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## OHIO CRIMINAL SENTENCING COMMISSION MEETING

May 16, 2024 10am-12pm

Ohio Judicial Center, Law Library Reading Room

- I. Call to Order Chair Chief Justice Sharon L. Kennedy
- II. Roll Call Director Melissa A. Knopp, Esq.
- III. Approval of Minutes from November 16, 2023, & February 15, 2024
- IV. Committee Reports
  - A. Personnel Committee Chair Chief Justice Sharon L. Kennedy
  - B. Adult Criminal Justice Committee Director Annette Chamber-Smith
  - C. Juvenile Justice Committee Judge Helen Wallace
  - D. Data Committee Chair Chief Justice Sharon L. Kennedy
- V. Legislative Update Alex T. Jones
- VI. Old Business
  - A. Niki Hotchkiss Resignation Director Knopp
  - B. Monitoring Report **(VOTE NEEDED)** Todd Ives
  - C. Commission Staff Organizational Chart & Program Coordinator Position **(VOTE NEEDED)** Director Knopp
  - D. Unconstitutional Ohio Revised Code Sections **(VOTES NEEDED)**
    - 1. Adult Statutory Changes Will Davies
    - 2. Juvenile Statutory Changes Alex T. Jones
  - E. Proposed Juvenile Committee Language for ORC §181.21 **(VOTE NEEDED)** Alex T. Jones
  - F. Proposed Language to Commission Duties Regarding Juveniles for ORC §181.26 **(VOTE NEEDED)** Alex T. Jones
- VII. New Business
  - A. Change November Commission Meeting Date to November 14, 2024 **(VOTE NEEDED)** Director Knopp
  - B. University of Cincinnati Contract Extension **(VOTE NEEDED)** Director Knopp
  - C. Council of State Governments (CSG) Justice Center Juvenile Justice Summit—May 21, 2024, Meeting Director Knopp
  - D. Resources
    - 1. NGRI Reference Guide **(VOTE NEEDED)** Will Davies
    - 2. Reagan Tokes Act Memo Will Davies
    - 3. Analysis of Legislative History Enabling Sentencing Commission Will Davies

## VIII. Adjourn



## OHIO CRIMINAL SENTENCING COMMISSION

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### OHIO CRIMINAL SENTENCING COMMISSION MEETING

November 16, 2023 10am-12pm

Ohio Judicial Center, Room 281

#### 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  
Charles Chandler, Peace Officer  
Sean Gallagher, Judge, Appellate Court  
Joe Grubers, Ohio Department of Rehabilitation and Correction  
Latyna Humphrey, House of Representatives  
Kristen Johnson, Judge, Probate and Juvenile Court  
Nathan Manning, Ohio Senate  
Jennifer Muench-McElfresh, Judge, Common Pleas Court  
Charles Jones, State Highway Patrol  
Larry Sims, Sheriff  
Helen Wallace, Judge, Juvenile Court  
Donnie Willis, County Commissioner  
Tim Young, Ohio Public Defender  
Vernon Sykes, Ohio Senate

#### MEMBERS Absent

Nicole Condrey, Mayor (Zoom)  
Gwen Howe-Gebbers, County Prosecutor, Juvenile (Zoom)  
Darren Shulman, Municipal Prosecutor (Zoom)  
Kenneth Spanagel, Judge, Municipal Court (Zoom)  
Josh Williams, House of Representatives (Zoom)  
Tyrone Yates, Judge, Municipal Court (Zoom)  
Robert DeLamatre, Judge, Juvenile Court  
Robert Krapenc, Attorney, Criminal Defense  
Charles McConville, County Prosecutor  
Stephen McIntosh, Judge, Common Pleas Court

#### STAFF PRESENT

Melissa Knopp, Executive Director  
Michael Crofford, Research Specialist  
Will Davies, Criminal Justice Counsel  
Niki Hotchkiss, Assistant Director  
Todd Ives, Research Specialist  
Alex Jones, Criminal Justice Counsel



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## Call to order and Roll Call

1. Chief Justice Kennedy called the meeting to order. Director Melissa Knopp took roll call; a quorum was present.

## Approval of minutes from September 21, 2023

2. Chief Justice Kennedy asked if any members saw any needed changes to the minutes of the September 21, 2023, meeting. Judge Cappelli wanted to clarify that she suggested under personnel matters that hiring the executive director follow the same process as other positions. This is reflected in the Operating Guidelines but not in the minutes. It was confirmed this change will be made to the draft. Judge Cappelli moved to accept the minutes with this change, Judge Johnson seconded. Minutes passed unanimously.

## Introduction of Executive Director Melissa Knopp

3. Chief Justice Kennedy welcomed Melissa Knopp as the new Executive Director of the Sentencing Commission. Ms. Knopp introduced herself, including her background and past experience and mentioned that she will be reaching out to members individually to discuss priorities for the Commission.

## Committee Reports

4. Joe Gruber, designee for Department of Rehabilitation and Correction Director Annette Chambers-Smith, gave a brief overview of the matters discussed at the first meeting of the adult criminal justice committee. On October 19, the committee met over zoom and discussed unconstitutional code sections that are present in the Ohio Revised Code, jail time credit and the Uniform Sentencing Entry, and SB201 Reagan Tokes Law. The committee will next meet in January 2024.
5. Judge Helen Wallace reported that the juvenile justice committee met on September 21 and November 2 and created a list of priorities they would like to address, though with some current issues and legislation pending, the priorities are fluid. The juvenile justice committee's priorities include bindover, RECLAIM, truancy and status offenses, early intervention strategies, and serious youthful offender dispositions. The committee will meet next on December 7, 2023, via zoom.
6. Chief Justice Kennedy reported that data committee co-chair Lori Criss will be moving from her position at Ohio Mental Health and Addiction Services (Ohio MHAS) to the Ohio State University and therefore will no longer serve on the data committee. The data committee met September 21 and on October 26 and focused on what the



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statutory language reflects about data. In October, the Chief Data Officer from Ohio MHAS discussed matters key to effective Data Governance and Supreme Court of Ohio Information Technology Director, Robert Stuart, discussed information contained in the Ohio Courts Network. The Chief Justice is planning to visit the Bureau of Criminal Investigation with Robert to understand what information they store and what can be used. The committee will continue on this path, understanding what information is collected and where and what information is necessary for the Commission to fulfill its responsibilities. The next meeting has not yet been set.

### Legislative Update

7. Alex Jones briefly went over the legislative update included in the meeting materials. He specifically discussed HB56, HB111, HB122, and HB139 as of particular interest to Commission members as they create a new criminal offense, modify existing penalties, and/or modify special victim classifications. HB67 includes specific duties for the Sentencing Commission, namely creating a sample application form and to notify certain entities if new legislation provides for a reduction in penalty.
8. Chief Justice Kennedy asked about why the statutory language regarding the juvenile committee was eliminated from the Sentencing Commission enabling legislation. There are few documents that can be found about why it was eliminated. Chief Justice Kennedy is planning to ask Judge Wallace to look into this and to look for records about this request.

### Old Business

9. Revisions to the Commission Operating Guidelines were presented at the September 21 meeting. No members proposed additional modifications. Judge Cappelli moved to accept the guidelines as distributed with meeting materials and Judge Muench-McElfresh seconded. The motion passed unanimously through a roll call vote.
10. With the passage of the Operating Guidelines, there needs to be a formation of a personnel committee for the Commission. Chief Justice Kennedy clarified that the Supreme Court of Ohio's Human Resources department will continue to assist and support the activities of the personnel committee, though the committee will do the primary work when needed. Chief Justice Kennedy, Darren Shulman, Chief Chandler, and Gwen Howe-Gebbers volunteered to serve on the personnel committee. Judge Johnson moved to accept these four members as the personnel committee, seconded by Judge Cappelli. The motion is passed unanimously through a voice vote.

### New Business



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11. Chief Justice Sharon Kennedy updated the Commission on the status of appointments and that the Governor's Office was already in the process of appointing members whose time will expire on January 1. She asked Commission Members whose time is expiring soon to contact either Chief Justice Kennedy, by letter, if it is a judicial appointment or Haylee Dunahay from the Governor's office if it is a Governor appointment.

#### Wrongful Conviction and Postconviction Relief

12. Director Knopp introduced Representative Jarrells, who is sponsoring a to-be-introduced bill to speed up the process of a new trial if there is new evidence. This issue goes hand in hand with the letter from the Supreme Court regarding Criminal Rule 33. Representative Jarrells mentioned that he is trying to talk to as many stakeholders as possible to get feedback to improve the bill prior to introduction. There was brief discussion about if this makes sense for criminal matters in municipal court, since the sentence may be completed by the time the proposed process occurs. There was extensive discussion about whether or not the Commission should comment on the bill since it has not yet been introduced. There was a discussion about the role of the Commission committees in such a matter and whether this was something that could be considered for them.
13. Chief Justice Kennedy made a motion to consider this bill in conjunction with the Supreme Court of Ohio letter to the Commission regarding Rule 33.1, seconded by Senator Sykes. Judge Selvaggio asked for clarification on the motion and after a brief discussion the motion was withdrawn. Tim Young made a motion to examine the bill from Representative Jarrells prior to its introduction, which was seconded by Brooke Burns. A voice vote was taken and due to there not being a unanimous opinion, a roll call vote taken, four votes in favor of the motion and fourteen opposed. Those voting against the motion were: Chief Justice Kennedy, Director Ast, Judge Cappelli, Joe Gruber, Chief Chandler, Judge Gallagher, Judge Johnson, Senator Manning, Colonel Jones, Sheriff Sims, Judge Wallace, Judge Muench-McElfresh, and Commissioner Willis. The "YES" votes were Brooke Burns, Representative Humphries, Senator Sykes, and Tim Young.
14. Judge Johnson moved that the adult criminal justice committee examine the issue of postconviction relief pursuant to the letter by the Supreme Court of Ohio and was seconded by Representative Humphrey. After short discussion, the motion was amended by Judge Johnson, that the adult criminal justice committee consider the statutory scheme for postconviction relief, seconded by Representative Humphrey. A short discussion followed where it was concluded that the Commission does not need to vote on what committees consider. The motion was then withdrawn.



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### House Bill 1 Report

15. Research Specialist Todd Ives reviewed the draft of the biennial House Bill 1 Impact Study report that was included in the meeting materials. A final version of the report is due to the Governor and the General Assembly by December 31, 2023. Todd reviewed the results and recommendations. There were no questions or discussion. Tim Young moved to accept the report, Chief Justice Kennedy seconded. Motion passed unanimously.

### Monitoring report

16. Chief Justice Kennedy informed the Commission that ORC section 181.25 requires a biennial monitoring report due to the General Assembly and Governor. She suggested that the Commission send a letter to the General Assembly and the Governor that the staff will begin updating the report and the Commission will vote on its acceptance at the February meeting. Although late, the Commission will comply with statutory requirements. There was a brief discussion on whether a vote was needed to approve this plan and what the general contents of the monitoring report would be. It was determined that a formal vote was not needed at this time and the staff would begin working on the monitoring report as well as review previous reports.

### Announcements and Adjournments

17. Vice-Chair Judge Selvaggio wanted to say thank you to those Commission members who may be at their last Commission meeting including Judge Gallagher, Judge Cappelli, and Tim Young. Representative Humphrey moved to adjourn, seconded by Sheriff Sims. Motion passed unanimously. Meeting adjourned at 11:42am.



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## **OHIO CRIMINAL SENTENCING COMMISSION MEETING**

February 15, 2024, 10am-12pm  
Ohio Judicial Center, Room 101

### **MEMBERS PRESENT**

Sharon L. Kennedy, Chief Justice, Chair  
Nick Selvaggio, Common Pleas Court Judge, Vice-Chair  
Amy Ast, Director, Department of Youth Services  
Robert DeLamatre, Judge, Juvenile Court  
Gwen Howe-Gebbers, County Prosecutor, Juvenile  
Joe Grubers, Ohio Department of Rehabilitation and Correction (Designee)  
Kristen Johnson, Judge, Probate and Juvenile Court  
Teri LaJeunesse, Victim Representative  
Nathan Manning, Ohio Senate  
Stephen McIntosh, Judge, Common Pleas Court  
Elizabeth Miller, Ohio Public Defender  
Jennifer Muench-McElfresh, Judge, Common Pleas Court  
Robert Sellers, Staff Lieutenant, State Highway Patrol (Designee)  
Darren Shulman, Municipal Prosecutor

### **MEMBERS ABSENT**

Brooke Burns, Ohio Public Defender, Juvenile Department (Zoom)  
Charles Chandler, Peace Officer  
Latyna Humphrey, House of Representatives  
Robert Krapenc, Attorney, Criminal Defense  
Charles McConville, County Prosecutor  
Larry Sims, Sheriff  
Vernon Sykes, Ohio Senate (Zoom)  
Helen Wallace, Judge, Juvenile Court  
Josh Williams, House of Representatives  
Donnie Willis, County Commissioner  
Tyrone Yates, Judge, Municipal Court

### **STAFF PRESENT**

Melissa Knopp, Executive Director  
Michael Crofford, Research Specialist  
Will Davies, Criminal Justice Counsel  
Todd Ives, Research Specialist  
Alex Jones, Criminal Justice Counsel





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### **Call to order and Roll Call**

1. Chief Justice Kennedy called the meeting to order at 10:00 AM. Director Melissa Knopp took roll call; however, a quorum was not present.

### **Approval of minutes from November 16, 2023**

2. Minutes for the November 16<sup>th</sup>, 2023, meeting had been included with the meeting materials, but without quorum, no vote could be held to accept the previous minutes.

### **Niki Hotchkiss Resignation**

3. Without a quorum, the Commission could not vote to accept the resignation of Niki Hotchkiss.

### **Committee Reports**

#### **Personnel Committee**

4. Chief Justice Kennedy gave a brief update on the work of the Personnel Committee. They have proposed redirecting the position of Assistant Director to an administrative coordinator role to support the executive director. Meeting materials included information on salary bands and comparable positions in state government. Without quorum, a vote could not be held to approve or post this position.

#### **Adult Criminal Justice Committee**

5. Stephen Gray, Chief Legal Counsel for ODRC, reported on the work that was being done by the Adult Criminal Justice Committee. In their recent meetings they have received a presentation and discussed a postconviction relief bill from Representative Jarrells that has not yet been formally introduced. Interested parties were invited to contact Rep. Jarrells office for feedback. Other topics include Commission staff have been looking at appeals trends and will continue to bring information to the Committee, there have been discussions on remanded cases from the appellate courts, updating and creating new bench cards for judges, reviewing an memo on unconstitutional code sections to be presented to the full commission, and reviewing jail time credit and creating instructions. The committee is hoping to propose revisions at their next meeting and will be reviewing drafts of sentencing entries to evaluate the ability to create a simplified sentencing box or language to more effectively capture credits. It was discussed that a subcommittee could be formed in conjunction with the juvenile committee and the Judicial Conference to address this topic.





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### Juvenile Justice Committee

6. Judge DeLamatre then discussed the work of the Juvenile Justice Committee. The committee has also been discussing the topic of confinement credit and will be looking to partner with the adult committee and Judicial Conference to further address this issue pending Commission approval. Other topics of discussion have been proposed legislation co-sponsored by Rep. Williams (HB314) that would eliminate juvenile court's ability to transfer cases across counties, proposed language to statutorily reestablish the Juvenile Justice Committee and modify the makeup of the committee, and the drafting of a memo for Commission approval on juvenile unconstitutional code sections.

### Data Committee

7. Chief Justice Kennedy then briefly shared the work of the Data Committee. They have continued to meet with various state agencies to determine who is collecting what data, the need for a memorandum of understanding (MOU) with each agency, and what information can be shared. They have heard from OCN, and BCI from the AG's office so far and are planning on meeting with others. Commission staff have also met with ODRC. The committee is planning to continue meeting frequently for the time being. The chief then reminded commission members that the contract with UC to maintain the USE entry was currently scheduled to end in June and that the data committee will be reviewing usage numbers to report on at the May commission meeting. A vote will need to be taken at that meeting as to how to proceed with the USE entry and UC contract.
8. Senator Sykes then asked if he could discuss the letter on data collection he had submitted to the commission. The chief stated that he could discuss it but there could not be a vote due to not having quorum. He stated that the legislature has had a long-standing desire to ensure that sentences are fair and free from racial bias but that this is difficult to examine without data. He then made a request that the data committee examine his letter for further discussion. The chief stated that this did not require a formal vote of the commission and that the data committee will take up the letter at their next meeting.

### Legislative Update

9. Criminal Justice Counsel Alex Jones gave a brief legislative update. He stated there have not been many updates related to Commission topics of interest, but that he would continue to monitor and track for future updates.



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### Old Business

10. Due to lacking quorum the Monitoring Report could not be reviewed and accepted. This will be tabled until the May meeting. A letter has been sent to the appropriate parties recognizing that this is behind schedule and is being worked on.

### New Business

#### Commission Staff Organizational Charts & Commission Coordinator Position

11. Similarly, the topic of accepting the Commission staff organizational charts and the approval of the coordinator position were tabled till the May meeting.

#### Unconstitutional Ohio Revised Code Sections

12. Further discussion and approval of memos to be sent to the legislature on adult and juvenile unconstitutional code sections were also tables till May due to the inability to take a vote.

#### Proposed Juvenile Committee Language for ORC §181.21

13. Chief Justice Kennedy stated that the previous language for the juvenile committee had been removed from statute without a vote from the Commission. She stated that this body is trying to restore this language, but this would need to be tabled for a vote at the next meeting.

#### Proposed Language to Commission Duties Regarding Juveniles for ORC §181.26

14. The chief then stated that the proposed language for the Commission's duties regarding juveniles would also have to be tabled until the following meeting when a vote could be held.

#### Senator Vernon Sykes Letter

15. Chief Justice Kennedy then asked if there were any additional questions about Senator Sykes letter as discussed earlier in the meeting. There were no additional questions at this time.

### Adjourn

16. Members were reminded that the next full commission meeting was scheduled for Thursday, May 16<sup>th</sup> and were encouraged to attend so that quorum could be achieved and the matters that had to be tabled today could be voted on then. The meeting was adjourned at 10:25 AM.



# OHIO

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# Monitoring Sentencing Reform

## 2023

An Ohio Criminal Sentencing Commission Report

May 2024

DRAFT

**Ohio Criminal Sentencing Commission**

Chief Justice Sharon L. Kennedy, Chair  
Melissa A. Knopp, Esq., Executive Director

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## Ohio Criminal Sentencing Commission

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**Chief Justice Sharon L. Kennedy**, Chair  
**Judge Nick Selvaggio**, Champaign County Common Pleas Court, Vice Chair  
**Director Amy Ast**, Ohio Department of Youth Services  
**Brooke Burns**, Ohio Public Defender Commission  
**Judge Beth Cappelli**, Fairborn Municipal Court  
**Director Annette Chambers-Smith**, Ohio Department of Rehabilitation and Correction  
**Chief Charles Chandler**, Westerville Police Department  
**Mayor Nicole Condrey**, City of Middletown  
**Judge Robert DeLamatre**, Erie County Common Pleas Court, Juvenile Division  
**Judge Sean Gallagher**, Ohio Eighth District Court of Appeals  
**Gwen Howe-Gebers**, Henry County Prosecuting Attorney, Juvenile  
**Representative Latyna Humphrey**, Ohio House of Representatives  
**Judge Kristen Johnson**, Hancock County Probate and Juvenile Court  
**Colonel Charles A. Jones**, Ohio State Highway Patrol  
**Defense Attorney Robert Krapenc**, Columbus  
**Teri LaJeunesse**, Victim Representative, Greene County  
**Senator Nathan Manning**, Ohio Senate  
**Charles T. “Chip” McConville**, Knox County Prosecuting Attorney  
**Judge Stephen McIntosh**, Franklin County Common Pleas Court  
**Judge Jennifer Muench-McElfresh**, Butler County Common Pleas Court  
**Darren Shulman**, City of Upper Arlington Prosecuting Attorney  
**Sheriff Larry Sims**, Warren County Sheriff’s Office  
**Judge Kenneth Spanagel**, Parma Municipal Court  
**Chief Brandon Standley**, Bellefontaine Police Department  
**Senator Vernon Sykes**, Ohio Senate  
**Judge Helen Wallace**, Montgomery County Juvenile Court  
**Representative Josh Williams**, Ohio House of Representatives  
**Donnie Willis**, Jackson County Commissioner  
**Judge Tyrone Yates**, Hamilton County Municipal Court  
**Timothy Young**, Ohio Public Defender Commission

### Staff

**Melissa A. Knopp, Esq.**, Executive Director  
**Michael Crofford, M.Ed.**, Research Specialist  
**William J. Davies, Esq.**, Criminal Justice Counsel  
**Todd Ives (Lead Author), MPA**, Research Specialist  
**Alex T. Jones, Esq.**, Criminal Justice Counsel

## Acknowledgements

This report is the culmination of the hard work and dedication of the staff of the Ohio Criminal Sentencing Commission. The Commission would especially like to recognize Todd Ives, the lead researcher and primary author of this report, and Michael Crofford for their efforts in combing through volumes of materials to produce this report in an abbreviated timeframe.

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

- Ohio Court Services, Case Management Section
- Ohio Department of Rehabilitation and Correction
- Ohio Public Defender
- Mike Walsh, Magistrate and Court Administrator 9<sup>th</sup> District Court of Appeals
- County Commissioners Association of Ohio
- Ohio Chief Probation Officers Association
- ODRC Bureau of Adult Detention
- Ohio Prosecuting Attorneys Association
- Office of Criminal Justice Services
- Ohio Legislative Services Commission

## 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 May 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 (121<sup>st</sup> 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 121<sup>st</sup> 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.<sup>1</sup> 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

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<sup>1</sup> <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.<sup>2</sup> 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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<sup>2</sup> See for example, the Sixth Monitoring Report (2005), [https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring\\_report\\_2005.pdf](https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf)

## Background

### History of Sentencing in Ohio<sup>3</sup>

#### 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,<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> 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

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<sup>3</sup> 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)

<sup>4</sup> 1982 Am.Sub.S.B. No. 199.

<sup>5</sup> 1990 Am.Sub.S.B. No. 258

<sup>6</sup> 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 decisions<sup>7</sup> 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).<sup>8</sup> With the assistance of JRI, and many other policy makers, the General Assembly enacted House Bill 86<sup>9</sup>, House Bill 487<sup>10</sup> and Senate Bill 337<sup>11</sup>. 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 201<sup>12</sup> 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 1<sup>13</sup> 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.<sup>14</sup> The main operating budget bill for Fiscal Year 2022, House Bill 110<sup>15</sup>, addressed “technical violations” of community control and altered periods of post release control (PRC).

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

<sup>8</sup> 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.

<sup>9</sup> 2011 Am.Sub.H.B. No. 86.

<sup>10</sup> 2012 Am.Sub.H.B. No. 487.

<sup>11</sup> 2012 Am.Sub.S.B. No. 337.

<sup>12</sup> 2018 Am. Sub. S.B. No. 201.

<sup>13</sup> 2020 Am.Sub.H.B. No. 1.

<sup>14</sup> 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/>

<sup>15</sup> 2021 Am.Sub.H.B. No. 110.

As 2022 came to a close, and the 134<sup>TH</sup> General Assembly finished its biennium, Senate Bill 288<sup>16</sup> 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.<sup>17</sup>

### Crime and Case Filings in Ohio

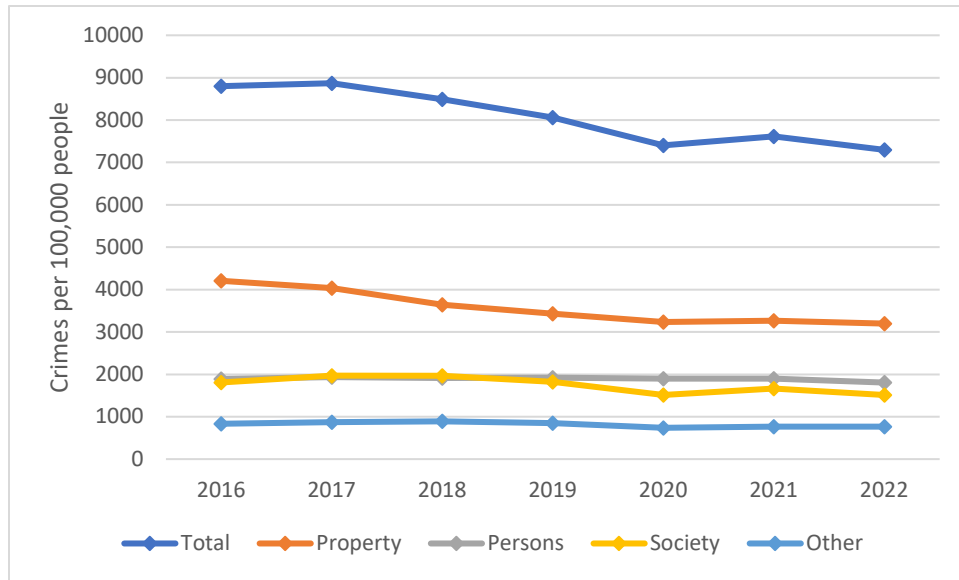
Much of this report focuses on the population and fiscal impact on Ohio's prisons and- on those serving a community sanction. R.C. 181.25(A)(2)(a)(ii) requires this report to assess the fiscal and other impact on local subdivisions such as law enforcement, jails, and the mental health system. In order 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.

