

## **Operation and Leadership**

Committees of diverse membership – including members outside of the Commission and its Advisory Committee – and Ad Hoc Committees meet regularly, while the full Commission meets quarterly. The next full Commission meeting is June 27, 2019. Chief Justice O’Connor chairs the Commission and the Vice-Chair is Judge Nick Selvaggio from the Champaign County Court of Common Pleas.

## **Sentencing Commission Project Updates**

### **— Drug Chapter Workgroup**

Our membership has long discussed the need for common sense changes to modernize and refine the provisions of Revised Code section 2925 dealing with controlled substance offenses. We’ve agreed that at minimum those efforts must address the way trace amount drug cases are handled while ensuring the distinction between drug users and drug traffickers and recognizing that relapse is a part of recovery. To that end, Commission staff has referred to the work of the Recodification Committee, monitored legislative efforts, considered the content of Issue 1 and subsequent draft proposals (i.e. “the Klein-O’Brien plan”), and researched reform efforts in other states in order to help inform the discussion of recommended changes to Chapter 2925.

At the full Commission meeting on December 13, 2018, the Commission heard details on several proposals for drug sentencing reform, including the “Klein-O’Brien” plan, suggestions from the Ohio Judicial Conference and Chief Justice, the “Ohio Fresh Start” plan and others. In November 2018, a request was submitted to DRC for estimated bed impact, which remains pending. The Commission sanctioned a workgroup to convene to attempt harmonization of the proposals for the Sentencing and Criminal Justice Committee to consider before presentation to the full Commission. That work group has met several times and anticipates written recommendations this summer.

### **— Recodification**

Commission staff has continued work in partnership with the Ohio Judicial Conference (OJC) to move forward portions of the Recodification Committee recommendations. We have parsed many of the recommendations into two proposed bills, one specific to the drafting conventions to improve readability and those in which a mens rea element was added. The second bill contains changes deemed non-controversial aimed at nonviolent and property related crimes. Both bills were drafted by LSC, but will have to be resurrected under the 133<sup>rd</sup> General Assembly. Commission and OJC staff will work with the legislature to identify potential sponsors.

### **— Juvenile Committee**

The Committee is interested in pursuing funding for a proposed study of juvenile sentencing practices in Ohio. The Committee upcoming focus will be to identify its priorities for future work.

### **— Justice Reinvestment**

The final scheduled meeting of the Ohio Criminal Sentencing Commission’s Justice Reinvestment (JR) 2.0 Ad Hoc Committee was on November 8, 2018. The goal of the group is to “develop a statewide public safety strategy to reduce crime, improve behavioral health treatment and adopt more cost-effective sentencing, corrections and supervision policies.” The work has resulted in four related policy objectives: reducing violent crime, expanding mental health and drug treatment, reducing recidivism and its costs, and improving criminal data collection – all of which received final votes by committee members. A summary report was distributed in May 2019 and a longer, definitive report will be prepared once legislation is enacted by (the 133<sup>rd</sup>) General Assembly.

[More information is available here.](#)

### — Bail and Pretrial Services

The report and recommendations from the Commission inspired legislation Sub.HB439 (Dever, Ginter) and SB274 (McColley), which did not advance in the lame duck session of the 132<sup>nd</sup> General Assembly. In March 2018, staff of the Ohio Criminal Sentencing Commission produced a report to estimate costs associated of implementation for provisions in the proposed legislation.

The Supreme Court of Ohio Commission on Rules of Practice and Procedure considered our Bail and Pretrial Services Report and Recommendations that impacted Crim. R. 46. Accordingly, the Commission on the Rules of Practice and Procedure proposed a number of changes to the Rules of Evidence and the Rules of Criminal Procedure, including Rule 46(B). The revisions suggest that bond should be set based on the least restrictive conditions that, in the court's judgment, will reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. In Crim. R. 46, the Commission also proposed adding an additional item for the court to consider in setting bond – a risk assessment tool. Those changes remain pending and the Chief Justice has in the meantime created a [Task Force to Examine the Ohio Bail System](#). The Task force met several times between January and May 2019, and a final report is expected soon.

