2013-2022



Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics

Figure 42. Average Incoming Appeals of Common Pleas Courts per Appellate Judge, 2013-2022



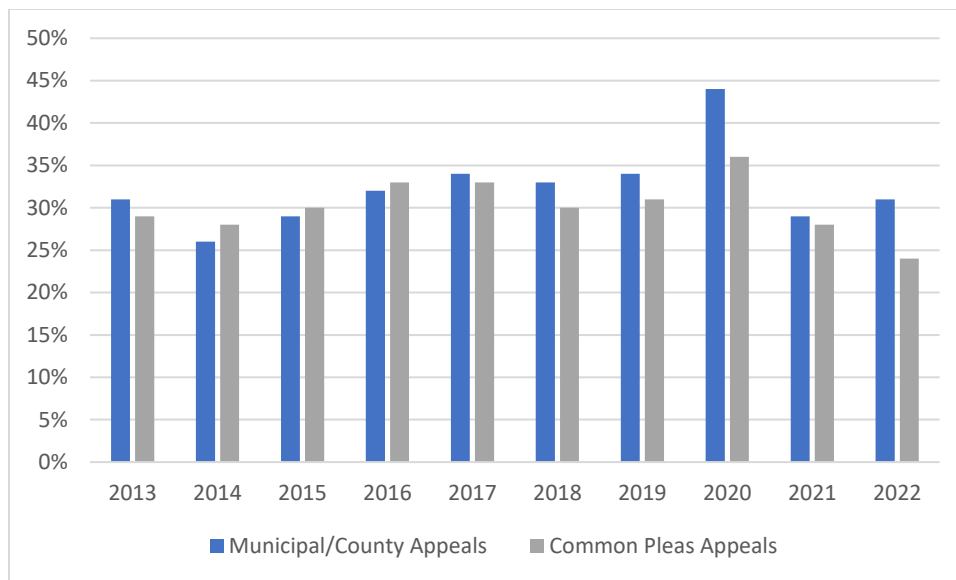
Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics

Court Statistics Caseload Performance Metrics

The Supreme Court of Ohio’s Case Management Section also publishes dashboards on the performance measures of Ohio’s appellate courts. One of the performance measures is overage rate, defined as “the proportion of the court’s active pending caseload that has been pending for longer than the applicable time standards. It is calculated by dividing the number of cases pending beyond the time guidelines at the end of a month by the total number of cases pending at the end of that same month.”²⁶

²⁶ See State of Ohio Court Statistics, Data Dictionary. <https://www.supremecourt.ohio.gov/courts/services-to-courts/court-services/dashboards/data-dictionary/> The overall time standard for all case types is 210 days from appeal filing to release of the opinion except for Administrative Appeals (200 days from appeal filing to release of the opinion) and Original Actions (180 days from filing of the application/petition to release of the opinion). Overage rates for 2020 may be impacted by the Supreme Court of Ohio's orders allowing for case aging to be tolled during the periods of March 9, 2020, through July 30, 2020, and December 16, 2020, through March 16, 2021.

Figure 43. Overage Rates for Municipal/County and Common Pleas Court Appeals, 2013-2022

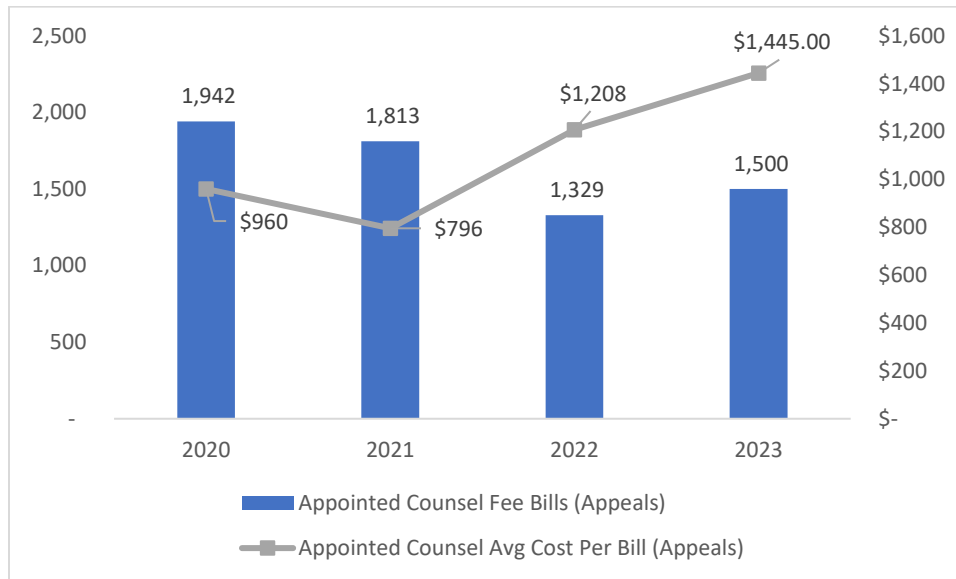


Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics

Ohio Public Defender Appeals Statistics

Every year, the Ohio Public Defender publishes data on appointed counsel and public defender caseloads and costs. The following graphics utilize this information to report on general trends on the cost of appeals to the public defender and appointed counsel system.