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<sup>16</sup> 2022 Am.Sub.S.B. No. 288.

<sup>17</sup> 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/>

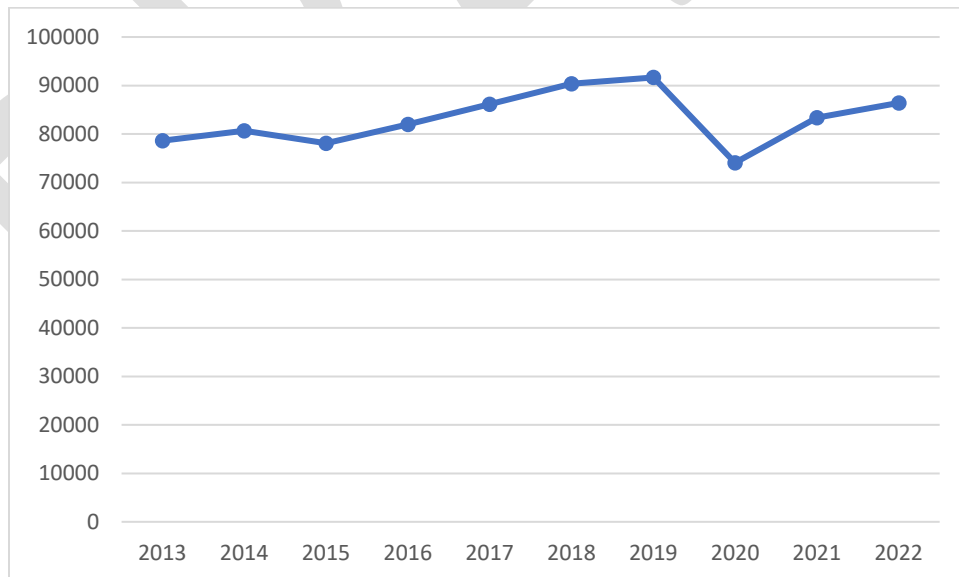
**Figure 1. OIBRS Index Crime Rate, 2016-2022**



*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.

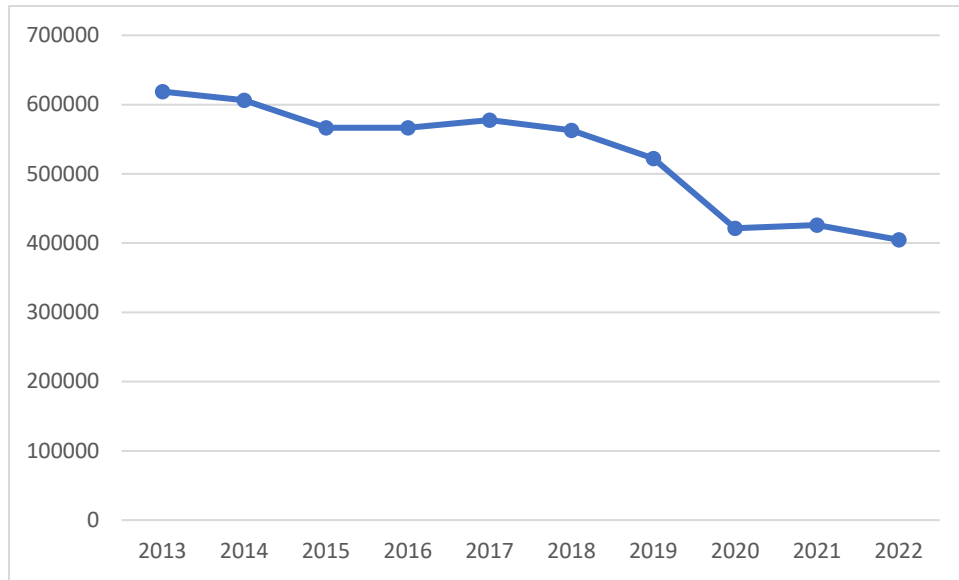
**Figure 2. Total Incoming Criminal Cases, Common Pleas Courts, 2013-2022**



*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.<sup>18</sup>

### 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.<sup>19</sup> 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.

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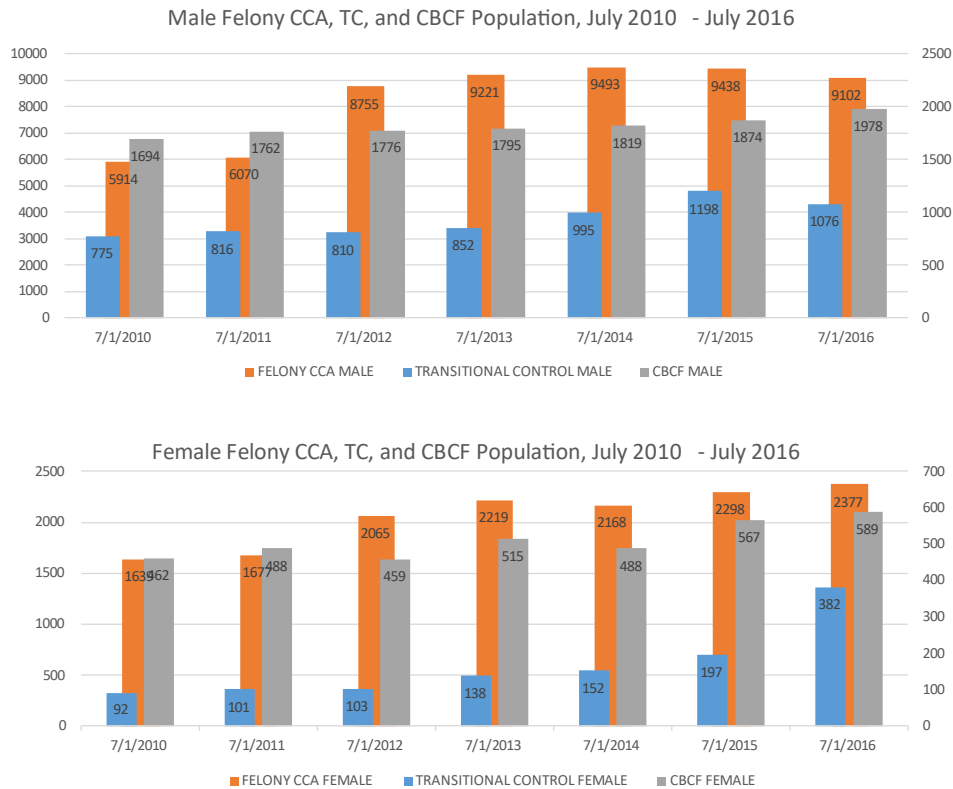
<sup>18</sup> See for example, the Sixth Monitoring Report (2005).

[https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring\\_report\\_2005.pdf](https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf)

<sup>19</sup> 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**



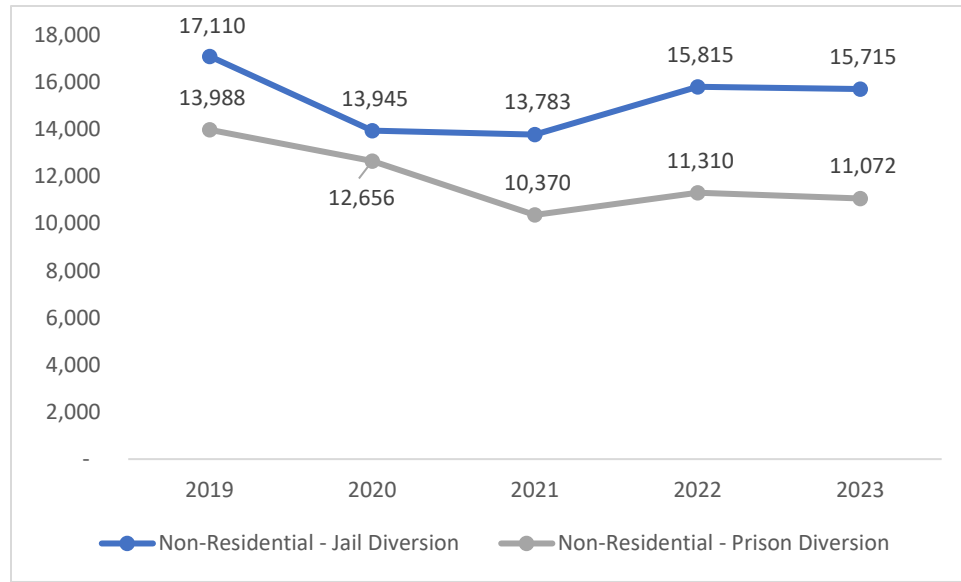
*Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation*

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.

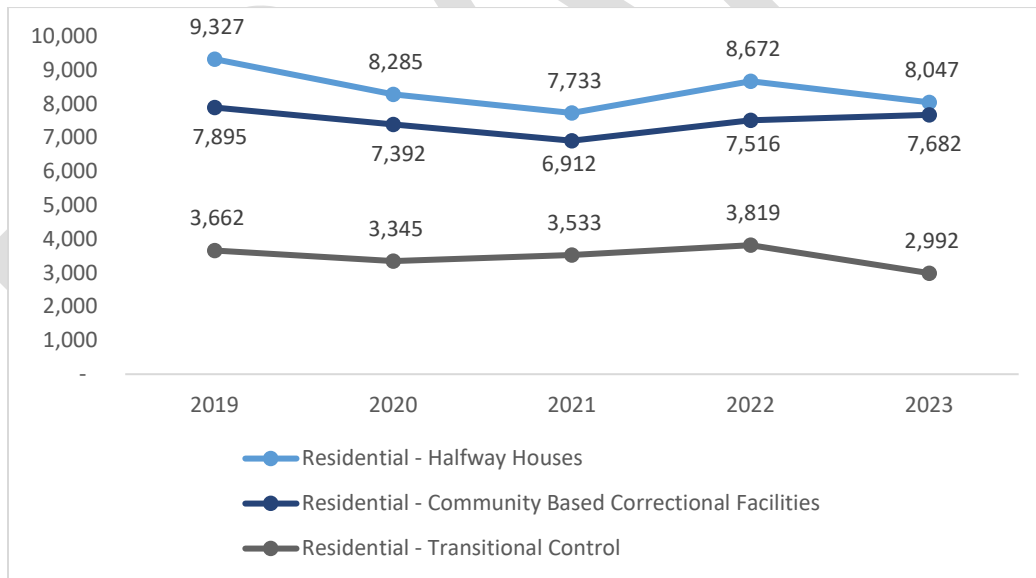
As demonstrated in Figure 5, admissions to the non-residential grant programs for jail and prison diversion decreased slightly during COVID, rebounding post-2020 to slightly below their pre-COVID levels. Figure 6 displays similar trends for halfway houses and community based correctional facilities. 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**



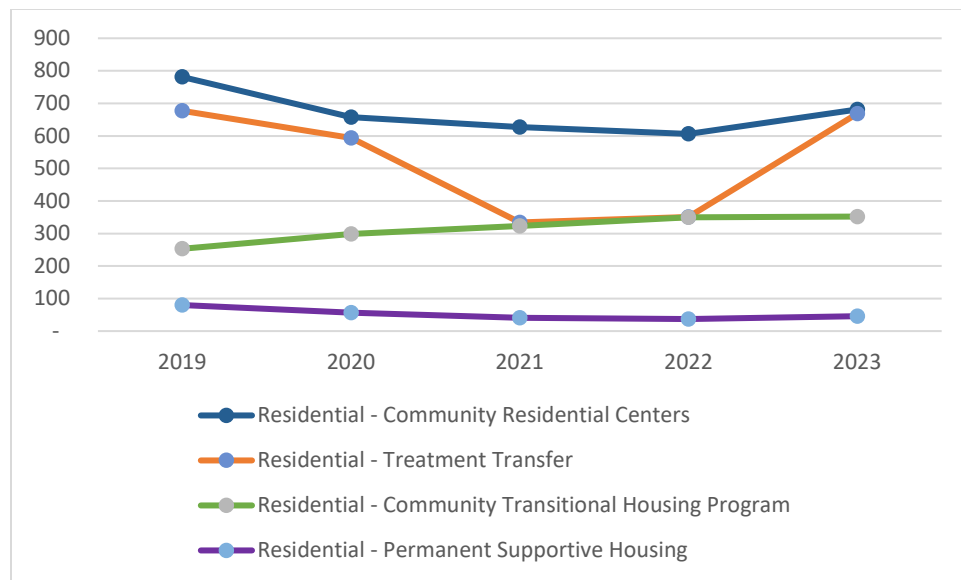
*Source: ODRC Bureau of Community Sanctions, Annual Reports (2019-2023)*

**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**

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

## 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.

DRAFT

## 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 (133<sup>rd</sup> General Assembly) and Senate Bill 288 (134<sup>th</sup> General Assembly). A quick summary of each these local impact statements is contained below.<sup>20</sup>

#### Ohio House Bill 1 (133<sup>rd</sup> 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.<sup>21</sup> 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

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

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

<sup>21</sup> 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 (134<sup>th</sup> 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* report<sup>22</sup> 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.

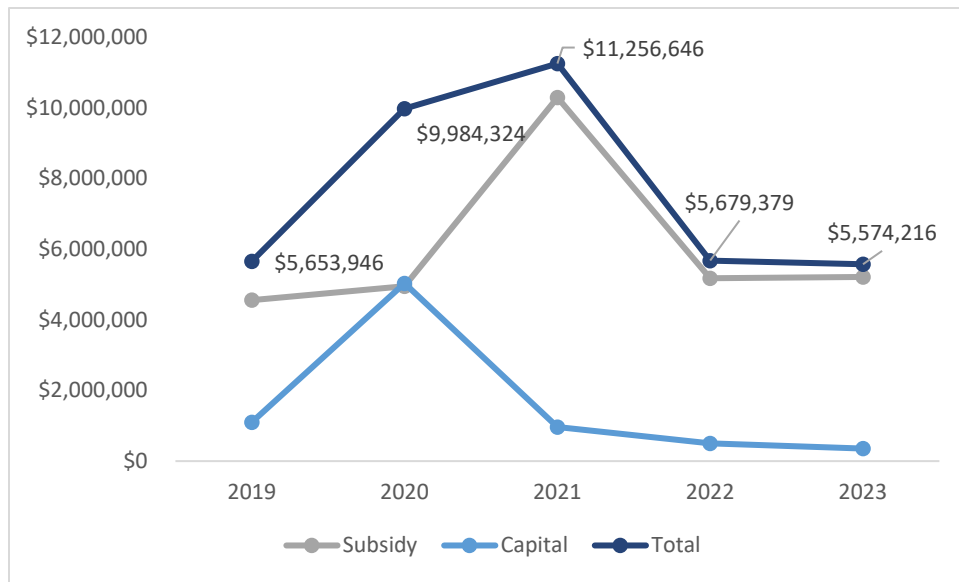
**Figure 8. State Spending by County, Attorney General, FY 2019-2023**



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

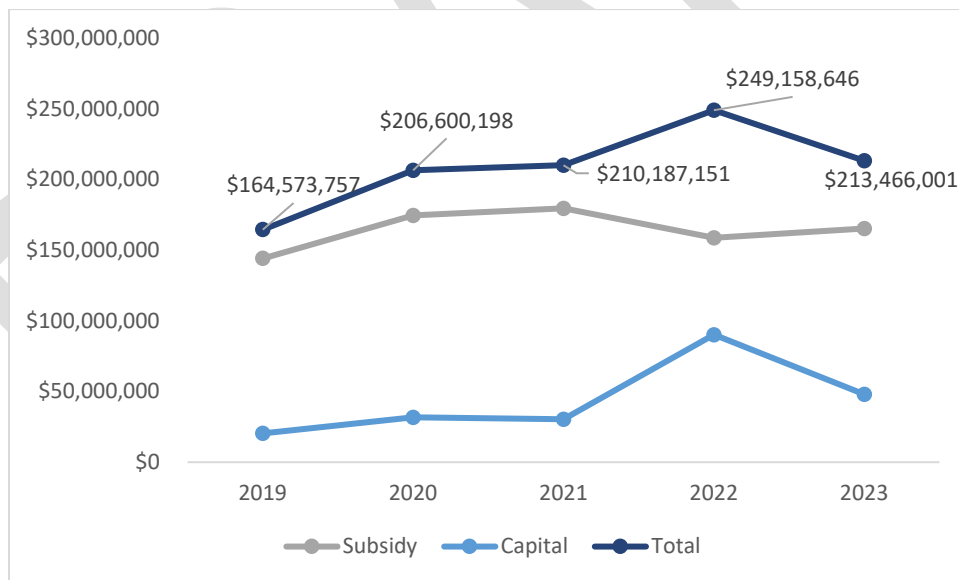
<sup>22</sup> See <https://www.lsc.ohio.gov/budget/state-spending-by-county>

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



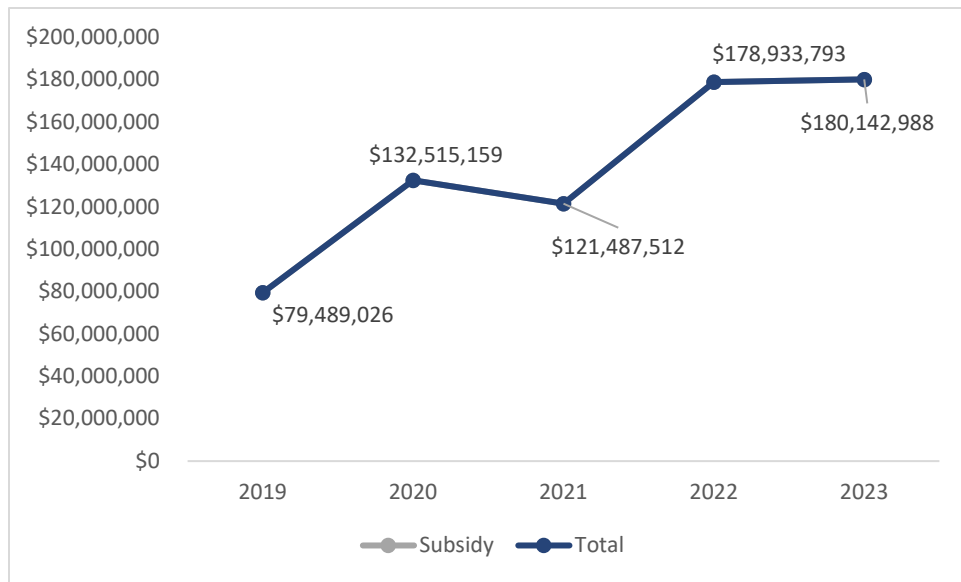
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

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



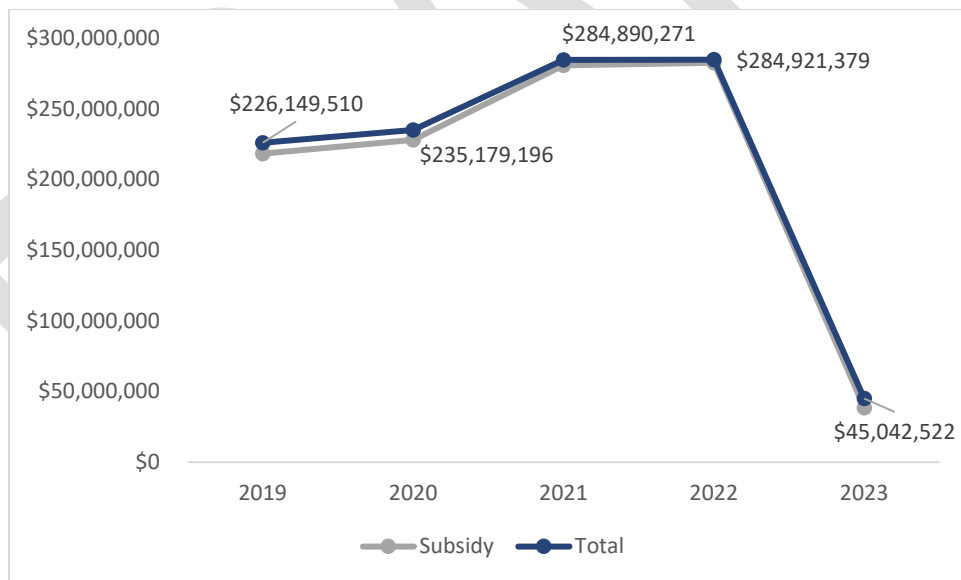
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

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



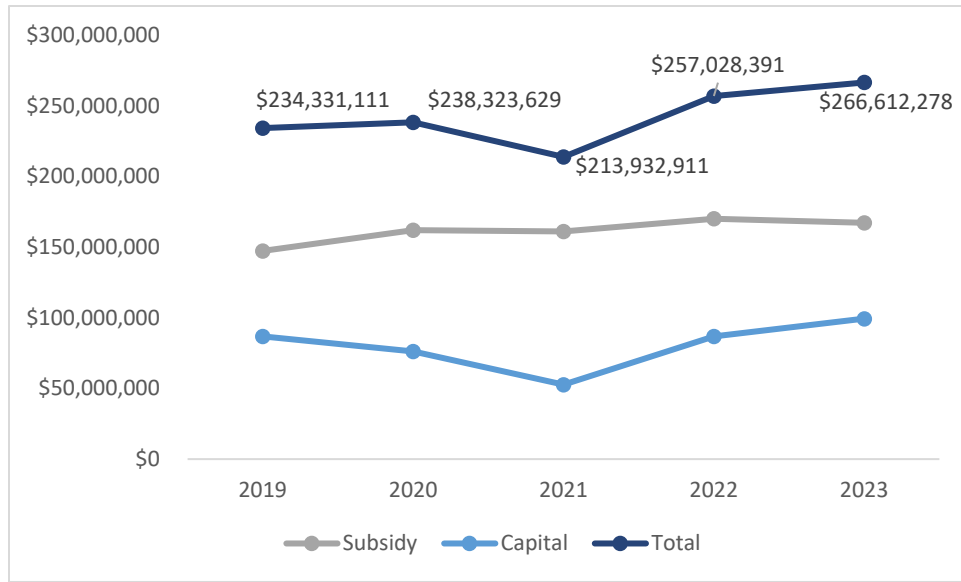
Source: Legislative Service Commission, State Spending by County Report, 2019-2023

**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**

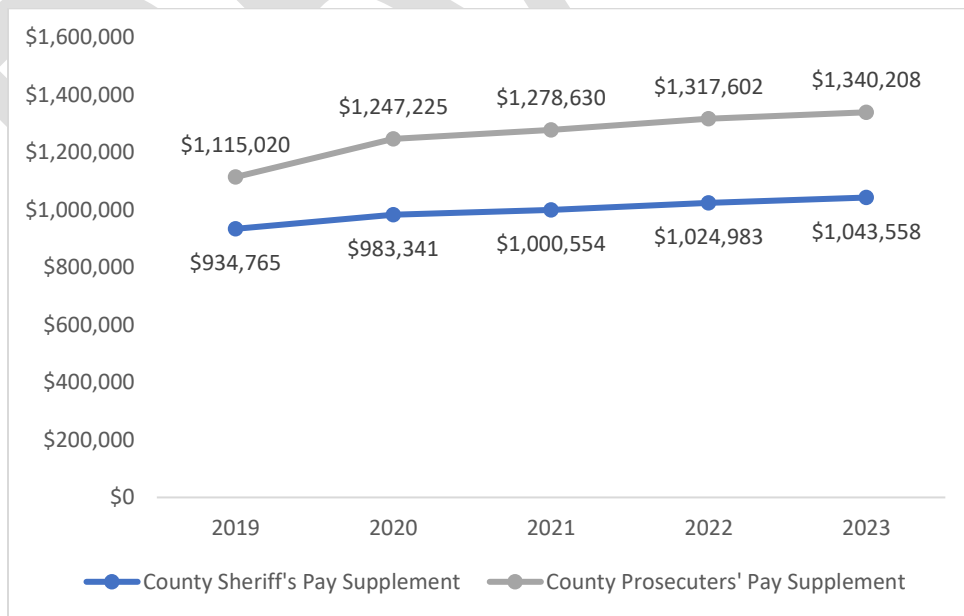


Source: Legislative Service Commission, State Spending by County Report, 2019-2023