In October 2018, we received notice that we were awarded a grant in collaboration with the Office of Criminal Justice Services regarding data collection for bail and pretrial services with a variety of courts on the project. The summary description is as follows:

*Under the Special Emphasis project, OCJS will collaborate with the Ohio Criminal Sentencing Commission, an affiliated office of the Supreme Court of Ohio, to move Ohio municipal and common pleas courts toward better and more comprehensive data collection on bail and pretrial services. OCJS and the Criminal Sentencing Commission will carry out the following activities:*

- 1) Assess the quality of local court data and examine the extent to which these records can support analysis of bail and pretrial services;*
- 2) Make recommendations regarding data collection based on local needs and the standards identified as most critical in assessing outcome and performance measures for the bail and pretrial services field, and their related court functions; and*
- 3) To work with identified courts on early implementation of these recommendations.*

### — Appellate Review of Felony Sentencing

Sentencing Commission members and the Ohio Judicial Conference are working on a legislative proposal to amend ORC 2952.08 dealing with Appellate Review of Felony Sentencing. The chapter currently contains language that has been subject to inconsistent and often conflicting interpretation throughout the state. These efforts are intended to provide a method for uniform and meaningful review of felony sentencing by appellate courts through clear drafting and concise statements of standards. Judges, prosecutors, and representatives of the defense bar presented a draft to the full Commission in September 2018, which was tabled for future discussion. The working group met in early January 2019 to refine the proposal and is now working to incorporate relevant elements of SB201 – indeterminate sentencing.

### — Case disposition

This ongoing project uses a variety of data sources in an effort to better understand where people go when they leave the court. We started with 2016 data using a small subset of counties (and Common Pleas courts) to explore whether we could put data together to comprehensively tell disposition outcomes for all cases in a

county where an F5 was the highest offense of conviction. We are now gathering 2017 and 2018 data. This type of analyses allows us not only understand the number of cases sentenced to prison, but also to see those sentenced to community control (and types of community control, if available) or jail.

#### — T-CAP

In an effort to contribute to the conversation in useful and meaningful ways, the Commission has been studying, and trying to better understand, why T-CAP eligible F5 offenders might be sent to prison. Our purpose and intent is to consider what was/is happening at the local level. We chose a “deep dive” approach – a small, intensive, qualitative study of journal entries of sentence in just a few counties, some now participating in TCAP and some not. Using both allowed us to better see if there may be similarities or differences between the groups, while at the same time knowing it was/is a small case study and not representative of all counties or Ohio.

#### — Jail recidivism

This project is in collaboration with the Buckeye State Sheriff’s Association, the Stepping Up initiative in Ohio and the Council of State Governments. The project goal is to establish, and then possibly measure, the concept of jail recidivism. We are also considering partnering the conversation of defining jail recidivism with an effort to identify trends and patterns of jail population over time using the historical jail data the Commission has from the early 2000s in combination with more recent data.

#### — Data Analysis

One of the Commission’s ongoing priorities is sensible criminal justice and drug reform in Ohio. We believe constructive conversation about treatment and program resources, capacity, and outcomes is critical to getting it right, but constructive conversation is not possible without movement towards a data-informed environment. Data at the aggregate level could provide Ohio with a framework designed to reduce criminal justice involvement and move people with drug dependency and mental health needs into treatment that works.

Thus, we are working with members of the General Assembly to include language authorizing (and obligating) the Sentencing Commission to regularly monitor and report on the implementation, application, and administration of legislation enacted that impacts sentencing. Empowering the Commission to collect aggregate criminal justice data will provide an unprecedented level of information for system practitioners and policy makers that can, in turn, be used to develop and implement new law enforcement interventions and policing strategies, to refine extant criminal justice policies, and to leverage resources and programming to improve outcomes. Robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system.

#### — Resources

The Commission has [Reagan Tokes Law Information](#)

The law mandates a system of indefinite sentencing for non-life felonies of the first and second degree and applies to offenses committed after March 22, 2019. Contact Commission staff for more information or training opportunities. [Resources and information can be found here.](#)

The Commission has published the first in a series of Data Briefs, [The Data Disconnect: Adult Criminal Justice Data in Ohio](#) and recently updated other [Quick Reference Guides](#).