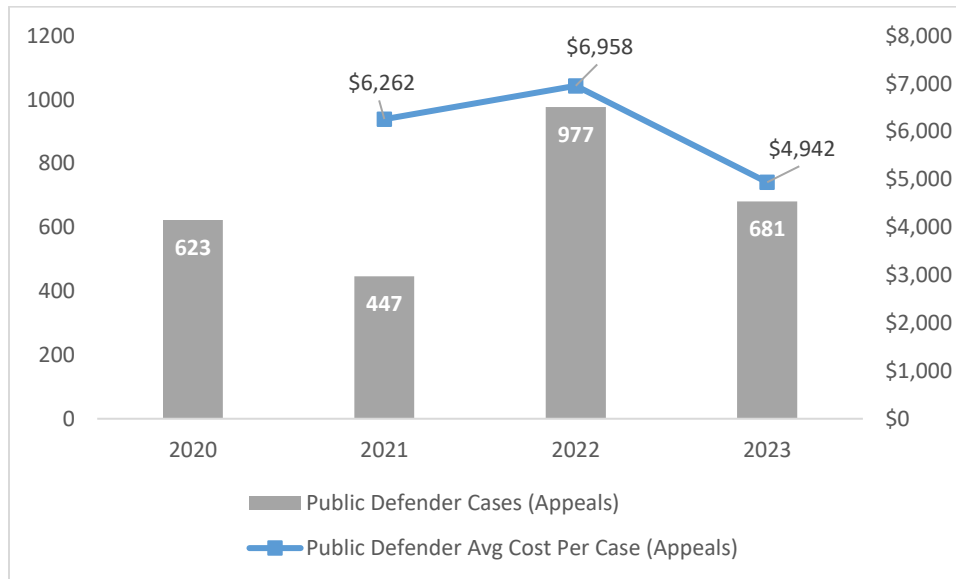
Figure 44. The Number of Appointed Counsel Fee Bills by the Average Cost per Bill for Appellate Cases, 2020-2023²⁷



Source: *The Office of the Ohio Public Defender, Appointed Counsel and Public Defender Cost and Expense Report*

²⁷ Please note that the reimbursement rate for appointed counsel may change monthly. For a historical table of reimbursement rates, please see: <https://opd.ohio.gov/static/County%20Resources/Reimbursement/Reimbursement-Percent-History-01-08-2024.pdf>

Figure 45. The Number of Public Defender Cases by Average Cost per Case for Appellate Cases, 2020-2023²⁸



Source: *The Office of the Ohio Public Defender, Appointed Counsel and Public Defender Cost and Expense Report*

Conclusion

Overall, criminal appeals largely held steady over the past decade, dropping significantly during the COVID-19 pandemic. The criminal appeals for 2021-22 remain below pre-pandemic levels. Felony appeals as a percentage of dispositions have also decreased, indicating that a smaller share of felony case terminations are being appealed. The number of appeals per judge is also at a decade low, but is slowly rebounding to pre-pandemic levels. Outside of the pandemic, overage rates for criminal appeals have remained in the 20-35% range. Public defender caseloads and costs have fluctuated over the past four years. Longer term trends should be tracked to better understand these numbers. Generally, these metrics suggests that the pre-Senate Bill 2 concerns about the rising costs of appeals still have yet to be realized. Crucially, appellate courts do not track the time spent on criminal appeals, which is necessary to assess whether they are spending more time and resources on criminal appeals, despite the downward trend of sentencing-based appeals reaching Ohio’s appellate courts.

²⁸ The Public Defender’s Office notes that, due to the COVID-19 pandemic the cost per case for county public defender offices may appear artificially high. This is due to the fact that the cost per case figures for public defender offices are based upon the total budget of an office. Most of these costs are fixed—salaries, benefits, facilities, and equipment. During this report period, some court operations were reduced and case filings reduced. As a result, while costs remained relatively flat, opened case counts for the time period were reduced to varying degrees across Ohio’s 88 counties due to COVID.