### State of Ohio – Budget Line Items

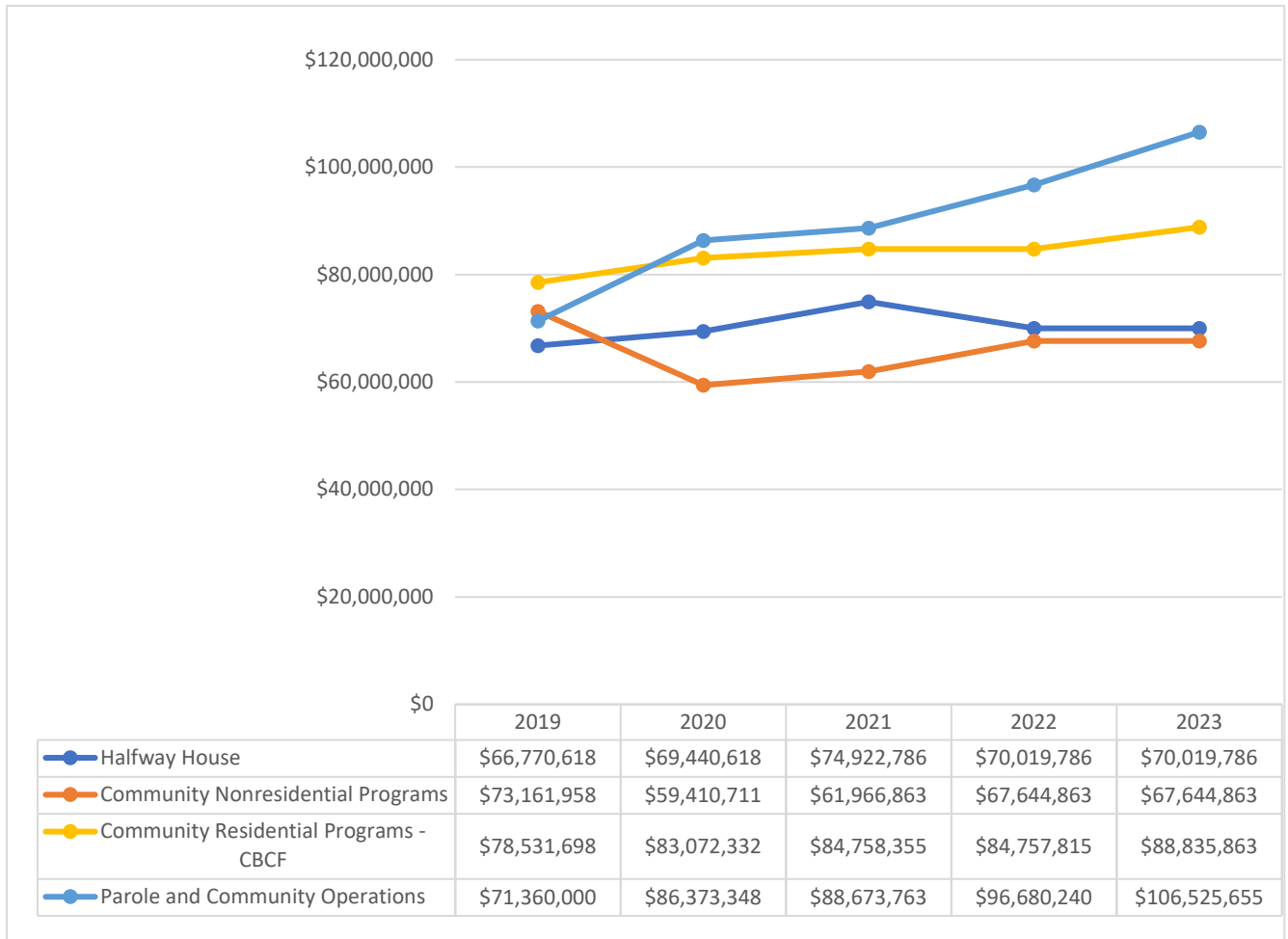
State agency budgetary documents often contain line items for funding to the counties. The following tables illustrate some of these funding items to provide more detail on the state spending by county charts. Note that these figures are already captured in the state spending by county report and are 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, Greenbook

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



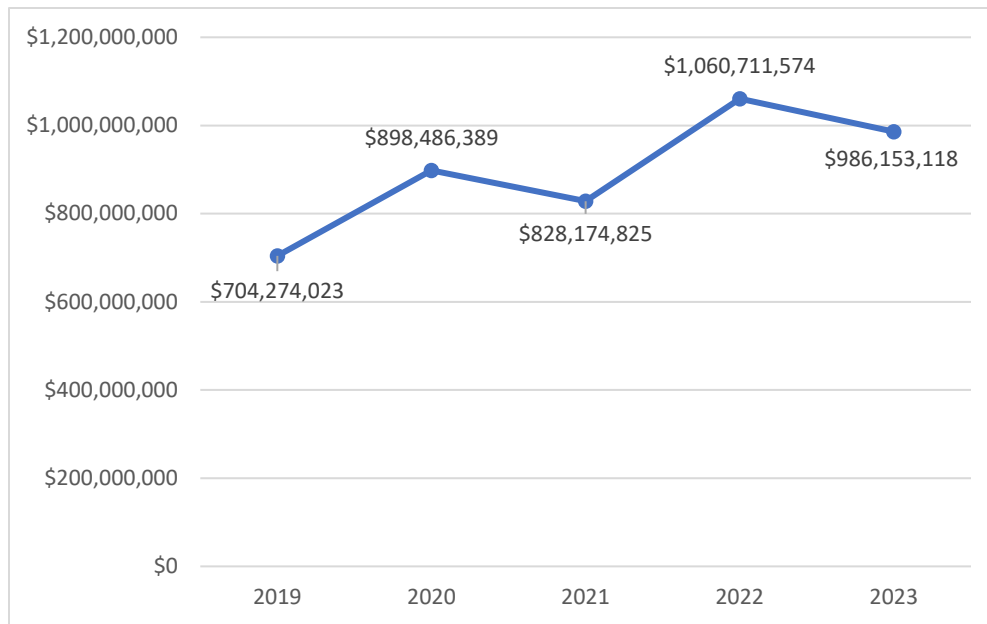
*Source: Legislative Budget Office, Greenbook*

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



Source: Legislative Budget Office, Greenbook

**Figure 18. OMHAS Total Appropriation, FY 2019-2023<sup>23</sup>**

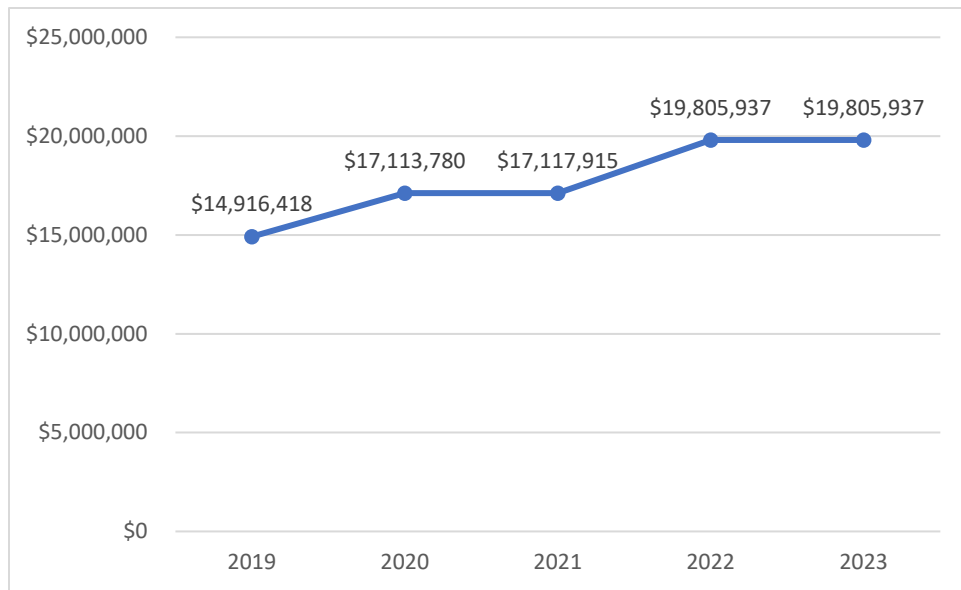


*Source: Legislative Budget Office, Greenbook*

<sup>23</sup> 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.

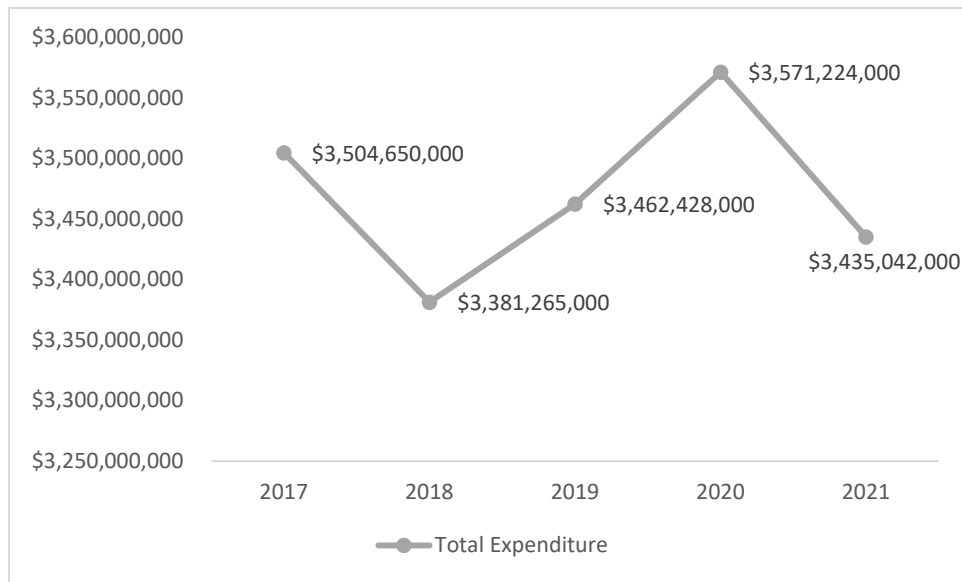
**Table 2. Capital Improvement Funding for Jails and Local Correctional Facilities, FY 2019-2024**

<b>Project Description</b>	<b>2017-2019 (132nd GA – HB 529)</b>	<b>2019-2020 (133rd GA – SB 310)</b>	<b>2021-2022 (134th GA – HB687)</b>	<b>2023-2024 (135th GA – HB33)</b>
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](#)

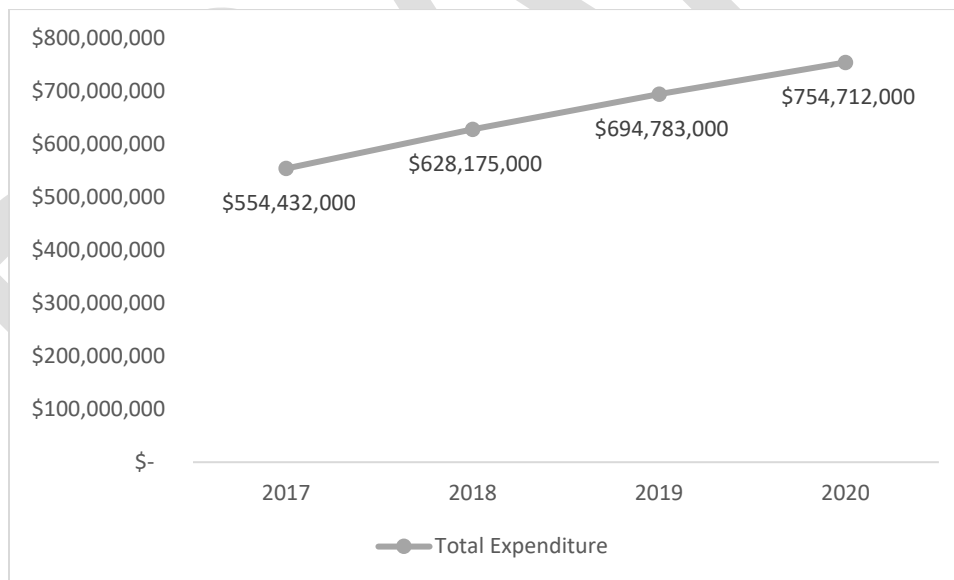
The U.S. Census Bureau's Annual Survey of Local Government Finances is the only known comprehensive source of state and local government finance data collected on a national scale using uniform definitions, concepts, and procedures. The survey obtains data on revenues, expenditures, debt and assets of 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**



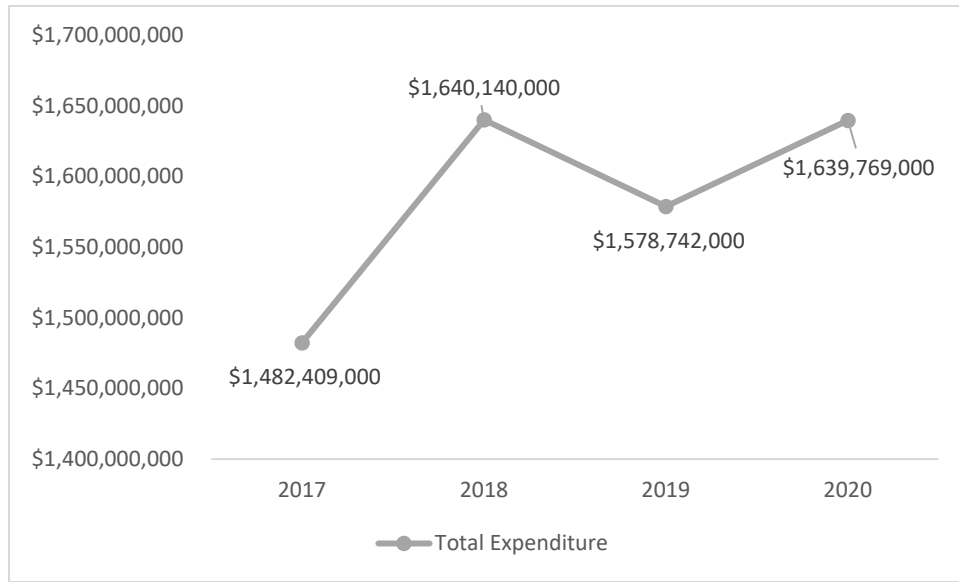
Source: US Census Bureau State and Local Government Finance Historical Datasets and Tables

**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**

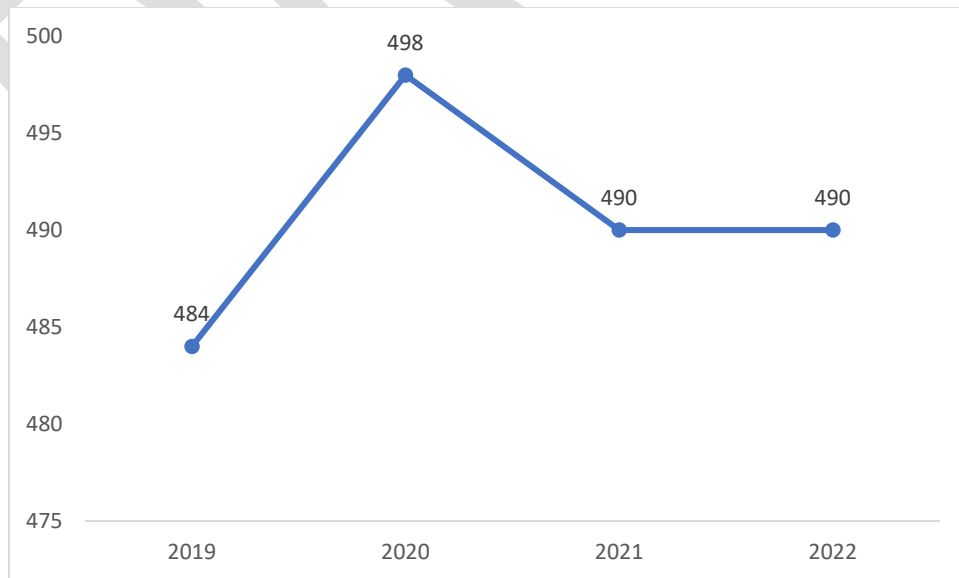


*Source: US Census Bureau State and Local Government Finance Historical Datasets and Tables*

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

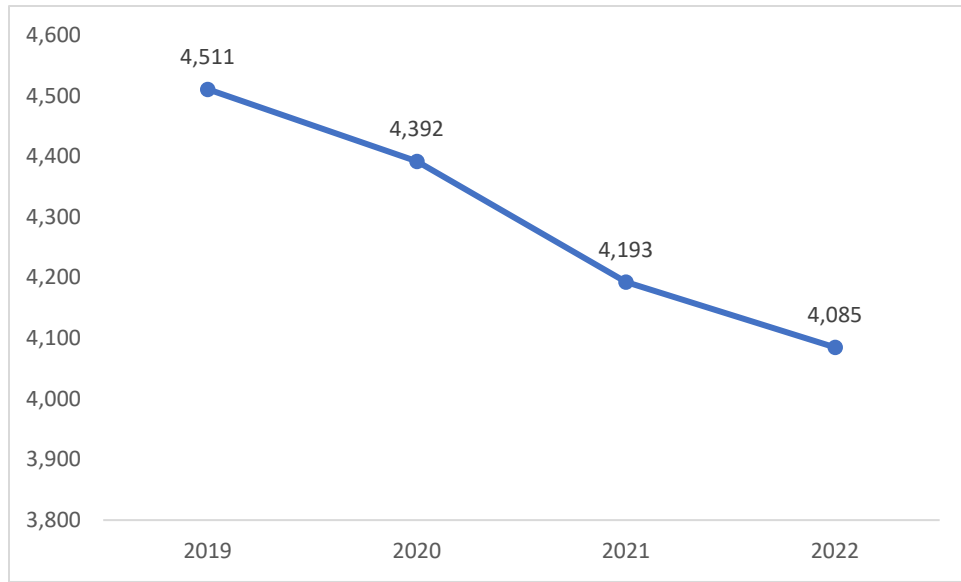
The Occupational Employment and Wage Statistics (OEWS) program provides wage and employment estimates by state and industry. The following tables show employment statistics for select categories at the local government level, statewide, except for the mental health and substance abuse treatment workers, 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**



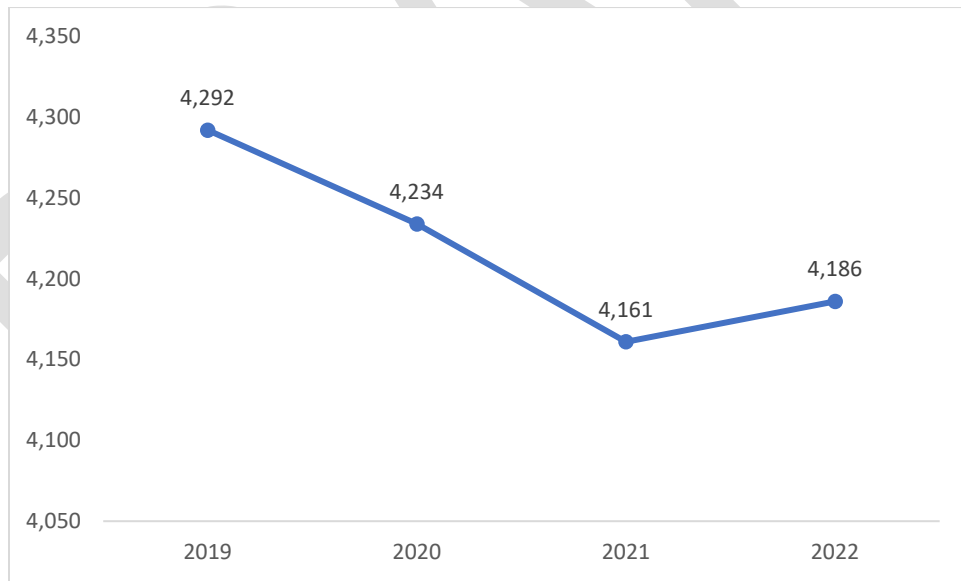
*Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics*

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



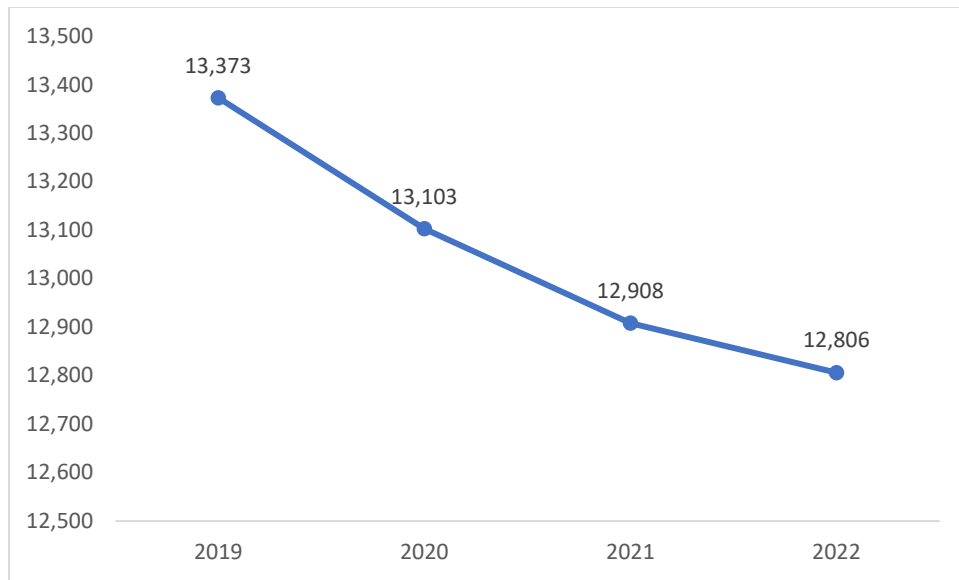
*Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics*

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



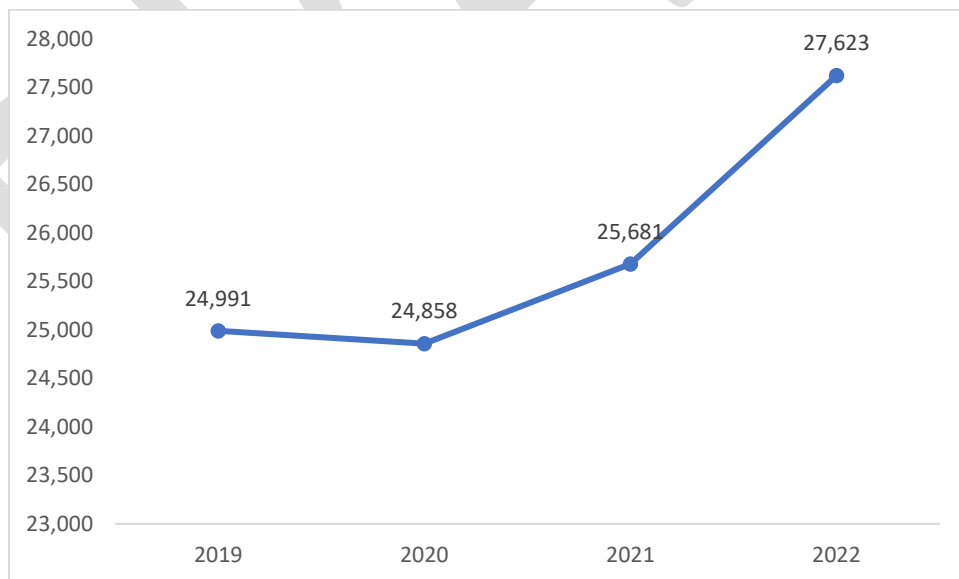
*Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics*

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



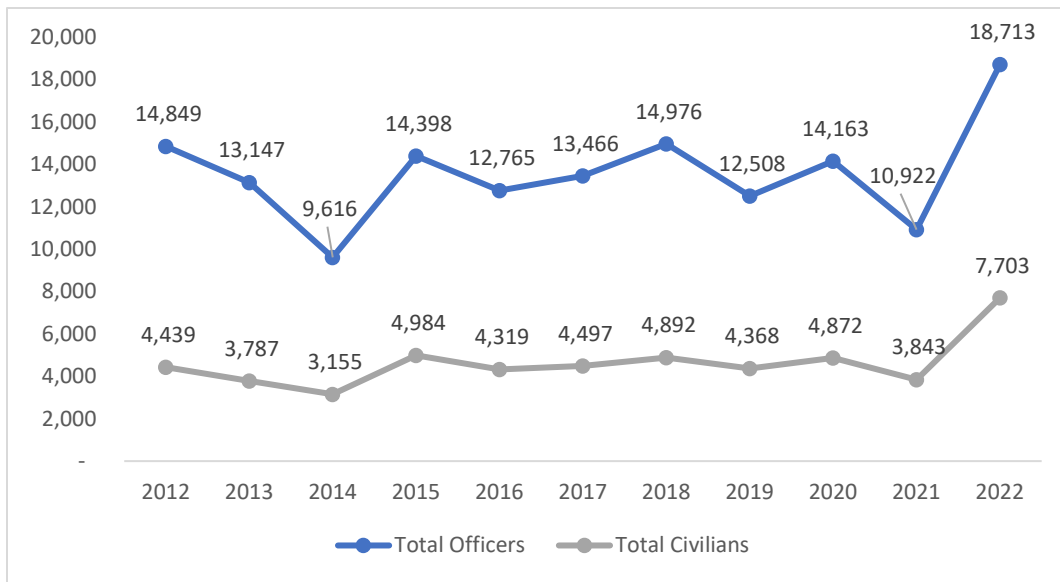
*Source: US Bureau of Labor Statistics, Occupational Employment and Wage Statistics*

**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**



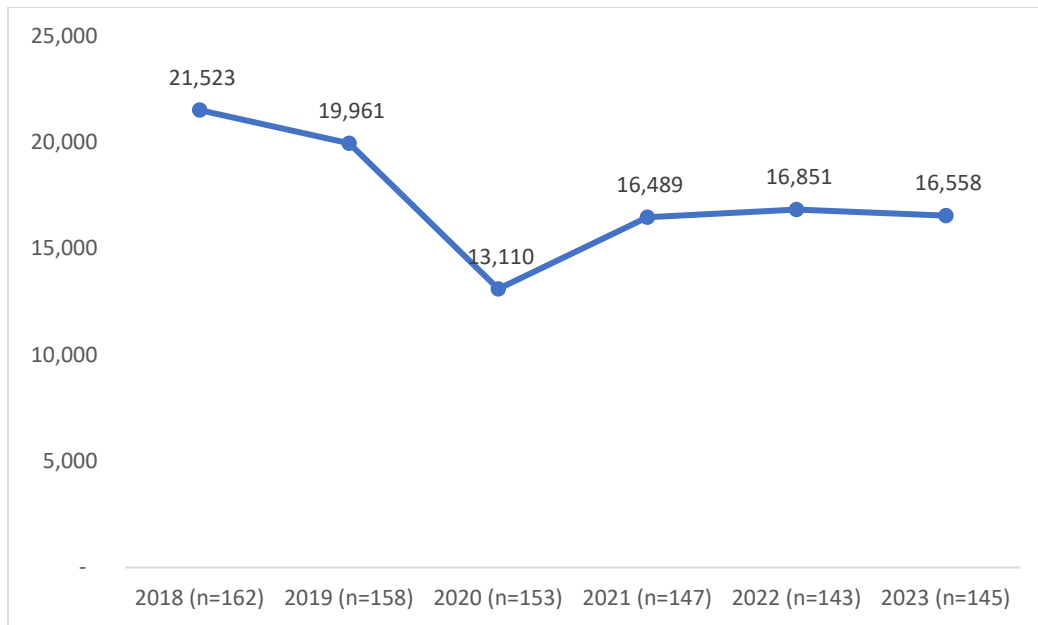
*Source: Federal Bureau of Investigation, Uniform Crime Reporting, Police Employee Data*

### 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.<sup>24</sup>

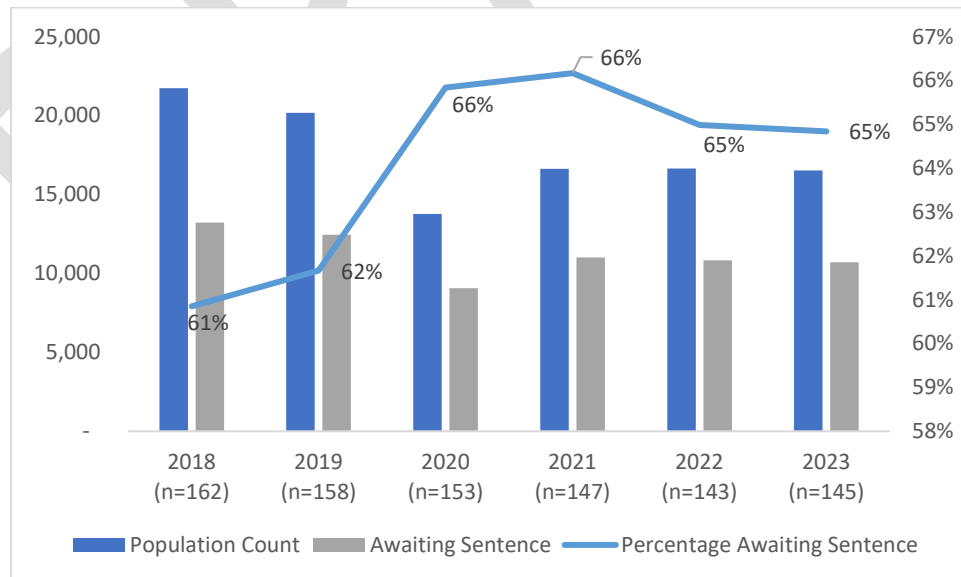
<sup>24</sup> Please note: The data listed on this table is solely determined and self-reported by the listed jails. DRC has not evaluated the accuracy of any of these figures and reserves the opportunity to analyze and confirm their accuracy.

**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

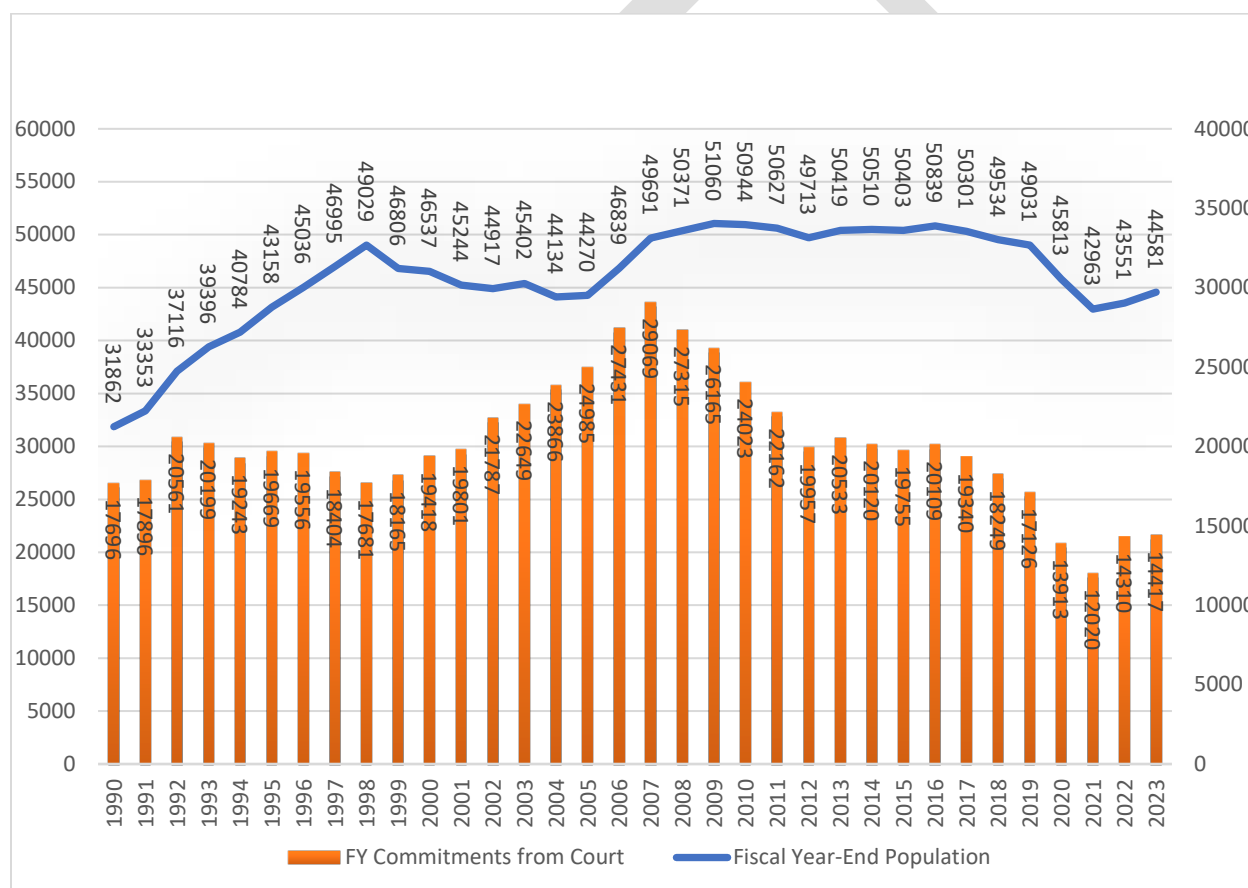
## R.C. 181.25(A)(2)(b) The Impact on State Correctional Institutions

### 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**



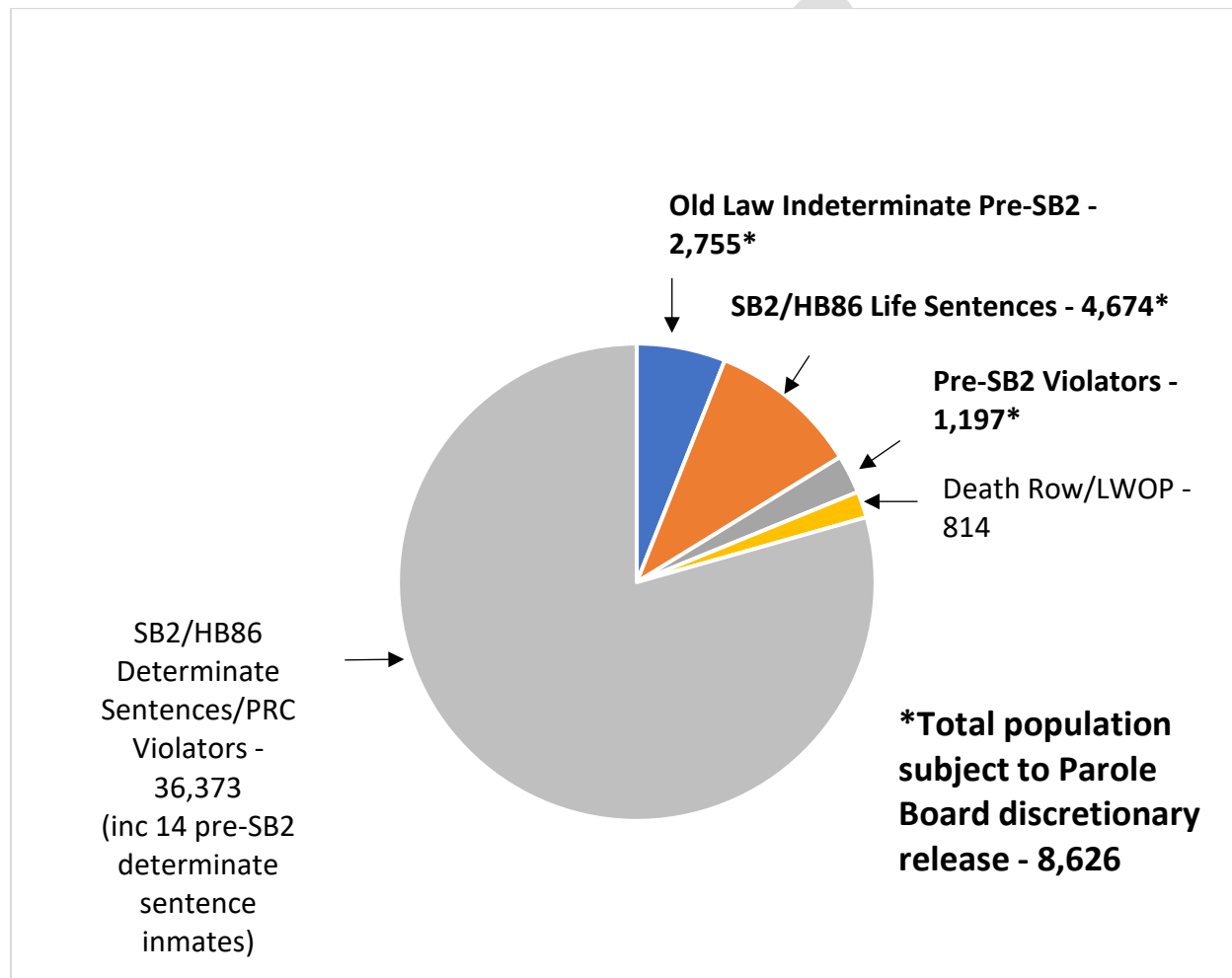
*Source: Ohio Department of Rehabilitation and Correction, Bureau of Research and Evaluation*

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.

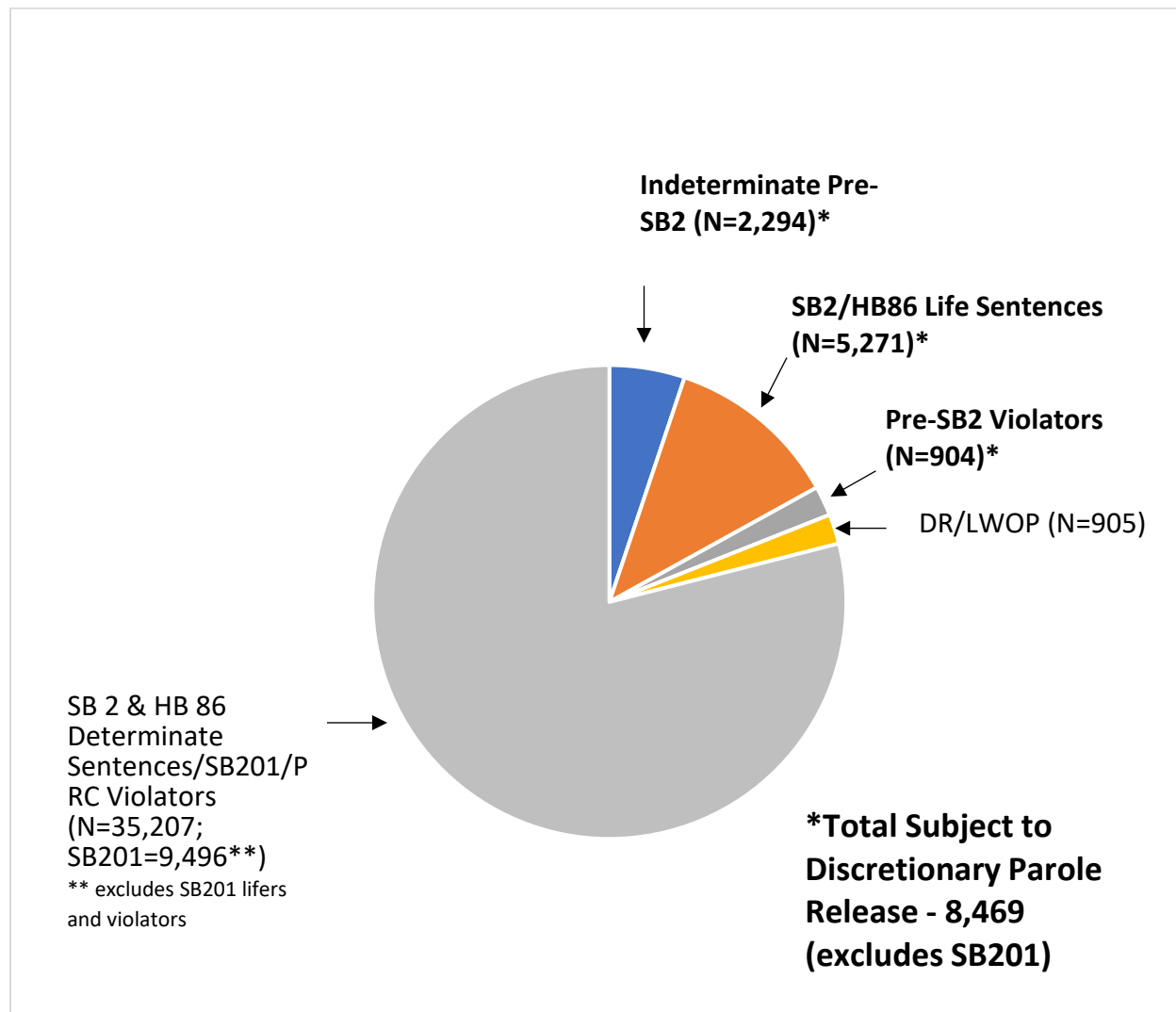
The next set of figures focuses on ODRC inmates by old law and new law status as well as sentence type, from 2020 to 2023.

**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*

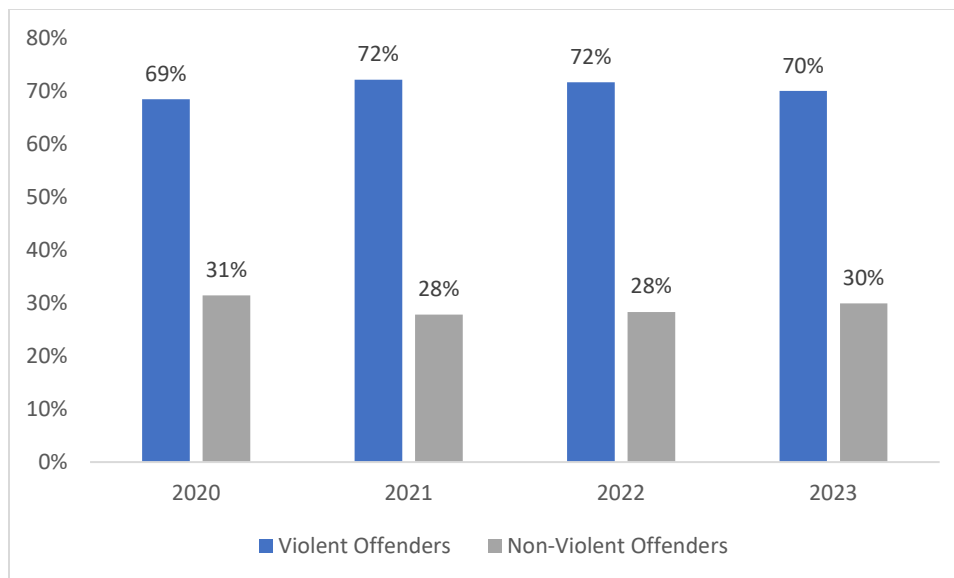
**Figure 33. Distribution of DRC Custody Population by Sentence Type and Old Law/New Law Status, July 1, 2023 (N=44,581)**



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

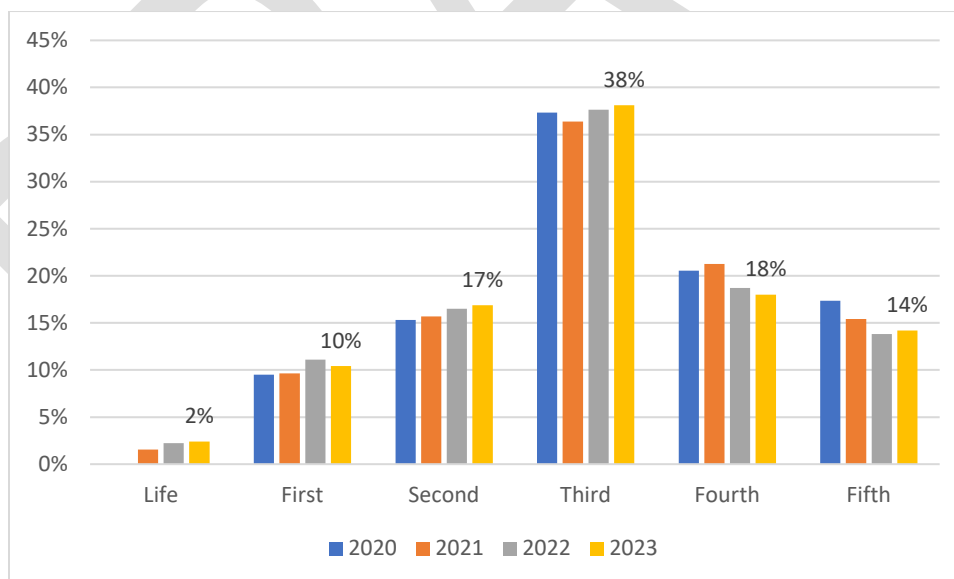
The next set of figures illustrate the trends of the ODRC custody population by violent/nonviolent status, felony level of most serious offense, and the most serious offense type, from calendar year 2020 to 2023.

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



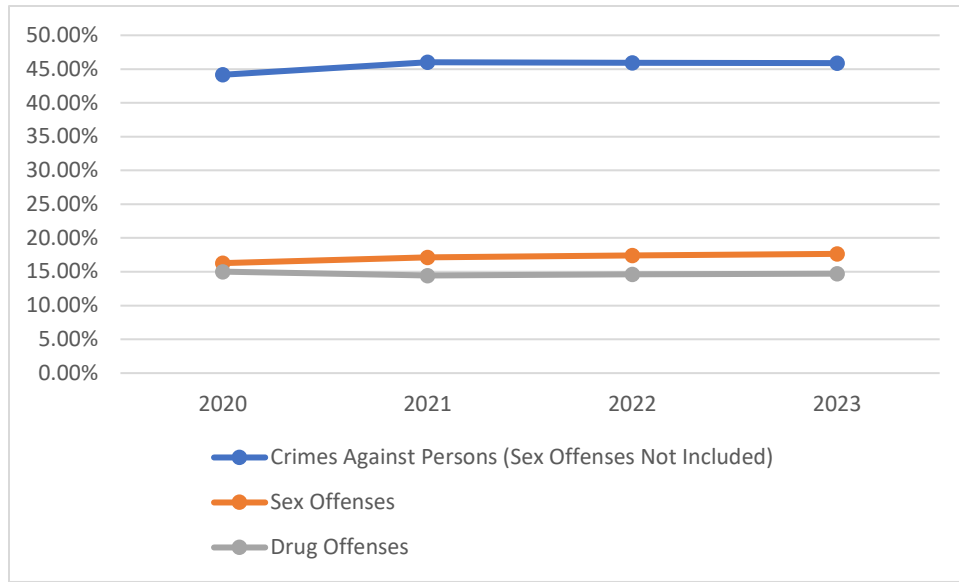
*Source: Ohio Department of Rehabilitation and Correction, Annual Reports*

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



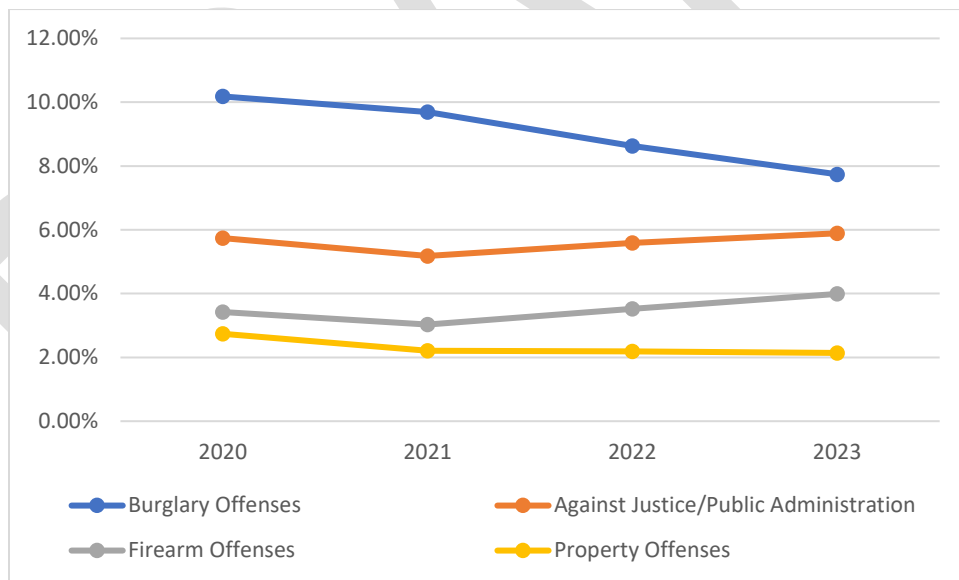
*Source: Ohio Department of Rehabilitation and Correction, Annual Reports*

**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**



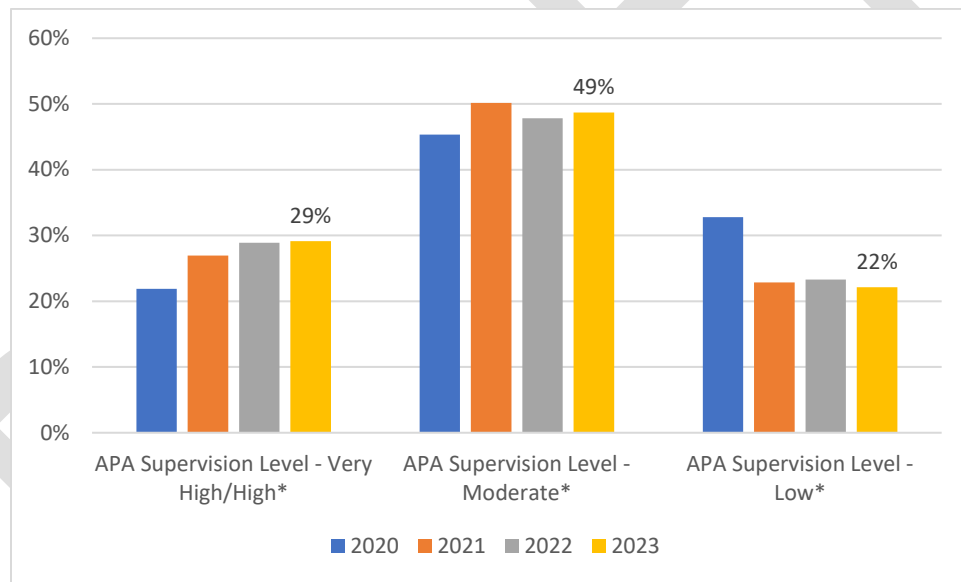
Source: Ohio Department of Rehabilitation and Correction, Institutional Census Reports

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

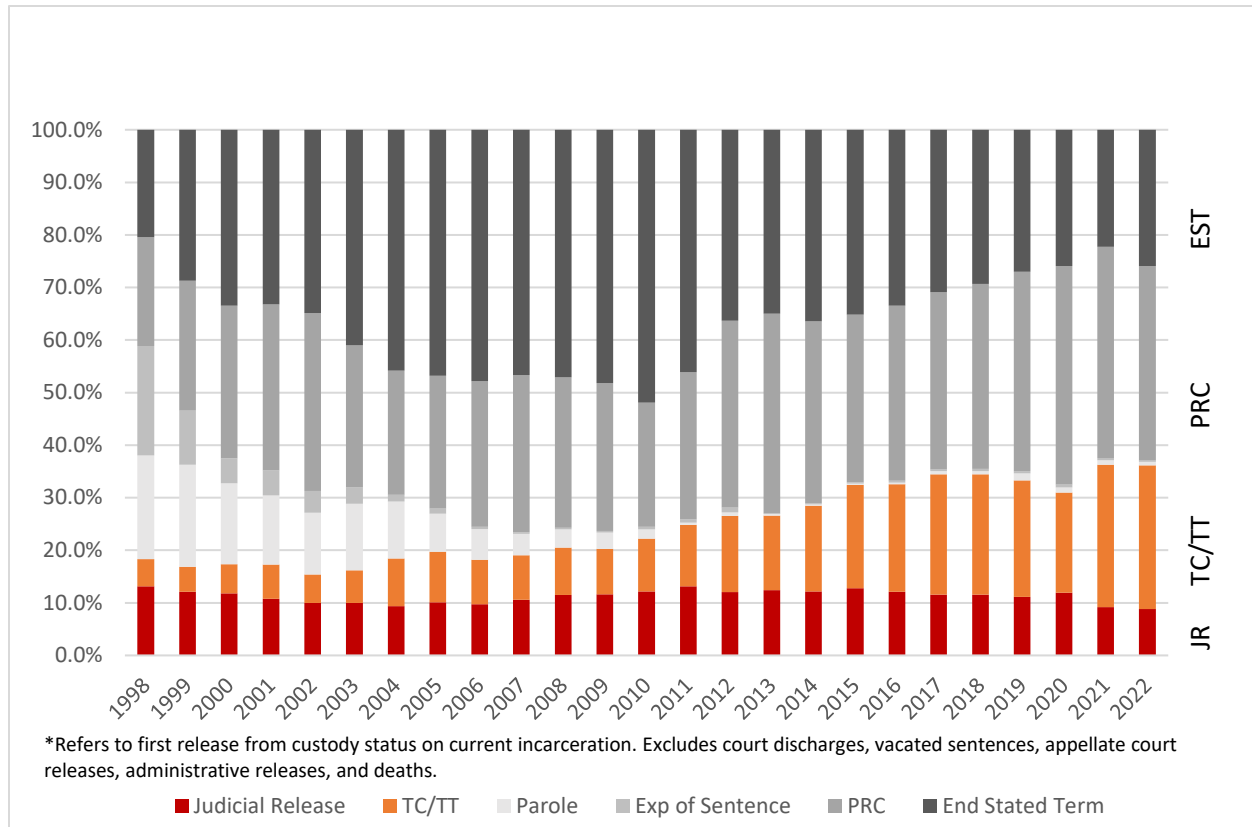
**Figure 38. Percentage of Individuals Under Adult Parole Authority Supervision Among Very High/High, Moderate, and Low supervision levels, 2020-2023**



*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).<sup>25</sup> 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.

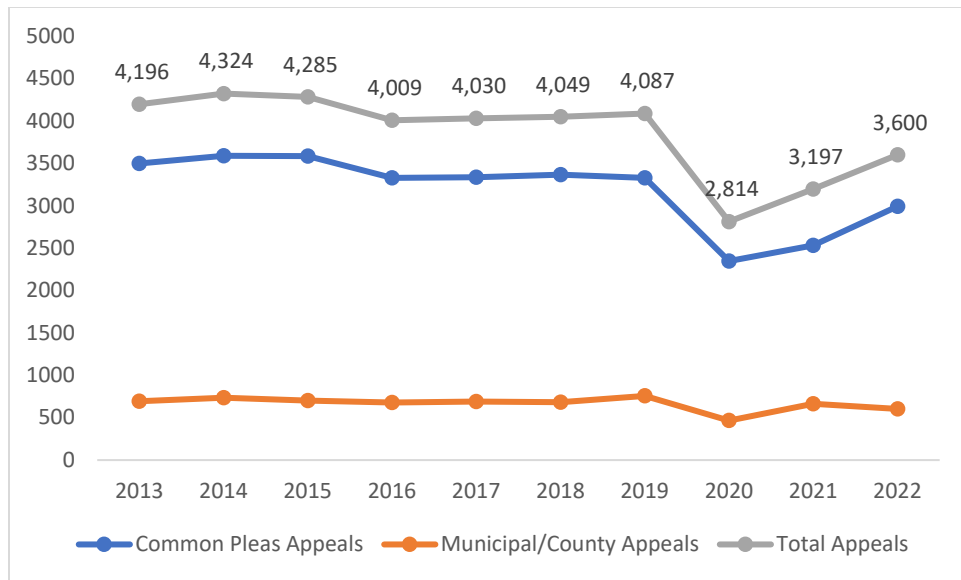
Note that these broad statistics give a general idea about caseloads at the appellate level. Appellate courts currently do not track cost or time spent on criminal appeals. While the number of criminal appeals may remain static, it is possible that courts are spending more time on each case. One such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

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<sup>25</sup> See the Sixth Monitoring Report (2005).

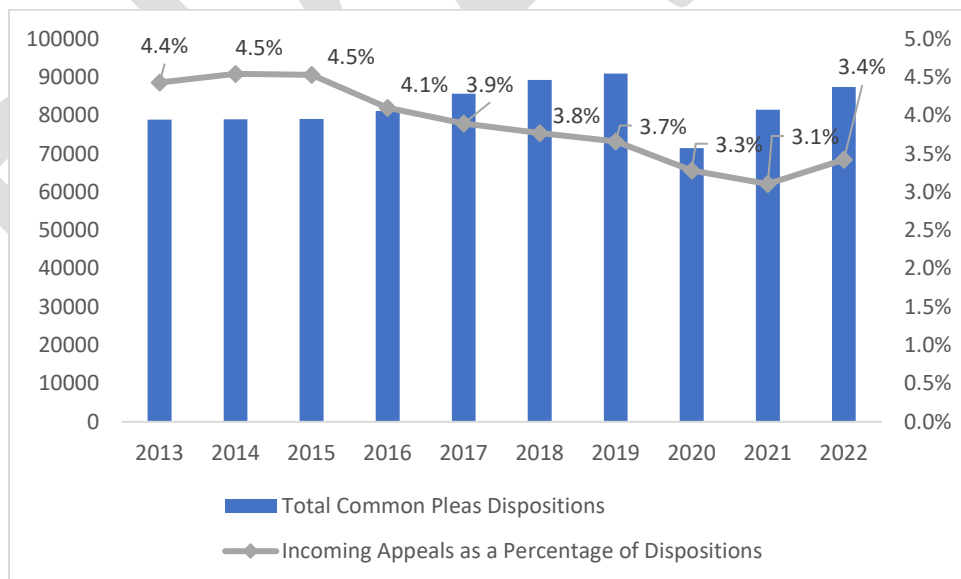
[https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring\\_report\\_2005.pdf](https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/monitorRpts/monitoring_report_2005.pdf)

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



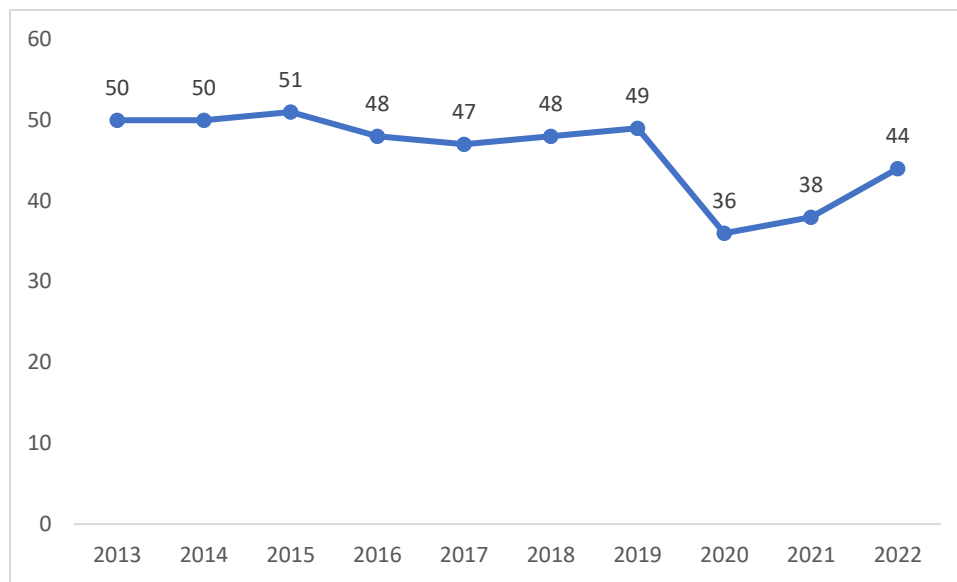
Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics

**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**



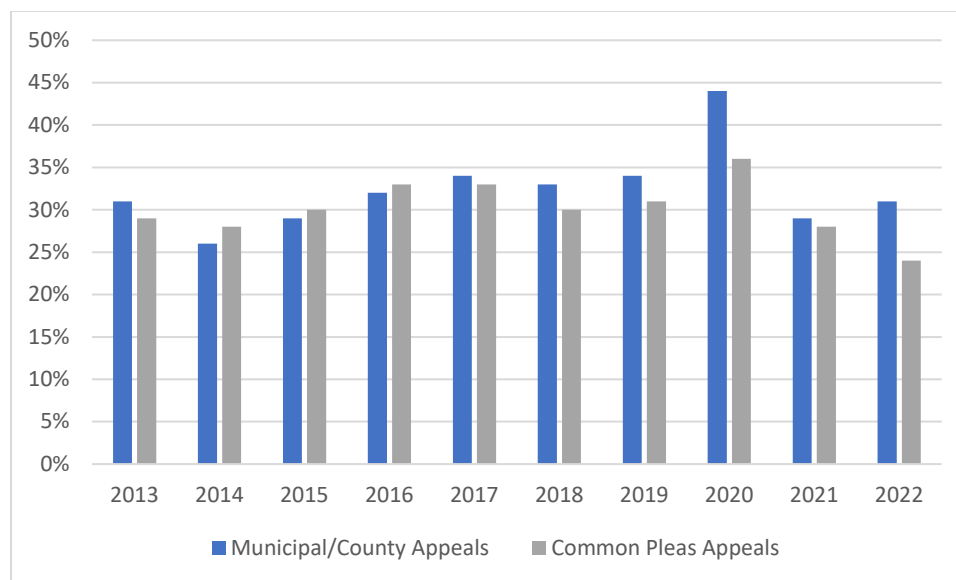
*Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics*

### 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."<sup>26</sup>

<sup>26</sup> 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**

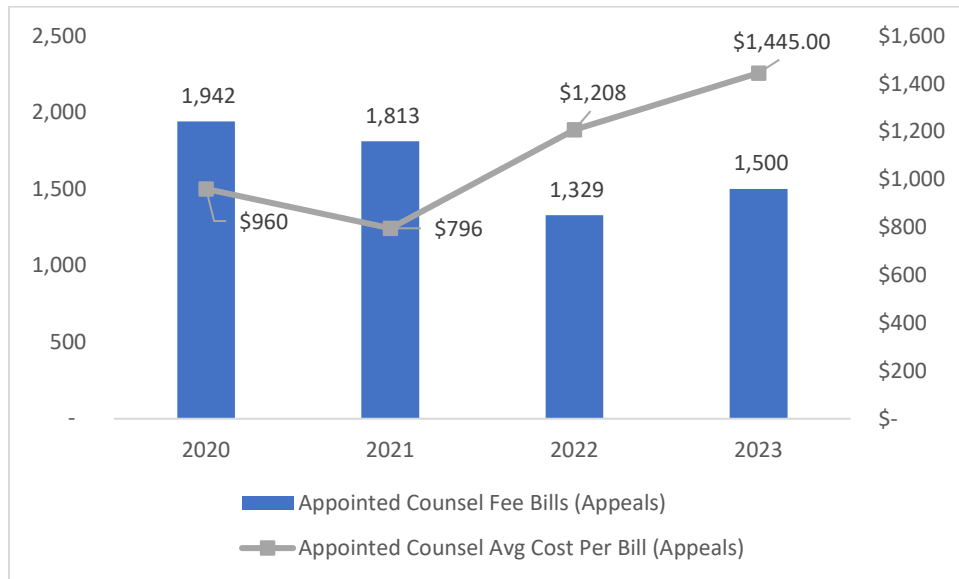


*Source: Supreme Court of Ohio Case Management Section, State of Ohio Court Statistics*

### 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, 2020-2023<sup>27</sup>**

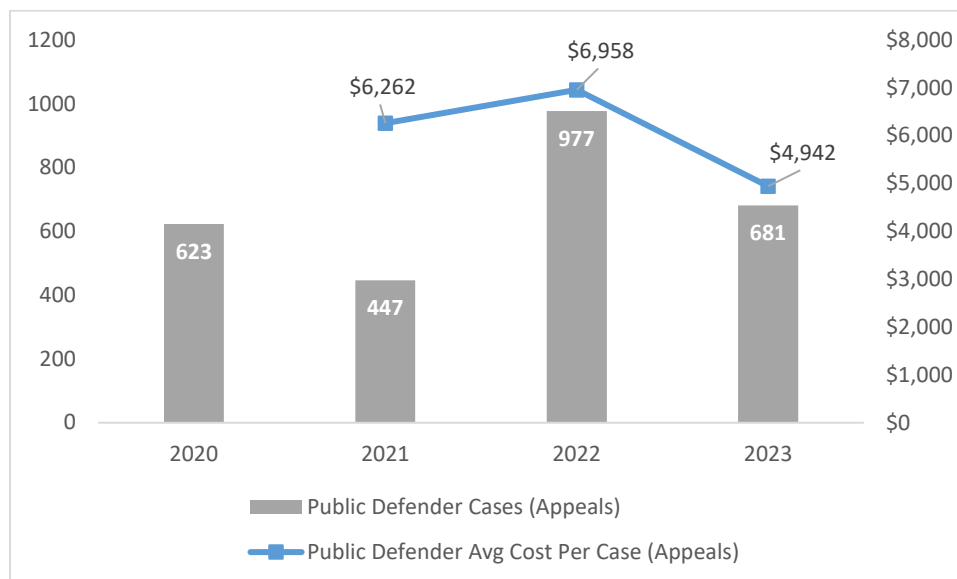


Source: The Office of the Ohio Public Defender, Appointed Counsel and Public Defender Cost and Expense Report

<sup>27</sup> 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, 2020-2023<sup>28</sup>**



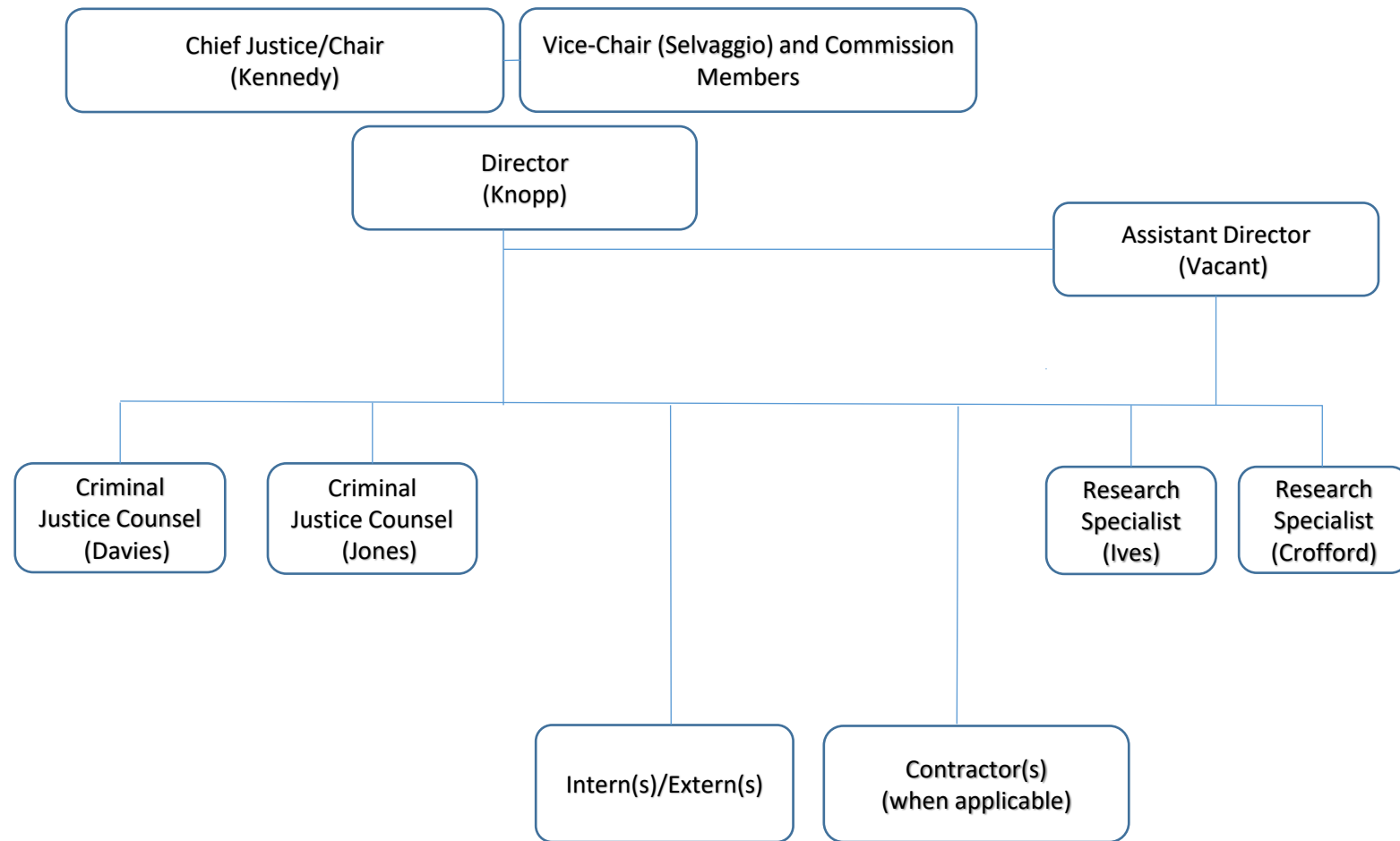
*Source: The Office of the Ohio Public Defender, Appointed Counsel and Public Defender Cost and Expense Report*

## 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.

<sup>28</sup> 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.

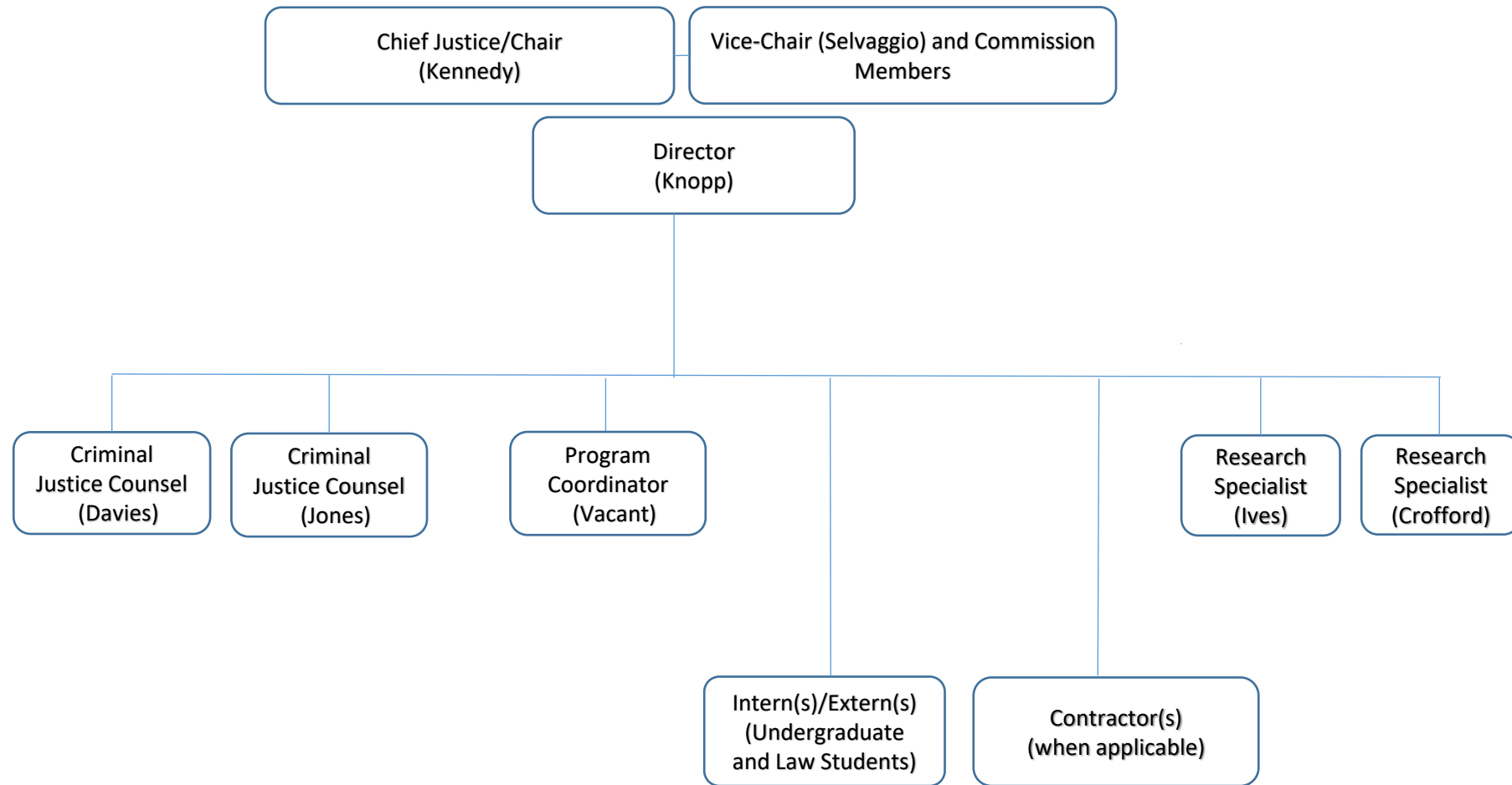
## Current Organizational Chart as of December 6, 2023



**OHIO**

CRIMINAL SENTENCING COMMISSION

## Proposed Organizational Chart as of February 15, 2024



**OHIO**

CRIMINAL SENTENCING COMMISSION





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

## POSITION DESCRIPTION

### **POSITION TITLE:** Criminal Sentencing Commission Coordinator

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**Classification:** Staff Specialist III

**Pay Grade:** 106

**Office/Section:** Criminal Sentencing

**Division:** Affiliated Offices

**Reports to:** Director

**Position Control Number:**

**FLSA Status:** Exempt

**EEO Status:** Professional

**Date Created:** January 2024

**Date Revised:**

### **JOB PURPOSE**

Provides administrative support to the operations of the commission, the director, and staff in matters relating to the work of the Ohio Criminal Sentencing Commission and its committees, including tracking the status of relevant legislation, reviewing and editing summary materials developed, and assisting in identifying and obtaining relevant information and data necessary to fulfill the duties statutorily mandated to the commission.

### **ESSENTIAL DUTIES AND RESPONSIBILITIES OF THE POSITION**

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

Assists the director in preparing commission work product, facilitating commission and committee meetings and general duties of the office.

Monitors promising practices relative to criminal justice issues and disseminates pertinent information to the commission director, the commission and its committees, interested parties and justice system partners.

Assists in planning and implementing non-legal research, including monitoring the impact of changes in sentencing policy. Duties include managing outreach with key stakeholders across the criminal justice system and collating extant sources of information to produce original analysis.

Works with the director and criminal justice counsel to track the status of relevant legislation, including legislative calendar, bill introduction, bill committee hearing status, and bill passage.

Coordinates special projects and assignments for the director and commission. Serves as a liaison and/or represents the commission on relevant committees and task forces.

Monitors and updates the commission's website and supports the director in coordinating with the Supreme Court of Ohio Office of Public Information on website maintenance, meeting information and materials, announcements, and print materials to ensure materials are publicly available and current.

Works with research specialists to manage non-legal, undergraduate interns assigned to the commission.

Oversees and manages third party contracts regarding administrative office operations. Administers and manages successful grant applications.

Assists the director and staff with scheduling meetings and preparing materials and/or coordinating arrangements for meetings and conferences; makes arrangements for meeting rooms, meals, and overnight accommodations; makes travel arrangements for director and staff as needed.

Responsible for reconciling daily and monthly fiscal reports, issues invoices, receipts, refunds, Inter-State Transfer of Funds, and properly account for payments. Researches and handles payment issues and commission member reimbursements. Prepares for audit and responds to Auditor inquiries for request for information. Works with third party processing entities, the Supreme Court of Ohio fiscal and technology departments to resolve payment issues.

Respond to inquires regarding public records, including researching and obtaining records for review by director.

Provides staff support for the commission and commission committees, including drafting comprehensive minutes.

Performs other related duties as assigned.

Regular, reliable, and punctual attendance is required.

### **QUALIFICATIONS & EXPERIENCE**

Requires a bachelor's degree or equivalent in criminal justice or related discipline and the ability to learn and understand complex policies and procedures. The degree may be substituted by six or more years of progressive and related experience with the Sentencing Commission or related area in the court system.

Requires the ability to handle sensitive information and meet various deadlines. Must be proficient in computer applications such as Microsoft Office products, excellent interpersonal communication, and problem-solving skills.

Skilled in performing technical, specialized, complex, and difficult office administrative work requiring the use of independent judgment; interpreting policies and procedures related to the office; analyzing and resolving office administrative and procedural problems.

Skilled in communicating effectively with co-workers, commission members, director, the general public, and private organizations and others sufficient to exchange or convey information.

**Special Requirements:** This position is regularly exposed to sensitive information and the employee is expected to keep any such information strictly confidential.

The intent of this job description is to provide a representative summary of the major duties and responsibilities performed by employees. It is not intended to be an exhaustive or all-inclusive list of all job-related duties that an employee may be requested to perform.

## **PHYSICAL REQUIREMENTS**

This position operates in a professional office environment and routinely uses standard office equipment, such as computers and phones.

This is a largely sedentary role; however, the employee may also be required to move about the office and building. Preparing and moving documents and files requires an ability to occasionally lift up to 20 pounds and may require bending, pushing, pulling, or reaching. While performing the duties of this job, the employee will regularly be required to communicate and exchange information.

## **COMMISSION EXPECTATIONS OF EMPLOYEE**

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

## **AT-WILL EMPLOYMENT**

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

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Employee Signature

---

Date

---

Supervisor Signature

---

Date

**Salary Bands***Effective July 1, 2022*

<b>Grade</b>	<b>Minimum</b>	<b>Mid-Point</b>	<b>Maximum</b>
101	\$35,630.40	\$41,849.60	\$48,068.80
102	\$39,187.20	\$46,030.40	\$52,873.60
103	\$43,097.60	\$50,627.20	\$58,177.60
104	\$47,382.40	\$55,702.40	\$64,001.60
105	\$52,145.60	\$61,256.00	\$70,387.20
106	\$57,324.80	\$67,392.00	\$77,417.60
107	\$63,065.60	\$74,110.40	\$85,155.20
108	\$69,388.80	\$81,515.20	\$93,641.60
109	\$76,315.20	\$89,689.60	\$103,043.20
110	\$83,948.80	\$98,654.40	\$113,339.20
111	\$92,352.00	\$108,513.60	\$124,675.20
112	\$101,587.20	\$119,350.40	\$137,134.40
113	\$111,758.40	\$131,289.60	\$150,841.60
114	\$122,907.20	\$144,393.60	\$165,900.80
115	\$135,179.20	\$158,849.60	\$182,499.20

**STATE OF OHIO (DAS)**  
CLASSIFICATION  
SPECIFICATION

**CLASSIFICATION SERIES**

Program Administrator

**SERIES NUMBER**

6312

**MAJOR AGENCIES**

All Agencies

**EFFECTIVE**

06/30/2013

**SERIES PURPOSE**

The purpose of the Program Administrator occupation is to provide program direction by relieving superior of administrative duties.

At the first level, incumbents relieve superior of non-routine administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff. At the second level, incumbents relieve superior of variety of difficult administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff. At the third level, incumbents relieve superior of most difficult administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff.

Note: In order to determine whether position is assigned duties of specified administrative nature, compare duties assigned to position in question with those assigned to immediate supervisory position, identify duties that have been delegated to subordinate & scope & impact of those duties on overall program activities of unit, section, division or bureau. The higher the class level, it is expected that there will be an increase in the knowledge of the technical policies & procedures of the operational unit to include training &/or academic background commensurate with the immediate supervisor's assigned program.

Note: This series may be used within agency/institution &/or in community setting.

This classification series may not be used to cover any functions currently described by another existing classification specifically designed for the function.

**JOB TITLE**

Program Administrator 1

**JOB CODE**

63122

**PAY GRADE**

10

**EFFECTIVE**

02/26/2012

**CLASS CONCEPT**

The advanced level class works under general supervision & requires considerable knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of non-routine administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

**JOB TITLE**

Program Administrator 2

**JOB CODE**

63123

**PAY GRADE**

12

**EFFECTIVE**

02/26/2012

**CLASS CONCEPT**

The first administrative level class works under administrative direction & requires thorough knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of variety of difficult administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

**JOB TITLE**

Program Administrator 3

**JOB CODE**

63124

**PAY GRADE**

14

**EFFECTIVE**

02/26/2012

**CLASS CONCEPT**

The second administrative level class works under administrative supervision & requires extensive knowledge of management principles/ techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by acting for superior & by relieving superior of most difficult administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

<b><u>JOB TITLE</u></b>	<b><u>JOB CODE</u></b>	<b><u>B. U.</u></b>	<b><u>EFFECTIVE</u></b>	<b><u>PAY GRADE</u></b>
Program Administrator 1	63122	EX	02/26/2012	10

**JOB DUTIES IN ORDER OF IMPORTANCE** (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)

Acts for administrator (e.g., independently answers complex &/or confidential correspondence; conducts staff meetings to discuss rules & operating procedures relating to assigned area; monitors manpower needs & insures sufficient number of personnel to complete special assignments/ projects), serves as liaison between administrator & subordinates, transmits decisions & directives, represents administrator at meetings & conferences, formulates & implements program policy & assumes responsibility & authority in administrator's absence, or does all of preceding & supervises staff (i.e., assigned clerical, maintenance, security &/or lower-level administrative employees).

Researches & analyzes programs, procedures & policies; develops project proposals & program plans; provides technical advice to aid administrators in decision making.

Manages business functions of administrator's office; prepares & administers budgets; oversees maintenance of fiscal controls, authorizes expenditures & purchases; administers special programs & projects; coordinates specific auxiliary functions falling under authority of supervisor.

Performs public relations duties; researches & responds to inquiries & complaints; furnishes information & explains programs to public; writes position papers & reports; makes speeches & gives lectures; prepares news releases.

**MAJOR WORKER CHARACTERISTICS**

Knowledge of supervisory principles/techniques; business administration, management science or public administration; employee training & development\*; interviewing\*; public relations; budgeting. Ability to handle sensitive telephone & face-to-face inquiries & contacts with public & government; write letters, papers, reports & speeches & deliver speeches before general public; develop complex reports & position papers; define problems, collect data, establish facts & draw valid conclusions; calculate fractions, decimals & percentages; gather, collate & classify information according to established methods; establish friendly atmosphere as supervisor of work unit.

(\*)Developed after employment.

**MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT**

Completion of undergraduate core program in business administration, management science or public administration; 12 mos. trg. or 12 mos. exp. in supervisory, administrative &/or managerial position which involved limited research & public contact. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or completion of undergraduate core program in academic field commensurate with program area to be assigned per approved Position Description on file; 12 mos. trg. or 12 mos. exp. in supervisory, administrative, managerial &/or staff position which involved limited research & public contact. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or 36 mos. trg. or 36 mos. exp. in business administration, management science or public administration. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

**TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT**

Not applicable.

**UNUSUAL WORKING CONDITIONS**

Not applicable.

<b><u>JOB TITLE</u></b>	<b><u>JOB CODE</u></b>	<b><u>B. U.</u></b>	<b><u>EFFECTIVE</u></b>	<b><u>PAY GRADE</u></b>
Program Administrator 2	63123	EX	02/26/2012	12

**JOB DUTIES IN ORDER OF IMPORTANCE** (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)

Acts for administrator (e.g., responds to programmatic issues/ needs of staff; leads/monitors task forces; plans, writes & implements departmental goals), serves as liaison between administrator & subordinates, transmits decisions & directives, represents administrator at meetings & conferences, assumes responsibility & authority in administrator's absence, interviews, hires, & counsels employees, manages office & auxiliary functions (e.g., maintenance, security, public information, personnel) & formulates & implements program policy, or does all of preceding & supervises assigned staff (i.e., clerical &/or lower-level administrative personnel).

Analyzes & evaluates programs, procedures & policies; provides technical advice to aid administrators in decision making.

Develops & coordinates public relations programs; researches & responds to inquiries & complaints; furnishes information & explains programs to public, legislators & news media; writes position papers & reports; makes speeches & gives lectures; prepares news releases.

Manages business function of administrator's office; prepares & administers budgets; establishes & oversees maintenance of fiscal controls; authorizes expenditures & purchases; develops & implements recruitment & training programs; develops & administers special programs & projects; prepares important documents, correspondence, directives & publications.

**MAJOR WORKER CHARACTERISTICS**

Knowledge of supervisory principles/techniques; business administration, management science or public administration; public relations; employee training & development; interviewing; public accounting. Ability to gather, collate & classify information about data, people or things; define problems, collect data, establish facts & draw valid conclusions; deliver speeches before government officials & general public; write, letters, papers & reports; handle sensitive telephone & face-to-face inquiries & contacts with general public; interview job applicants to determine work best suited to them.

**MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT**

Completion of undergraduate core program in business administration, management science or public administration; 2 yrs. trg. or 2 yrs. exp. in supervisory, administrative &/or managerial position.

-Or completion of undergraduate core program in academic field commensurate with program area to be assigned per approved Position Description on file; 2 yrs. trg. or 2 yrs. exp. in supervisory, administrative &/or managerial position or staff position involving planning, research &/or policy/procedure development.

-Or 4 yrs. trg. or 4 yrs. exp. in business administration management science or public administration.

-Or 1 yr. exp. as Program Administrator 1, 63122.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

**TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT**

Not applicable.

**UNUSUAL WORKING CONDITIONS**

Not applicable.

<b><u>JOB TITLE</u></b>	<b><u>JOB CODE</u></b>	<b><u>B. U.</u></b>	<b><u>EFFECTIVE</u></b>	<b><u>PAY GRADE</u></b>
Program Administrator 3	63124	EX	02/26/2012	14

**JOB DUTIES IN ORDER OF IMPORTANCE (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)**

Acts for administrator (e.g., provides program direction for staff; administers statewide agency programs; insures compliance with state & federal program requirements; advocates for legislation to enhance services/ programs related to assigned specialty), provides regular direction to division heads & other staff members, conducts staff meetings to discuss & execute policies & procedures, reviews proposals of division heads & other staff members & makes recommendations to administrator, assumes full responsibility & authority in administrator's absence, plans, directs & appraises work of administrator's office staff, including clerical & lower-level administrative employees, manages office auxiliary functions (e.g., maintenance, security, public information, personnel) & formulates & implements program policy, or does all of preceding & supervises assigned staff (i.e., clerical &/or lower-level administrative personnel).

Analyzes & evaluates programs, procedures & policies; develops & revises programs; provides technical advice to aid administrator in decision making.

Prepares & directs preparation of correspondence, reports, policy statements, legislative drafts; provides information on programs & policies to private organizations, government officials & general public.

Coordinates & monitors personnel & fiscal services of administrative unit; oversees & provides budget preparation & administration; orients & counsels new professional personnel; identifies staff training needs.

Represents administrator at meetings & conferences with state, federal & community agencies; speaks for administrator on policy matters.

**MAJOR WORKER CHARACTERISTICS**

Knowledge of business administration, management science or public administration; supervisory principles/techniques; public relations; employee training & development; budgeting. Ability to define problems, collect data, establish facts & draw valid conclusions; develop complex reports & position papers; handle sensitive face-to-face contacts with public & government officials; establish friendly atmosphere as supervisor of work unit.

**MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT**

Completion of undergraduate core program in business administration, management or public administration; 36 mos. trg. or 36 mos. exp. in supervisory, administrative &/or managerial position.

-Or completion of undergraduate core program for academic field of study commensurate with program area to be assigned per approved Position Description on File; 36 mos. trg. or 36 mos. exp. in supervisory, administrative, managerial &/or staff position involving planning, research &/or policy/procedure development.

-Or 5 yrs. trg. or 5 yrs. exp. in business administration, management or public administration.

-Or 1 yr. exp. as Program Administrator 2, 63123.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

**TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT**

Not applicable.

**UNUSUAL WORKING CONDITIONS**

Not applicable.



# E1 Exempt Pay Range Schedule

Rates Effective July 2023

Pay Range	Rate Type	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
1	Hourly	\$12.88	\$13.46	\$14.02	\$14.64				
	Annual	\$26,790	\$27,996	\$29,161	\$30,451				
2	Hourly	\$15.63	\$16.29	\$16.98	\$17.74				
	Annual	\$32,510	\$33,883	\$35,318	\$36,899				
3	Hourly	\$16.38	\$17.11	\$17.87	\$18.63				
	Annual	\$34,070	\$35,588	\$37,169	\$38,750				
4	Hourly	\$17.19	\$17.96	\$18.83	\$19.64				
	Annual	\$35,755	\$37,356	\$39,166	\$40,851				
5	Hourly	\$18.04	\$18.86	\$19.64	\$20.51				
	Annual	\$37,523	\$39,228	\$40,851	\$42,660				
6	Hourly	\$19.00	\$19.80	\$20.65	\$21.51				
	Annual	\$39,520	\$41,184	\$42,952	\$44,740				
7	Hourly	\$20.17	\$20.92	\$21.79	\$22.55	\$23.41			
	Annual	\$41,953	\$43,513	\$45,323	\$46,904	\$48,692			
8	Hourly	\$21.33	\$22.28	\$23.24	\$24.29	\$25.43			
	Annual	\$44,366	\$46,342	\$48,339	\$50,523	\$52,894			
9	Hourly	\$22.75	\$23.94	\$25.11	\$26.37	\$27.70			
	Annual	\$47,320	\$49,795	\$52,228	\$54,849	\$57,616			
10	Hourly	\$24.53	\$25.89	\$27.28	\$28.86	\$30.39			
	Annual	\$51,022	\$53,851	\$56,742	\$60,028	\$63,211			
11	Hourly	\$26.74	\$28.28	\$29.92	\$31.61	\$33.40			
	Annual	\$55,619	\$58,822	\$62,233	\$65,748	\$69,472			
12	Hourly	\$29.49	\$31.15	\$32.82	\$34.63	\$36.55	\$38.55	\$40.12	\$42.01
	Annual	\$61,339	\$64,792	\$68,265	\$72,030	\$76,024	\$80,184	\$83,449	\$87,380
13	Hourly	\$32.51	\$34.29	\$36.16	\$38.11	\$40.26	\$42.43	\$44.17	\$46.25
	Annual	\$67,620	\$71,323	\$75,212	\$79,268	\$83,740	\$88,254	\$91,873	\$96,200
14	Hourly	\$35.74	\$37.78	\$39.81	\$41.97	\$44.34	\$46.81	\$48.75	\$51.03
	Annual	\$74,339	\$78,582	\$82,804	\$87,297	\$92,227	\$97,364	\$101,400	\$106,142
15	Hourly	\$39.27	\$41.48	\$43.82	\$46.23	\$48.79	\$51.47	\$53.58	\$56.10
	Annual	\$81,681	\$86,278	\$91,145	\$96,158	\$101,483	\$107,057	\$111,446	\$116,688
16	Hourly	\$43.29	\$45.70	\$48.21	\$50.92	\$53.71	\$56.79	\$59.12	\$61.89
	Annual	\$90,043	\$95,056	\$100,276	\$105,913	\$111,716	\$118,123	\$122,969	\$128,731
17	Hourly	\$47.70	\$50.33	\$53.15	\$56.08	\$59.23	\$62.53	\$65.97*	
	Annual	\$99,216	\$104,686	\$110,552	\$116,646	\$123,198	\$130,062	\$137,217*	
18	Hourly	\$52.57	\$55.48	\$58.61	\$61.83	\$65.25	\$68.90		
	Annual	\$109,345	\$115,398	\$121,908	\$128,606	\$135,720	\$143,312		
19	Hourly	\$57.83	\$61.03	\$64.47	\$68.01	\$71.78	\$75.79		
	Annual	\$120,286	\$126,942	\$134,097	\$141,460	\$149,302	\$157,643		

\* Pursuant to ORC 124.152 (D), Pay Grade 17, Step 7 is applicable only to Ohio State Highway Patrol Captains



## CRIMINAL SENTENCING COMMISSION

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

**TO:** Ohio General Assembly

**FROM:** Ohio Criminal Sentencing Commission

**DATE:** February 15, 2024

**RE:** Adult Unconstitutional Ohio Revised Code Sections

[R.C. 181.25\(A\)\(4\)](#) directs the Ohio Criminal Sentencing Commission (the Commission) to study the existing sentencing structure of the state and recommend necessary changes. Consistent with the Commission's statutory mandate, this memorandum is notification to the General Assembly that legislative action may be necessary, as the Supreme Court of Ohio has held the following criminal code sections unconstitutional in whole or in part. While the commission does not offer specific corrections or fixes, the legislature will need to evaluate the purpose of these code sections and decide whether they need to be repealed, modified or rewritten in some way.

### **2901.08(A)**

R.C. 2901.08(A) allows a court to use an adjudication of delinquency or juvenile traffic offender as a conviction when considering appropriate charges or sentence of the person now that they have attained adulthood. The Supreme Court found that it was unconstitutional to use that juvenile record against an adult.

The Supreme Court in [State v Hand, 149 Ohio St.3d 94, 2016-Ohio-5504](#) found that R.C. 2901.08(A) violates the Due Process Clauses of Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution because it is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult. A juvenile adjudication cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum.

### **2907.03(A)(13)**

R.C. 2907.03 is the offense of Sexual Battery. For the offense of Sexual Battery, only subsection (13) is unconstitutional. Subsection (13) applies strict liability to police officers regardless of the relationship with the victim. This is an instance where the legislature must decide whether the underlying principles of holding a police officer strictly liable necessitates a rewrite of this statute, a repeal of the statute or some other resolution.

The Supreme Court in [State v. Mole, 149 Ohio St.3d 215, 2016-Ohio-5124](#) found that R.C. 2907.03 is generally a valid scheme insofar as it imposes strict liability for sexual conduct on various classes of offenders who exploit their victims through established authoritarian relationships. But subdivision (A)(13) irrationally imposes that same strict liability on peace officers even when there is no occupation-based relationship between the officer and the victim. The Court concluded that R.C. 2907.03(A)(13) is an



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arbitrarily disparate treatment of peace officers that violates equal protection under the Ohio Constitution and the United States Constitution.

### **2953.73(E)(1)/2953.72(A)(8)**

The sentence at issue is found in R.C. 2953.73(E)(1) and states, "If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may seek leave of the supreme court to appeal the rejection to the supreme court \* \* \*." By severing the phrase "seek leave of the supreme court to," the court removed the offending discretionary-review process. The statute then permissibly reads, "If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may appeal the rejection to the supreme court."

With regards to 2953.72(A)(8) by severing the text that reads "seek leave of the supreme court to" and "to that court if the offender was sentenced to death for the offense for which the offender is requesting the DNA testing and, if the offender was not sentenced to death for that offense, may appeal the rejection to the court of appeals," the section is left with the direction that "the offender may appeal the rejection."

The Supreme Court's solution was to sever the offending language to make the statutes constitutional. Until the legislature makes a decision and adopts or changes the severance that the Supreme Court decided, then the language remains in the Ohio Revised Code.

The Supreme Court in [State v. Noling, 149 Ohio St.3d 321, 2016-Ohio-8252](#) found that R.C. 2953.73(E)(1), which denies appeals of right from rejections of applications for DNA testing in cases in which the death penalty is imposed, is unconstitutional. The court held that unconstitutional portions of R.C. 2953.73 are severed. After severance, R.C. 2953.73 entitles capital offenders to appeals of right to the Supreme Court. Further the Court held that the same analysis applies equally to 2953.72(A)(8).

### **2950.031 and 2950.032**

R.C. 2950.031 allowed the Ohio Attorney General to reclassify registered sex offenders into the new Tier classification system. R.C. 2950.032 required the same reclassification, except for incarcerated sex offenders. The Supreme Court held that the legislature could not give the executive branch a function that is for the judicial branch. Judges had already made the findings and ordered registrations, so the executive could not be given the authority to undo that decision and reclassify.

The Supreme Court in [State v. Bodyke, 126 Ohio St.3d 266, 2010-Ohio-2424](#) found that R.C. 2950.031 and 2950.032 violate separation of powers by requiring executive branch to reclassify sex offenders already classified by court order. Only appellate courts are constitutionally permitted to review or modify court judgments. The Executive branch may not reopen final judgments.

For further information or inquiry please contact Melissa A. Knopp, Esq., Director of the Ohio Criminal Sentencing Commission, at [Melissa.Knopp@sc.ohio.gov](mailto:Melissa.Knopp@sc.ohio.gov) or (614) 378-9311.



CRIMINAL SENTENCING COMMISSION

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

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**TO:** Ohio General Assembly

**FROM:** Ohio Criminal Sentencing Commission

**DATE:** February 15, 2024

**RE:** Juvenile Unconstitutional Ohio Revised Code Section

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[R.C. 181.25\(A\)\(4\)](#) directs the Ohio Criminal Sentencing Commission (the Commission) to study the existing sentencing structure of the state and recommend necessary changes. Consistent with the Commission's statutory mandate, this memorandum is notification to the General Assembly that legislative action may be necessary, as the Supreme Court of Ohio has held that a portion of the state's juvenile sentencing structure, [R.C. 2152.86](#), is unconstitutional.

R.C. 2152.86 imposes an automatic, lifetime requirement of sex-offender registration and notification on qualifying juvenile offenders who have been adjudicated delinquent for committing certain sex offenses. The juveniles who are subject to this mandatory registration are Public Registry-Qualified Juvenile Offender Registrants. They are 14 years of age or older, have been subject to a serious youthful offender dispositional sentence, and have been adjudicated delinquent for committing, attempting or conspiring to commit, or complicity in committing one of the delineated sex offenses outlined in R.C. 2152.86(A)(1)(a)-(c).

In 2012, the Supreme Court of Ohio, in *In re C.P.*, [131 Ohio St.3d 513, 2012-Ohio-1446](#), held that the R.C. 2152.86 automatic, lifetime registration and notification penalty constitutes cruel and unusual punishment and, therefore, violates both the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9. Additionally, the Court found that the procedure for the imposition of the penalty violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 16.

Despite the unconstitutional findings, the text of R.C. 2152.86 has remained, unchanged, in the Ohio Revised Code. As a result, numerous appellate courts have had to intervene to correct trial court orders that have erroneously been issued under R.C. 2152.86.

The Commission's suggestion to the General Assembly is that R.C. 2152.86 either be repealed in its entirety or be amended to conform with the decision in *In Re C.P.*

For further information or inquiry please contact Melissa A. Knopp, Esq., Director of the Ohio Criminal Sentencing Commission, at [Melissa.Knopp@sc.ohio.gov](mailto:Melissa.Knopp@sc.ohio.gov) or (614) 378-9311.

**R.C. 181.21**

(D) The sentencing commission shall establish a standing juvenile committee. The committee ~~shall~~ may consist of the following ~~commission~~ members: the chief justice of the supreme court or the chief justice's designee, the director of youth services, the three juvenile court judges, one court of common pleas judge who is not a juvenile court judge, one county prosecuting attorney who is experienced in the prosecution of cases in juvenile court involving alleged delinquent children, unruly children, and juvenile traffic offenders, the attorney whose practice of law primarily involves the representation in juvenile court of alleged delinquent children, unruly children, and juvenile traffic offenders, the former victim of a violation of Title XXIX of the Revised Code, the county commissioner, one legislator from each political party, the sheriff, and one municipal corporation or township peace officer who is experienced in the investigation of cases involving juveniles, and any other person or persons that the chief justice or the chairperson of the committee designate. The members ~~of the commission~~ may serve on the committee by designation of the chief justice or the chairperson of the committee. The chief justice shall designate a member to serve as chairperson of the committee. The committee shall select a vice-chairperson and any other necessary officers and adopt rules to govern its proceedings. The committee shall meet as necessary at the call of the chairperson or on the written request of four or more of the committee's members. A majority of the members of the committee shall constitute a quorum, and the votes of a majority of the quorum present shall be required to validate any action of the committee, including recommendations to the commission. The committee and the commission shall comply with section 181.26 of the Revised Code.

**R.C. 181.26 – Additional duties of commission concerning juveniles**

(A) In addition to its duties set forth in sections 181.23 to 181.25 and 181.27 of the Revised Code, the state criminal sentencing commission shall do all of the following:

- (1) Review all statutes governing delinquent child, unruly child, and juvenile traffic offender dispositions in this state;
- (2) Review state and local resources, including facilities and programs, used for delinquent child, unruly child, and juvenile traffic offender dispositions and ~~profile~~ the populations of youthful offenders in the facilities and programs;
- (3) ~~Report to the general assembly no later than, a comprehensive plan containing recommendations based on the reviews required under divisions (A)(1) and (2) of this section. The recommendations shall do all of the following~~ Develop a juvenile justice policy for the state. The policy shall be designed to:
  - (a) Assist in the managing of the number of persons in, operation of, and costs of, the facilities, the programs, and other resources used in delinquent child, unruly child, and juvenile traffic offender dispositions;
  - (b) ~~Foster rehabilitation, public safety, sanctions, accountability, and other reasonable goals;~~ Further the purposes for disposition under section 2152.01 of the Revised Code;
  - (c) Provide greater certainty, proportionality, uniformity, fairness, and simplicity in delinquent child, unruly child, and juvenile traffic offender dispositions while retaining reasonable judicial discretion;
  - (d) ~~Provide for the restoration of victims of juvenile offenses.~~

~~(B) The commission shall project the impact of the comprehensive plan recommended by the commission under this section on state and local resources used in delinquent child, unruly child, and juvenile traffic offender dispositions. The commission shall determine whether any additional facilities, programs, or other resources are needed to implement the comprehensive plan.~~

~~(B)(C) If the general assembly enacts all or a substantial part of the comprehensive plan recommended by the commission under this section, t~~The commission shall do all of the following:

- (1) Assist in the implementation of ~~the enacted plan~~ statutes governing delinquent child, unruly child, and juvenile traffic offender dispositions in this state;
- (2) Monitor the operation of ~~the plan~~ statutes governing delinquent child, unruly child, and juvenile traffic offender dispositions in this state, periodically report to the general assembly on the plan's statutes' operation and the plan's statutes' impact on resources used in delinquent child, unruly child, and juvenile traffic offender dispositions, and periodically recommend necessary changes in the plan statutes to the general assembly based on this monitoring in the biennial monitoring report described in section 181.25(A)(2) of the Revised Code;
- (3) Review all bills that are introduced in the general assembly that relate to delinquent child, unruly child, and juvenile traffic offender dispositions, determine if those bills are consistent with the juvenile justice policy adopted under division (A)(3) of this section, recommend to the general assembly amendments to those bills if necessary, and assist the general assembly in making legislation consistent with the plan juvenile justice policy adopted under division (A)(3) of this section.

# Not Guilty By Reason of Insanity Reference Guide

## What Is Not Guilty By Reason Of Insanity (NGRI)?

[R.C. 2901.01(A)(14)]

A person is “not guilty by reason of insanity” relative to a charge of an offense only if the person proves, by a preponderance of the evidence and in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.

A defendant who does not plead not guilty by reason of insanity is conclusively presumed to have been sane at the time of the commission of the offense charged. [R.C. 2943.03]

A diagnosis of mental illness or intellectual disability, alone, is not sufficient for a finding of NGRI. There must be a connection between the behavior of the offense and the inability to know the wrongfulness of the behavior as a product of the underlying mental disease or defect.

## What Does Not Constitute A Defense Of NGRI?

[R.C. 2945.391]

Proof that a person’s reason, at the time of the commission of an offense, was so impaired that the person did not have the ability to refrain from doing the person’s act or acts, does not constitute a defense.

Competency to Stand Trial and NGRI are separate and independent issues in a case. While both issues may be raised in the same case and the court can request joint evaluations, if both issues are raised the trial court will likely want to resolve the competency issue prior to resolving the NGRI issue. If only one issue is present in a case, then that is the only evaluation that needs to be conducted. The issue of NGRI may be raised only if a defendant enters a plea of not guilty by reason of insanity and enters that plea in writing.

## How Is Competency Different From a Not Guilty By Reason Of Insanity Plea?

Competency to stand trial is a determination by the judge about a defendant’s present mental condition and about the defendant’s capacity to understand the proceedings and assist in the defendant’s own defense. [R.C. 2945.37(G)]

A plea of not guilty by reason of insanity (NGRI) asserts an affirmative defense regarding the defendant’s mental condition at the time of the offense and focuses on the defendant’s knowledge of the wrongfulness of the defendant’s actions at that time.  
[R.C. 2901.01(A)(14)]

## Entering A Not Guilty By Reason Of Insanity Plea

Who may raise NGRI? [R.C. 2901.01(A)(14)]

Only the defense may enter a plea of NGRI, and the plea must be made before the commencement of trial.<sup>1</sup> The plea must be made in writing by either the defendant or defense counsel.<sup>2</sup>

Who has the burden to prove NGRI? [R.C. 2901.05]

The defendant has the burden to prove NGRI by a preponderance of the evidence.

May a juvenile enter an NGRI plea?

No. No provision for an insanity plea exists in Ohio R. Juv. P. 29.<sup>3</sup>

## Evaluations For NGRI [R.c. 2945.371]

If a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's mental condition at the time of the offense charged.

Who conducts the evaluation? [R.C. 2945.371]

If the court orders an evaluation, it must be conducted by an "examiner" as defined by R.C. 2945.37(A)(2) of the court's choosing. The examiner must be a qualified psychiatrist or clinical psychologist or be one employed by the Department of Mental Health and Addiction Services (OMHAS) to conduct such examinations.

[Administrative Code 5122-32-01(M)(3)]

Postdoctoral fellows may participate in the preparation of the report and may co-sign reports on which they have made significant contributions. No examiner may co-sign a report prepared by a postdoctoral psychology fellow without having personally participated in the evaluation of the examinee.

What is the time frame and format for the evaluation?  
[R.C. 2945.371(G) and (H)]

An examiner must send a report to the court within 30 days after the court orders the evaluation. The evaluation may be conducted through electronic means.

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1 R.C. 2943.03 and Ohio R. Crim. P. 11(H)

2 Ohio R. Crim. P. 11(A)

3 *In re Chambers*, 116 Ohio App.3d 312 (3rd Dist. 1996)



What must be included in the evaluation report?  
[R.C. 2945.371(H)]

The report must include all of the following:

1. The examiner's findings;
2. The facts in reasonable detail on which the findings are based;
3. If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the acts charged.

Can statements made to examiners during NGRI evaluations or hearings be used against the defendant? [R.C. 2945.371(K)]

Statements made by the defendant during evaluations or hearings cannot be used to determine guilt.

Who pays the cost of the evaluation? [R.C. 2945.371(L)]

Examiners are paid a reasonable amount. Costs are borne by the court and may be taxed as costs in the case.<sup>4</sup>

What about a second opinion? [R.C. 2945.371 (B)]

If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court must inform the defendant that the defendant may undergo an independent expert evaluation and that, if the defendant is indigent and unable to pay for an independent expert evaluation, it will be arranged for the defendant at public expense.

## Levels of Movement<sup>1</sup> and Forensic Status

Once a defendant has been committed to an OMHAS facility, depending on the defendant's forensic status, various levels of movement are permitted within the facility:

Level 1 – Restricted to unit placement

Level 2 – Supervised on-grounds movement

Level 3 – Unsupervised on-grounds movement

Level 4 – Supervised off-grounds movement

Level 5 – Unsupervised off-grounds movement

Trial Visit – Unsupervised community contact with expectation to return

Conditional Release – Treatment in community for a period of time, not to exceed maximum term of imprisonment for most serious offense.

Medical Movement - Emergency and non-emergency.

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1 See Appendix D <https://mha.ohio.gov/static/AboutUs/MediaCenter/PublicationsandFactSheets/ohio-forensic-manual.pdf>. For more guidance, contact OMHAS Director of Forensic Services, Lisa Gordish, PsyD, [lisa.gordish@mha.ohio.gov](mailto:lisa.gordish@mha.ohio.gov).

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4 Department of Mental Health and Addiction Services (OHMAS) has been funding NGRI evaluations in common-pleas courts.

## NGRI Verdict By Jury Or Judge

What happens once the trier of fact finds the defendant NGRI?  
[R.C. 2945.40(A)]

The court must conduct a full hearing within 10 days of the verdict finding NGRI.

What is the purpose of the full hearing within 10 days?  
[R.C. 2945.40(A)]

To determine whether the person found NGRI is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order. (See Sidebar)

What happens if the court does not conduct the hearing within 10 days? [R.C. 2945.40(B)]

The person who was found NGRI is to immediately be discharged. However, in *State v. Pollock*, 2002-Ohio-102 (2nd Dist. 2002) the court held that the time limits are directory, not mandatory, regarding R.C. 2945.40(B).

May the hearing be continued? [R.C. 2945.40(B)]

Yes. If the continuance is granted upon motion of the defendant, then any period of time is allowed. If the continuance is granted for good cause, then the delay may be no longer than 10 days.

May the court order temporary detention prior to the 10-day hearing? [R.C. 2945.40(A)]

Yes. Prior to the hearing, if the trial court has probable cause to believe that the person is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order, then the court may order temporary detention up to 10 days or until the hearing, whichever is earlier.

Where is the defendant detained while awaiting the 10-day hearing? [R.C. 2945.40(A)]

Any person detained under a temporary order of detention must be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

### Levels of Movement and Forensic Status, Continued...

Hospitals may move an individual from level one to level two with an attending psychiatrist's order. Approval of levels 3-5 and Conditional Release may be changed only by court order.  
(R.C. 2945.401(D) (1))

Forensic Status (Available level of movement)

Jail Transfers and police holds - (Level 1).

Competency/Sanity Evaluation [R.C. 2945.371(H) (3) and (4)] – (Level 1).

Incompetent, restorable [R.C. 2945.38(B)] – (Levels 1 and 2)

Incompetent, unrestorable, probate court jurisdiction [R.C. 2945.38(H) (4)] – (Levels 1-5)

Maintain Competency [R.C. 2945.38(A)] – (Levels 1 and 2)

Incompetent, unrestorable, criminal court jurisdiction [R.C. 2945.39(A)] – (Levels 1-5)

Not Guilty by Reason of Insanity [R.C. 2945.40] – (Levels 1-5)

Mentally ill probationer or parolee [R.C. 2967.22 and Chapter 5122] – (Levels 1-5)

What are a defendant's rights at hearings regarding commitment terminations or changes? [R.C. 2945.40(C)(1)-(5)]

Defendant has a right:

- to attend hearings
- to counsel
- to independent expert evaluation
- to subpoena witnesses and documents
- to present evidence on his/her behalf
- to cross-examine witnesses
- to testify or not be compelled to testify
- to have copies of any relevant medical or mental-health document in the custody of the state, unless release of such a document would create substantial risk of harm to any person.

What are the requirements for the hearing that the trial court must hold? [R.C. 2945.40(D)]

The hearing must be open to the public.

The hearing must be conducted in accordance with the rules of civil procedure

The court must make and maintain a full transcript and record of the proceedings

What evidence may the court consider at the full hearing? [R.C. 2945.40(D)]

All relevant evidence, including but not limited to:

- Any psychiatric, psychological, or medical testimony or reports
- Acts constituting the offense for which the defendant found NGRI
- Any history of the defendant that is relevant to his or her ability to conform to the law

What findings must the court make at the full hearing? [R.C. 2945.40(E)]

If there is no clear and convincing evidence that the defendant is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order, then the court shall discharge the defendant.

## Role of the Forensic Monitor

R.C. 2945.402 refers to actions that "the monitor" will conduct. OAC 5119.29 requires OhioMHAS in conjunction with boards of alcohol, drug addiction, and mental health services and community mental health boards to develop a coordinated system for tracking and monitoring persons found NGRI and granted Conditional Release and persons found Incompetent to Stand Trial and granted Conditional Release.

Each county ADAMH Board has designated a Forensic Monitor to monitor the compliance of a person on conditional release with the conditions of their release. The Forensic Monitor acts as a liaison between the court, hospital, outpatient treatment provider, and the individual. The Forensic Monitor notifies the court of any violation of the conditional release plan.

It is important for the Court to inform the Forensic Monitor of any defendant being placed on Conditional Release to the community directly without hospitalization as early in this process as possible. The Forensic Monitor must meet with the defendant and design the Conditional Release Plan prior to the hearing where the least restrictive placement is determined to be the community.

The Forensic Monitor may remind the Court to complete "Form 95" in accordance with Sup. R. 95.

[R.C. 2945.40(F)]

If clear and convincing evidence is presented that the defendant is a person with a mental illness subject to court order or person with an intellectual disability subject to institutionalization by court order, then the court shall commit the person.

Where shall the court commit the defendant found NGRI and also to be a person with a mental illness subject to court order? [R.C. 2945.40(F)]

Either to the department of mental health and addiction services for treatment in a hospital, facility, or agency as determined clinically appropriate by the department of mental health and addiction services or to another medical or psychiatric facility, as appropriate.

Where shall the court commit the defendant found NGRI and also found to be a person with an intellectual disability subject to institutionalization by court order? [R.C. 2945.40(F)]

A facility operated by the department of developmental disabilities or another facility, as appropriate.

What factors shall the court consider in placement? [R.C. 2945.40(F)]

- Extent to which the person is a danger to the person and to others
- The need for security
- Type of crime involved

*In weighing these factors, the court must give preference to protecting public safety.*

Where can the court commit the defendant? [R.C. 2945.40(F)]

The least restrictive alternative available that is consistent with public safety and the welfare of the person.

*Prior to making a placement determination, courts can request that an examiner conduct a least restrictive setting evaluation to assist in determining placement pursuant to R.C. 2945.40(F).*

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It is important for the Court to inform the Forensic Monitor of any defendant being placed on Conditional Release to the community directly without hospitalization as early in this process as possible. The Forensic Monitor must meet with the defendant and design the Conditional Release Plan prior to the hearing where the least restrictive placement is determined to be the community.

The Forensic Monitor may remind the Court to complete “Form 95” in accordance with Sup. R. 95.

## NGRI Commitment

What are the reporting requirements once the court commits a defendant? [R.C. 2945.401(C)]

Facility of commitment must report in writing to the trial court whether the defendant remains a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order.

[R.C. 5122.311]

The hospital, agency, or facility where the defendant has been committed must notify the Office of the Attorney General of the identity of the defendant. The notification must be submitted using the [Notification Form for Records Checks](#).

How often must the report be made? [R.C. 2945.401(C)]

After the initial 6 months of treatment and every 2 years after the first report.

What must the court do after receiving the report?

[R.C. 2945.401(C)]

Within 30 days hold a hearing on the continued commitment or any changes in the condition of the commitment.

May the defendant request a change of conditions of confinement? [R.C. 2945.401(C)]

Yes. The trial court must conduct a hearing on that request if six months or more have elapsed since the most recent hearing conducted.

Does the trial court have continuing jurisdiction?

[R.C. 2945.401(A)]

Yes. NGRI defendant remains subject to the jurisdiction of the trial court until final termination of the commitment.

May the court release a defendant on conditional release?

[R.C. 2945.402(E)(1)]

Yes. If the court does approve conditional release, the court must report the approval and information pertaining to the release to the local law-enforcement agency. [See [Rules of Superintendence for the Courts of Ohio, Sup. R. 95](#), which supplies the form for reporting.]

### Relevant Case Law

*State v. Stutler*, Ohio St.3d, 2022-Ohio-2792. Following a finding of NGRI and commitment, unless the state proves by clear and convincing evidence that the recommended changes to commitment conditions would result in a threat to public safety or to any person, the trial court does not have discretion to deny the requested change.

*State v. Curry*, 45 Ohio St.3d 109 (1989). A plea of not guilty by reason of insanity may be a defense to any crime regardless of the requisite mens rea. Thus, an insanity defense may be entered in cases requiring proof that the defendant's conduct be purposeful, knowing, reckless, or negligent because criminal intent or lack thereof is not the focus of the insanity question.

*State v. Foster*, 2014-Ohio-530 (2nd Dist.). Counsel was not ineffective in failing to pursue an insanity defense, as an insanity defense would have conflicted with defendant's defense strategy of pleading not guilty and denying all allegations regarding her behavior.

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What happens when the defendant is granted conditional release? [R.C. 2945.402]

The court may set any conditions on the release with respect to the treatment, evaluation, counseling, or control of the defendant that the court considers necessary to protect the public and the welfare of the defendant. [See sidebar. Forensic Monitors work with the court to assist with designing a Conditional Release Plan.]

A conditional release is a commitment. The R.C. 2945.401 hearings still apply.

Monitor must notify the trial court immediately of any violation of terms of conditional release. Court may order defendant detained and then hold a hearing within 10 days to determine if conditional release should be modified or terminated.

*Courts should be aware that the notification requirements in R.C. 5122.311 are still applicable to defendants who have been conditionally released. The hospital, agency, or facility where the defendant has been committed must notify the Office of the Attorney General of the identity of the defendant. The notification must be submitted using the [Notification Form for Records Checks](#).*

What happens if the defendant violates the terms of conditional release? [R.C. 2945.402(A)]

Trial court may revoke conditional release and reinstitutionalize the defendant if the conditions have not been satisfied.

[R.C. 2945.402(C)]

The Forensic Monitor must notify the trial court immediately of a violation of terms of conditional release. The court may order the defendant detained and then hold a hearing within 10 days to determine if conditional release should be modified or terminated.

[R.C. 2945.402 (D)]

If the Court finds by a preponderance of the evidence that the defendant violated the terms of the conditional release, the court may continue, modify, or terminate the conditional release.

### Relevant Case Law, *Continued...*

*State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239.

The amount of time a person found not guilty by reason of insanity may be subject to court-ordered commitment is not reduced by the period of time spent in pretrial custody. R.C. 2967.191, which mandates the reduction of a prison term for prisoners convicted and sentenced, does not apply to a person found not guilty by reason of insanity because such a person is never convicted of an offense or sentenced to a period of confinement as a prisoner. Therefore, a person who is found not guilty by reason of insanity and subsequently deemed a mentally ill person subject to court-ordered hospitalization is not eligible for a reduction of the term of the court-ordered commitment at a behavioral health facility for pretrial time spent in detention.

*State v. Swiger*, 2013-Ohio-3519 (9th Dist.). A plea of not guilty by reason of insanity may be a defense to strict-liability offenses. A trial court erred by refusing to give a not guilty by reason of insanity instruction solely because the underlying criminal offenses were strict-liability offenses.

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## Termination of Commitment

How long may a defendant be committed after an NGRI finding? [R.C. 2945.401(J)(1)]

The earlier of:

Defendant no longer a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order, as determined by trial court

Expiration of the maximum prison term<sup>5</sup> or term of imprisonment that the defendant could have received if the defendant had been convicted of the most serious offense with which the defendant was found not guilty by reason of insanity.

Who has the burden of proof in hearings regarding terminating or changing a commitment pursuant to R.C. 2945.401(C) or R.C. 2945.401 (D)(1)? [R.C. 2945.401(G)]

In each instance, the prosecutor has the burden of proof as follows:

Recommendation of termination of commitment:

To maintain the court's jurisdiction, the prosecutor must show by clear and convincing evidence that the defendant remains a person with a mental illness or intellectually disabled person subject to court order.

Recommendation to a less restrictive status:

The prosecutor must show by clear and convincing evidence that the proposed changes represent a threat to public safety or a threat to the safety of any person.

What if a defendant still needs treatment after termination of commitment? [R.C. 2945.401(A)]

If terminated due to expiration of maximum prison term, the prosecutor or the court may file an affidavit for the civil commitment of the defendant.

### Relevant Case Law, *Continued...*

*State v. Ware*, 44 Ohio App. 3d 201 (1st Dist. 1988). When a defendant is simultaneously found guilty of one or more counts of an indictment but not guilty by reason of insanity of the remaining counts of the indictment, the court may not postpone or stay the hearing on hospitalization or institutionalization that is mandated by R.C. 2945.40(A) pending the defendant's release. Instead, R.C. 2945.40(A) requires that the hearing be held first in order to accomplish the legislative purpose of treating mentally ill defendants who are found not guilty by reason of insanity, before or in lieu of punishment. See also *State v. Bailey*, 2010-Ohio-6155 (8th Dist.).

*State v. Davis*, 2014-Ohio-90 (10th Dist.). Where criminal defendant was found competent to stand trial, trial counsel was not ineffective because he acceded to the inmate's directive to forgo a not guilty by reason of insanity defense, as counsel's professional obligation was to abide by the client's wishes.

*State v. Tenace*, 121 Ohio App. 3d 702 (6th Dist. 1997). Trial court erred in permitting defense counsel, over defendant's objection, to withdraw defendant's plea of not guilty by reason of insanity and proceed on a plea of not guilty.

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<sup>5</sup> *State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239.

## Person with a Mental Illness Subject to Court Order:

A “person with a mental illness subject to court order” is defined by R.C. 5122.01 (B) as a person with a mental illness who, because of the person’s illness: (ANY of the following apply)

- (1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s basic physical needs because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
- (4) Would benefit from treatment for the person’s mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
- (5) (a) Would benefit from treatment as manifested by evidence of behavior that indicates **ALL** of the following:
  - (i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
  - (ii) The person has a history of lack of compliance with treatment for mental illness and **ONE** of the following applies:
    - (I) At least twice within the thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period.

## Person With an Intellectual Disability Subject to Institutionalization by Court Order:

A “person with an intellectual disability subject to institutionalization by court order” is defined by R.C. 5123.01 (O) as “a person eighteen years of age or older with at least a moderate level of intellectual disability and in relation to whom, because of the person’s disability, either of the following conditions exists:

The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s most basic physical needs and that provision for those needs is not available in the community.

The person needs and is susceptible to significant rehabilitation in an institution.”



(II) Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person under section [5122.111](#) of the Revised Code, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period.

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

(iv) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.

(b) An individual who meets only the criteria described in division (B)(5)(a) of this section is not subject to hospitalization.

**Proposed Hierarchy of Reagan Tokes Act (RTA) Subjects for Possible Clarification:**

**I. Multiple Qualified Non-Life Terms**

**Query:** with multiple qualified non-life terms, does there need to be an indefinite term on each count or only one, with the others converted to definite terms by operation of law?

**OJC and DRC comments:**

This question was addressed in two sections of the House Passed version of HB 166 from the last Gen Assembly (134<sup>th</sup>). (That bill did not pass through the Senate, however.)

First, the proposed changes to **RC 2929.14(C)** stated:

(10)(a) When a court sentences an offender to a non-life felony indefinite prison term, ~~to be served consecutively with~~ any definite prison term or mandatory definite prison term previously ~~or~~, subsequently, ~~or~~ contemporaneously imposed on the offender in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence, the definite prison term or mandatory definite prison term shall be served prior to the non-life felony indefinite sentence prison term.

(b) When a court sentences an offender to a non-life felony indefinite prison term for an offense committed on or after March 22, 2019, to be served consecutively with any other non-life felony indefinite prison term previously, subsequently, or contemporaneously imposed on the offender in another case for an offense committed on or after March 22, 2019, the minimum prison term portions of each non-life felony indefinite prison term shall be aggregated and treated as one aggregate minimum prison term and the maximum prison term portions of each nonlife felony indefinite prison term shall be aggregated and treated as one aggregate maximum prison term to be served in accordance with section 2967.271 of the Revised Code.

(c) When a court sentences an offender to a non-life felony indefinite prison term for an offense committed on or after March 22, 2019, to be served consecutively to any indefinite prison term for an offense committed before July 1, 1996, the non-life felony indefinite prison term for the offense committed on or after March 22, 2019, shall be served prior to the indefinite prison term for the offense committed prior to July 1, 1996.

The proposed changes to RC 2929.14(C)(10) that talk about aggregation of sentences may create a conflict with current sentencing law in RC 2929.14(A)(1).

That section provides:

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section [2919.25](#) of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:

(1)(a) For a felony of the first degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section [2929.144](#) of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to March 22, 2019, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

The aggregation language of RC 2929.14(C)(10) may create a conflict with the specific provisions of RC 2929.14(A)(1) requiring the court to select a minimum term and a maximum term.

For example, let's presume that a person is convicted of three separate first degree felonies, and the court selects a minimum sentence of 4 years and maximum sentence of 6

years, for each of the three counts. And the court elects to have those three felony sentences served consecutively.

A fair reading of RC 2929.14(C)(10) suggest that the court should aggregate the sentence by taking the 4 to 6 year sentence and multiplying by 3, to get a total sentence of 12 to 18 years. But RC 2929.14(A)(1) talks about a single three separate counts, sentence the person on each count to an indefinite sentence of 4 to 6 years; to “truly” aggregate sentence arguably would mean to calculate a total sentence of 12 to 18 years (by multiplying each 4 to 6 year sentence by three, to get 12 to 18)

There is another problem with this language. Each prison term is supposed to be an independent term from other prison terms. When a prison term ends, it is complete and cannot be revived or restarted. Under R.C. 2967.271, each minimum term has a presumptive release date. Unless DRC rebuts the presumption and maintains an inmate longer, then upon the expiration of the minimum term, the sentence is complete. This proposed language suggests that even after a minimum has expired, that DRC can reactivate an expired case by using the maximum term at a later date.

For example, assume two cases are ordered served consecutively. Case A is 4 to 6 years and Case B is 4 to 6 years. An inmate will serve 4 years on Case A. Unless the presumption is rebutted and he is maintained, then after 4 years, Case A is finished, along with any maximum term. He then begins Case B. This proposed language suggests that an inmate can finish Case A and begin serving Case B. Then, if he has discipline problems, DRC can take the maximum term on expired Case A and apply it to his sentence either immediately by unilaterally suspending the sentence on Case B, or by applying the maximum term from Case A onto Case B.

Second, the proposed changes to **RC 2929.144(B)** stated:

(B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a one or more qualifying felony felonies of the first or second degree contained in a single indictment, information, or complaint shall determine the single maximum prison term that is part of the sentence for all of the qualifying felonies of the first or second degree contained in the indictment, information, or complaint, in accordance with the following:

(1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term

shall be equal to fifty per cent of the minimum prison term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code ~~plus fifty per cent of that term.~~

(2) If the offender is being sentenced for more than one felony, and if one or more of the felonies is a qualifying felony of the first or second degree, ~~and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.~~

~~(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum prison term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus either the longest minimum term or the aggregate minimum term plus fifty per cent of the longest minimum prison term for the most serious qualifying felony being sentenced. If a person has been sentenced to a non-life felony indefinite prison term prior to the effective date of this amendment, the provisions of section 2929.144 of the Revised Code as they existed at the time of the sentencing apply to the calculation of the maximum term of the person's sentence.~~

~~(4)~~ (3) Any mandatory prison term, or portion of a mandatory prison term, that is imposed or to be imposed on the offender under division (B), (G), or (H) of section 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a

specification, and that is in addition to the sentence imposed for the underlying offense ~~is:~~

(a) Is separate from the non-life felony indefinite sentence being imposed for the qualifying first or second degree felony committed on or after the effective date of this section and shall March 22, 2019;

(b) Shall not be considered or included in determining a maximum prison term for the offender under divisions (B)(1) to (3) of this section; ~~and~~

(c) Is to be imposed separately from the non-life felony indefinite sentence being imposed under this section.

## II. RTA Advisements – outsourced or not?

**Query:** RTA advisements should be simplified and possibly outsourced to ODRC.

### **OJC and DRC comments:**

The sentencing court is required to provide certain notifications at the hearing to the convicted offender. See RC 2929.19(B)(2)(c). DRC is ready, willing and able to assist the court by supplementing any notices that are provided by the court. For example, DRC can serve upon the incarcerated person any specific written advisements or notifications, or excerpts to summaries of such information, that it receives from the sentencing court. With recent technological upgrades, e.g., providing tablets to incarcerated persons, DRC may be able to electronically transmit those documents to a specific incarcerated person.

## III. Most Serious Offender (MSO) Language

**Query:** should some specific MSO language be put back into the Ohio Revised Code?

### **OJC and DRC comments:**

For over two decades, DRC has been calculating earned credit in a manner that looks at the entire sentence; for example, if someone is serving a sentence for two separate counts, murder and felonious assault, they would not be able to earn any credit since the murder is the most serious offense and controls. They would not be able to earn credit from their sentence for felonious assault even though that offense would be eligible.

A year ago, SB 288, the Omnibus Criminal Justice Bill, was enacted and removed the most serious offender language from the Earned Credit (EC) statute, RC 2967.193. That language was excluded from the new EC statute, RC 2967.194, that took effect on April 4, 2024.

The previous EC statute, RC 2967.193(D)(1) provided:

(1) The offender may earn one day of credit under division (A) of this section, except as provided in division (C) of this section, if the most serious offense for which the offender is confined is any of the following that is a felony of the first or second degree:

(a) A violation of division (A) of section [2903.04](#) or of section [2903.03](#), [2903.11](#), [2903.15](#), [2905.01](#), [2907.24](#), [2907.25](#), [2909.02](#), [2909.09](#), [2909.10](#), [2909.101](#), [2909.26](#), [2909.27](#), [2909.29](#), [2911.01](#), [2911.02](#), [2911.11](#), [2911.12](#), [2919.13](#), [2919.15](#), [2919.151](#), [2919.22](#), [2921.34](#), [2923.01](#), [2923.131](#), [2923.162](#), [2923.32](#), [2925.24](#), or [2927.24](#) of the Revised Code;

(b) A conspiracy or attempt to commit, or complicity in committing, any other offense for which the maximum penalty is imprisonment for life or any offense listed in division (D)(1)(a) of this section.

The following changes to the new EC statute, RC 2967.194(A)(2), are proposed:

Except as provided in division (C) of this section and subject to the maximum aggregate total specified in division (A)(4) of this section, a person confined in a state correctional institution or placed in the substance use disorder treatment program may provisionally earn, ~~one day or five days of credit~~, based **upon the most serious offense for which they are incarcerated and** on the category set forth in division (D)(1) or (2) of this section in which the person is included, toward satisfaction of the person's stated prison term,...

#### **IV. Judicial Release**

**Query:** Should RTA offenders be eligible for judicial release? (No other offender has the RTA earned credit).

a. "Mandatory" doesn't mean "mandatory" for mandatory prison terms with 80% release eligibility –

b. "disqualifying offenses" aren't the same as offenses leading to a "restrictive prison term".

c. Why is the JR eligibility of mandatory prison term only applicable to certain offenses (see 2929.20)

#### **OJC and DRC comments:**

The legislature has created different mechanisms for release from DRC institutions, different rules for earned credit and various definitions of different types of prisons terms that are not always congruent and often times unhelpful.

Last year's SB 288 folded the former 80% early release statute into the judicial release statute. This creates additional criteria for courts to consider, e.g., who is an eligible offender, who is a eighty-percent qualifying offender? And can you be both, at the same time, or at different times.

The OJC argued at the time of RTA drafting that judicial release should NOT apply to RTA offenders, who have a separate system of earned credit unavailable to other offenders (RC 2967.271). The built-in RTA earned credit model works better with an indefinite sentencing model than judicial release. Again, this is a policy decision that needs to be made: should judicial release be available to RTA offenders? It should be clear either way. Relatedly, is judicial release unavailable to everyone with a mandatory prison term? Why is a mandatory prison term ineligible for judicial release but is eligible for 80% release?

The current judicial release code contains confusing and conflicting language in its definitions of "disqualifying prison term" and "eligible prison term" and "restricting prison term". This is needlessly confusing and should be made to use the same language, so people know the same thing is being referred to.

In general, whether RTA offenders should qualify for judicial release, or for 80% release (recently moved into the Judicial Release statute, RC 2929.20), are legislative questions that need to be considered and addressed.



## **V. RTA Offenders, sex offenses and earned credit**

**Query:** RTA defendants should all be eligible for RTA earned credits, not just sex offenders, is that correct?

### **OJC and DRC comments:**

As mentioned previously, up until April 4, 2024, earned credit law, RC 2967.193 (D)(4) and (5) provides for 0, 1 or 5 days a month, depending on whatever is the most serious offense.

However, on April 4, 2024, SB 288 changed earned credit law: if eligible for earned credit, someone participating in eligible programs will earn primarily 0 or 5 days a month. See RC 2967.194.

- The new law removes the reference to Most Serious Offenses in subsection (D).
- The “0-day” offenses are going to be offenses like sex offenses committed after 2011, mandatories, and life sentences.
- Everything else is going to be 5 days.

Currently, the statute for sex offenses committed **before 2011** says you get one day a month if you are serving a stated prison term which includes a prison term for a sex offense.

- In concept, this language is similar to the most serious offense language.
- As long as there is a sex offense under their prison number that was committed before 2011, then DRC gives that person 1 day of earned credit per month, for the entire sentence.

DRC has strong concerns that the new Earned Credit statute governing sex offenses committed **after 2011** is not as specific as the statutory language regarding sex offenses committed before 2011.

- Changes to the earned credit law were made in HB 86, that took effect on September 30, 2011
- R.C. 2967.194(C)(3) says no participation credit is allowed if someone is serving a sentence for a sex offense committed after 9/30/2011.
- A “sentence” can be interpreted as either the individual sentence for a specific offense, or the total of multiple sentences.
- Thus, for example, if someone is serving a sentence with DRC for more than one offense, for example, a sex offense concurrent or consecutive to an eligible offense, the new earned credit language seems to indicate the legislature only contemplated the “0 day” rule applies to the single prison term imposed for the sex offense, as a

part of the total aggregate sentence. That is, the 0-day rule does not apply to the prison terms imposed for other, non-sex offenses.

To correct these inconsistencies in the earned credit statute, DRC proposes the following change to one sentence of RC 2967.194(C)(3). DRC proposes to change the current language as follows

From: “...sentence **for** a sexually oriented offense...”

To: “...sentence **that includes** a sexually oriented offense...”

The person is serving a sentence of life imprisonment without parole imposed pursuant to section 2929.03 or 2929.06 of the Revised Code, a prison term or a term of life imprisonment without parole imposed pursuant to section 2971.03 of the Revised Code, **or a sentence for that includes a sexually oriented offense that was committed on or after September 30, 2011.**



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# HISTORY PROJECT

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1990-PRESENT

“What is past is prologue.” - William Shakespeare

The past work of the Commission has laid a foundation for the necessary work of the Commission going forward. The need for the Commission is just as important today as it was at its creation in 1990.

# 1. BACKGROUND

## A. Creation of the Sentencing Commission

- Timeline:
  - 1990 SB 258 Governor signed creating 17-member commission
    - Office of criminal justice services
  - 1992 SB 273 One year to submit felony recommendations
  - 1993 HB [152](#) placed the Commission within the Supreme Court
  - 1994 HB 21 expanded to 24 members – misdemeanor sentencing
  - 1996 SB 2 study forfeiture statutes and monitor impact of new felony laws
  - 1996 HB 670 renamed to Sentencing Council
  - 1997 HB 591 expanded Council to 31 members - study juvenile dispositions
  - 1998 HB [484](#) directed Council to submit juvenile sentencing plan
  - 2000 SB [SB 107](#) restored Commission name
  - 2021 HB 1 added HB 1 Report

## B. History of Enabling Statutes

- 122.21 amended in 1993 to 181.51
- LSC has available the following:
  - 181.21
    - March 23, 2000 ([SB 107](#)- 123<sup>RD</sup> GA)
    - April 12, 2021 ([SB 331](#) – 133<sup>RD</sup> GA)
      - Repealed (D) Juvenile Committee
  - 181.22 (Advisory Committee)
    - Not available in LSC - Repealed
  - 181.23
    - March 23, 2000 ([SB 107](#) – 123<sup>RD</sup> GA)
  - 181.24
    - March 23, 2000 ([SB 107](#) – 123<sup>RD</sup> GA)
  - 181.25
    - March 22, 2013 ([HB 247](#) – 129<sup>TH</sup> GA)
  - 181.26
    - April 12, 2021 ([SB 331](#) – 133<sup>RD</sup> GA)
    - Repealed
  - 181.27
    - April 12, 2021 (HB1 – 133<sup>RD</sup> GA)

## C. Chair of the Commission

- 2023 to Present

- Chief Justice Sharon Kennedy
    - Executive Director – Melissa Knopp (October 2023 to Present)
      - Interim Director – Nikole Hotchkiss (May 2023 to October 2023)
- 2011 to 2022
  - Chief Justice Maureen O'Connor
    - Executive Director – David Diroll (1990 to 2014)
    - Executive Director – Sara Andrews (2014 to May 2023)
- 2010
  - Chief Justice Eric Brown
    - Executive Director – David Diroll (1990 to 2014)
- 1990 to 2010
  - Chief Justice Thomas Moyer
    - Executive Director – David Diroll (1990 to 2014)

#### D. Commission Staff History

- Todd Ives, Research Specialist (Present)
- Will Davies, Criminal Justice Counsel (Present)
- Alex T. Jones, Criminal Justice Counsel (Present)
- Michael Crofford, Research Specialist (Present)
- Niki Hotchkiss, Research Director, Assistant Director, Interim Director (2019-2023)
- Scott Shumaker, Criminal Justice Counsel (2018-2022)
- Jo Ellen Cline, Criminal Justice Counsel (2014 – 2017)
- Cynthia Ward, Administrative Assistant (1990 - 2015)
- Fritz Rauschenberger,
- Lisa Hickman, Research Specialist (2017-2019)
- Scott Anderson, Staff Attorney (2003-2007)
- Shawn Welch, Law Clerk
- Jeff Harris, Research Analyst (2004-2006)
- Throughout the history of the commission various interns and externs have contributed to the work of the Commission.
- Numerous legal interns from the legislative clinic of The Ohio State University College of Law have also contributed to the work of the Commission.

## **2. SENTENCING COMMISSION STATUTORY DUTIES**

### **R.C. [181.23](#)**

- (A)(1) Evaluate the effectiveness of the sentencing structure of the state.
- (A)(2) Study all existing criminal statutes
- (A)(3) Review any existing sentencing guidelines
- (A)(4) Determine the capacity and quality of existing correctional resources
- (A)(5) Profile populations of state and local correctional facilities and programs
- (A)(6) Coordinate correctional resources
- (A)(7) Identify additional correctional resources that are needed
- (B) Develop a sentencing policy

### **R.C. [181.24](#)**

- (A) And (B) By July 1, 1993 recommend to the GA comprehensive criminal sentencing structure consistent with policy developed in 181.23(B) and conclusions of 181.23(A) study.
- (C) Project impact of sentencing plan on correctional resources and need for more
- (D) Determine special appellate procedures
- (E) Submit draft version for review

### **R.C. [181.25](#)**

- (A)(1) Assist General Assembly in implementing plan
- (A)(2) Monitor and report biennially
- (A)(3) Review all criminal bills introduced
- (A)(4) Study sentencing structures and costs in Ohio, other states and federally
- (A)(5) Collect and maintain data regarding felony sentence appeals and postconviction
- (B) Study forfeiture law and recommend changes by July 1, 2002

### **R.C. [181.27](#)**

- (B)(1) Study the impact of changes made in HB 1 and continue to study
- (B)(2) No later than December 31, 2021 and biennially thereafter, submit report

### **3. SENTENCING COMMISSION WORK**

#### **A. Legislative Work of the Commission (1996 to Present)**

1996

SB 2 “Truth in Sentencing”  
SB 269 companion with SB2

2002

HB 327 Criminal Forfeiture  
SB 179 Juvenile Sentencing  
HB 393 Juvenile Sentencing Refinements

2004

SB 123 Traffic Law  
HB 490 Misdemeanor Sentencing

2005

HB 329 Traffic Law Refinements  
HB 52 Restitution and Vehicular Homicide  
HB 163 OVI penalties and record keeping

2006

SB 260 New Penalties for Sex Offenses

2007

HB 241 Forfeiture Criminal/Civil – Introduced in 2005  
HB 461 Vehicular Homicides and Assaults

2011

HB 86 Felony sentencing

2016

SB 272 Parole

2017

SB 64 Juvenile Mandatory Bindover  
Marsy’s Law – Constitutional Amendment  
SB 201 Indefinite Sentencing – Reagan Tokes Law

2018

HB 439 companion SB 274  
SB 274 Bail Modifications  
SB 1 Drug Laws

2019

SB 3 Drug Sentencing

2020

HB 1 Sealing, ILC, Inv Court Ordered Treatment, CC Changes  
SB 331 Sunset Review  
SB 353 Pretrial Reform Bill

2021

HB 110 Budget Bill - Clarified HB 1 changes  
HB 166 SB 201 refinements

2022

SB 288 Criminal Omnibus Bill

## B. Felony Sentencing

- a. SB 2 – Truth in Sentencing
- b. HB 86 Summary (2011)
- c. Life Without the Possibility of Parole – State Summary (2015)
- d. Interstate Commission For Adult Offender Supervision (2015)
- e. History of Marijuana Laws in OH and Supplemental Reports (2015)
- f. Extradition for Interstate Compact Cases (2016)
- g. Extended Sentencing RC 2929.202 (2016)
  - i. Approved by full Commission (14-1)
  - ii. Arose out of Ad hoc Committee to Review Extended Sentences
- h. Felony Sentencing in Ohio: Then, Now and Now What? (2022-2023)
- i. SORN Ad Hoc Committee Report & Recommendations (2016)
  - i. Sex Offender Registration Ad Hoc Committee (2015)
- j. Legislative and Judicial Brief (2016 to Present)
  - i. Statutory Duty – 181.25(A)(3)
  - ii. Volume 1 (2016) through Volume 8 (2023)
- k. A Plan for Simplifying the Ohio Revised Code (2008)
  - i. Pursuant to 181.24(A)
  - ii. Has never been acted upon by GA
- l. Monitoring Reports (1997 to Present)
  - i. Statutory Duty
    - 1. 181.25 (A)(2) Monitor and report to the GA biennially:
  - ii. Reports
    - 1. Monitoring Sentencing Reform (1997)
    - 2. Monitoring Sentencing Reform (1998)
    - 3. Monitoring Sentencing Reform (1999)
    - 4. Monitoring Sentencing Reform (2001)
    - 5. Monitoring Sentencing Reform (2003)
    - 6. [Monitoring Sentencing Reform \(2005\)](#)
    - 7. [A Decade of Sentencing Reform \(2007\)](#)
    - 8. [Monitoring Sentencing Reform \(2009\)](#)
    - 9. [Prison Crowding: The Long View, With Suggestions \(2011\)](#)
    - 10. OCSC Monitoring Report 2023 Working Draft (2023 Pending)
- m. Justice Reinvestment 2.0 in Ohio (2017)
  - i. Worked with Justice Reinvestment (JRI 2.0) Committee (2017 to 2018)
- n. Uniform Sentencing Entry and Associated Templates (2019 to Present)
  - i. Ad hoc committee Uniform Sentencing Entry (2020)
  - ii. Development and revision of USE and other templates
  - iii. Ohio Sentencing Data Platform
- o. Firearm Sentencing Penalties In The 133<sup>RD</sup> General Assembly (2020)
  - i. SB 221 – Governor Dewine’s Strong Ohio Proposal
    - 1. In response to mass shooting in Dayton
- p. COVID-19 (2020)



- i. Covid-19 and the Courts 2020: A Survey of Ohio Judges, Court Administrator, and Attorneys
- ii. Covid-19 and the Courts 2020: Follow-Up Interviews Addendum to the Full Report

### C. Misdemeanor Sentencing (1994 to Present)

- a. HB 21 (1994)
- b. Misdemeanor Sentencing: A Plan (December 1998)
  - i. Volume 1: Misdemeanor Sentencing
  - ii. Volume 2: Traffic Overhaul
  - iii. Volume 3: Distribution of Fines and Costs
- c. Misdemeanor Sentencing Primer (HB 490 and others) (2004)
- d. Interstate Compact & Municipal Courts (2015)
- e. Crimes Reduced to Misdemeanors – a look back to 1990 (2015)

### D. Juvenile Sentencing (1999, 2015, 2016)

- a. R.C. 181.26 (Repealed April 12, 2021: SB 331 – 133<sup>RD</sup> GA)
- b. A Plan for Juvenile Sentencing (1999)
  - i. Basis of SB 179
- c. Bindover Proposal (2016)
  - i. Based on Commission approved draft of changes to 2152.12
- d. Extended Sentence Review – Juvenile Offenders 2967.13(B) (2015)
  - i. Basis of SB 272 (131<sup>ST</sup> GA)
  - ii. Arose out of Ad hoc Cmte to Review Extended Sentences
- e. Juvenile Costs, Fees and Restitution Proposal (2015 to 2016)
  - i. RC 2152.20 – Forwarded proposal to General Assembly
- f. Confinement Credit Proposal (2015)
  - i. RC 2151.18 Draft approved Commission November 2015

### E. Asset Forfeiture Plan (2003)

- a. 181.25(B) Statutory Duty – by July 1, 2002 – COMPLETED!
- b. Title 29 (Criminal Code) and Title 45 (Traffic Code)
- c. HB 241 (2007)

### F. National Association of Sentencing Commissions' Annual Conference (2018)

- a. Host

### G. HB 1 (133<sup>RD</sup> General Assembly) REPORT (2022 to Present)

With the passage of HB1, R.C. 181.27 was added to the Sentencing Commission enabling statutes. The Commission was given the duty to study the impact of the changes that were made regarding the Attorney General Reimbursement Fund, R.C. 109.11, Community Control Sanctions and Technical Violations, R.C. 2929.15, Intervention in Lieu

of Conviction, R.C. 2951.041, Sealing of Record of Conviction or Bail Forfeiture, R.C. 2953.31 and R.C. 2953.32, and Involuntary Commitment to Treatment in Probate Courts, R.C. 5119.94. The first biennial HB1-Impact Study report was completed in [2022](#). The second HB1 Impact Study report was completed in [2023](#). The next report will be due December 31, 2025.



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**TO:** Ohio General Assembly

**FROM:** Ohio Criminal Sentencing Commission

**DATE:** May 16, 2024

**RE:** Adult Unconstitutional Ohio Revised Code Sections

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[R.C. 181.25\(A\)\(4\)](#) directs the Ohio Criminal Sentencing Commission (the Commission) to study the existing sentencing structure of the state and recommend necessary changes. Consistent with the Commission's statutory mandate, this memorandum is notification to the General Assembly that legislative action may be necessary, as the Supreme Court of Ohio has held the following criminal code sections unconstitutional in whole or in part. While the commission does not offer specific corrections or fixes, the legislature will need to evaluate the purpose of these code sections and decide whether they need to be repealed, modified or rewritten in some way.

#### **2901.08(A)**

R.C. 2901.08(A) allows a court to use an adjudication of delinquency or juvenile traffic offender as a conviction when considering appropriate charges or sentence of the person now that they have attained adulthood. The Supreme Court found that it was unconstitutional to use that juvenile record against an adult.

The Supreme Court in [State v Hand, 149 Ohio St.3d 94, 2016-Ohio-5504](#) found that R.C. 2901.08(A) violates the Due Process Clauses of Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution because it is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult. A juvenile adjudication cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum.

#### **2907.03(A)(13)**

R.C. 2907.03 is the offense of Sexual Battery. For the offense of Sexual Battery, only subsection (13) is unconstitutional. Subsection (13) applies strict liability to police officers regardless of the relationship with the victim. This is an instance where the legislature must decide whether the underlying principles of holding a police officer strictly liable necessitates a rewrite of this statute, a repeal of the statute or some other resolution.

The Supreme Court in [State v. Mole, 149 Ohio St.3d 215, 2016-Ohio-5124](#) found that R.C. 2907.03 is generally a valid scheme insofar as it imposes strict liability for sexual conduct on various classes of offenders who exploit their victims through established authoritarian relationships. But subdivision (A)(13) irrationally imposes that same strict liability on peace officers even when there is no occupation-based relationship between the officer and the victim. We therefore conclude that R.C. 2907.03(A)(13) is



an arbitrarily disparate treatment of peace officers that violates equal protection under the Ohio Constitution and the United States Constitution.

### **2953.73(E)(1) and 2953.72(A)(8)**

The sentence at issue is found in R.C. 2953.73(E)(1) and states, “If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may seek leave of the supreme court to appeal the rejection to the supreme court \* \* \*.” By severing the phrase “seek leave of the supreme court to,” the court removed the offending discretionary-review process. The statute then permissibly reads, “If the offender was sentenced to death for the offense for which the offender claims to be an eligible offender and is requesting DNA testing, the offender may appeal the rejection to the supreme court.”

With regards to 2953.72(A)(8) by severing the text that reads “seek leave of the supreme court to” and “to that court if the offender was sentenced to death for the offense for which the offender is requesting the DNA testing and, if the offender was not sentenced to death for that offense, may appeal the rejection to the court of appeals,” the section is left with the direction that “the offender may appeal the rejection.”

The Supreme Court’s solution was to sever the offending language to make the statutes constitutional. Until the legislature makes a decision and adopts or changes the severance that the Supreme Court decided, then the language remains in the Ohio Revised Code.

The Supreme Court in [State v. Noling, 149 Ohio St.3d 321, 2016-Ohio-8252](#) found that R.C. 2953.73(E)(1), which denies appeals of right from rejections of applications for DNA testing in cases in which the death penalty is imposed, is unconstitutional. The court held that unconstitutional portions of R.C. 2953.73 are severed. After severance, R.C. 2953.73 entitles capital offenders to appeals of right to this court. Further the Court held that the same analysis applies equally to 2953.72(A)(8).

### **2950.031 and 2950.032**

The Supreme Court held that the legislature could not give the executive branch a function that is for the judicial branch. Judges had already made the findings and ordered registrations, so the executive could not be given the authority to undo that decision and reclassify. The offending statutory language is still present in the revised code.

The Supreme Court in [State v. Bodyke, 126 Ohio St.3d 266, 2010-Ohio-2424](#) found that R.C. 2950.031 and 2950.032 violate separation of powers by requiring executive branch to reclassify sex offenders already classified by court order. Only appellate courts are constitutionally permitted to review or modify court judgments. The Executive branch may not reopen final judgments.

### **2929.13(F)(3)(b)**

The Supreme Court held that 2907.05(C)(2)(a) Gross Sexual Imposition with corroborating evidence was unconstitutional. The 134<sup>TH</sup> legislature in SB 288 repealed 2907.05(C)(2)(a). However, 2929.13(F)(3)(b) still contains the language that the court shall impose a prison sentence when there is evidence beyond the testimony of the victim that corroborates the violation.



The Supreme Court in [State v. Bevely, 142 Ohio St.3d 41, 2015-Ohio-475](#) found that because there is no rational basis for the provision in R.C. 2907.05(C)(2)(a) that requires a mandatory prison term for a defendant convicted of gross sexual imposition when the state has produced evidence corroborating the crime, the statute violates the U.S. Constitution.

For further information or inquiry please contact Melissa A. Knopp, Esq., Director of the Ohio Criminal Sentencing Commission, at [Melissa.Knopp@sc.ohio.gov](mailto:Melissa.Knopp@sc.ohio.gov) or (614) 378-9311.

DRAFT