# OHIO

## CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215 3431

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**TO:** Senator O'Brien , Representative Boggs  
Senator Manning, Representative Carfagna

**FROM:** Sara Andrews, Director

**DATE:** May 17, 2019

**RE:** Reagan Tokes Law – Indefinite Sentencing implementation

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As sponsors of SB133 and HB215, I'm writing to follow up on conversations we've had regarding the implementation of Senate Bill 201 "The Reagan Tokes Law". As you may know, Sentencing Commission staff are providing education and training for criminal justice practitioners throughout the state on the provisions of the law. These presentations are generating meaningful feedback from stakeholders and provide us an opportunity to examine the operational impact of the law.

Thus, we've attempted to synthesize this feedback into the attached working document that was discussed at the Sentencing and Criminal Justice Committee on May 16, 2019. The listed discussion points reflect areas of the law that are identified as difficult to administer or are unclear in application for the imposition of indefinite sentences and sentence computation. As you know, felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehensible sentences is of the utmost import for the administration of justice and promoting confidence in the system.

We hope to further discuss these topics with you and that legislation will be drafted to clarify the provisions of the law. We look forward to working with you and if you have any questions or need additional information, please let us know.

# REAGAN TOKES LAW

## SB201 IMPLEMENTATION

- **DEFINITIONS OF TERMINOLOGY** – SB201 introduces several terms that would benefit from clear and concise definition, and existing defined terms could also benefit from additional clarification in light of the new indefinite sentencing provisions. Definitions of the following terms would ease practitioner implementation of the new sentencing structure and aiding understanding of the interplay of specifications, definite terms, and indefinite minimum and maximum terms. The work of the Criminal Justice Recodification committee, upon which portions of SB201 were based, could provide some clarity with regard to definitional terms.
  - **Most serious felony** – not currently defined – should be objective and not subjective decisions to avoid disparate impact
  - **Minimum term**
  - **Maximum term**
  - **Stated Prison Term** – clarify definition vs prison term – include “stated minimum” and “stated maximum”
  - **Exceptional conduct or adjustment to incarceration**
- **FIX TO SENTENCING FORMULAS** – Remove “or definite term” from consecutive sentence formula in RC 2929.144(B)(2) and place it in concurrent sentencing formula in RC 2929.144(B)(3) to solve consecutive sentence issues(below)
- **ORDER OF SERVICE OF SENTENCE ISSUES** – Existing 2929.14(C)(9) addresses how definite terms previously or subsequently imposed interact with indefinite terms – however, this provision needs to be expanded to allow practitioners to properly advise defendants of the impact of their sentences. Areas that need to be addressed include:
  - **Concurrent sentences w/in same case** – Potential for a longer definite term to be run concurrent to an indefinite term, no guidance from statute as to what happens to the potential maximum term.
  - **Concurrent sentences between multiple files** – A defendant could have sufficient jail time credit to cause expiration of a minimum term on one file but a maximum term that exceeds the minimum and maximum on another file. What then becomes of the maximum term?
  - **Consecutive sentences between multiple files** – Can ODRC extend incarceration of one indefinite sentence before a defendant would begin serving a consecutive indefinite minimum term?

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- **Consecutive indefinite sentences and life sentences** – Similarly, can ODRC extend incarceration beyond the minimum term before the defendant begins serving the mandatory portion of a life sentence?
- **Contemporaneous sentencing of multiple files** – two issues
  - 2929.14 says previous or subsequent – not contemporaneous sentencing.
  - Depending on answers above, can a judge structure the order of indefinite sentences at the sentencing hearing?
- **EARNED REDUCTION OF MINIMUM PRISON TERM (ERMPT)** – Incentivizing good behavior in prison is a laudable goal, but several concerns have arisen amongst stakeholders with regard to ERMPT hearings.
  - **Is the defendant entitled to counsel** – unlike judicial release, this process is started administratively by DRC – In some counties full time public defenders may be available to represent these defendants but many jurisdictions may lack the resources to provide counsel.
  - **Are mandatory sentences eligible** – generally mandatory sentences include a provision exempting them from reduction by RC 2967 – As with sexually oriented offenses, a provision specifically excluding mandatory sentences would be beneficial (as would a definition of “mandatory sentence”)
  - **Subpoenaing of DRC staff to testify** – Clarification of what “information” the sentencing court is to consider at an ERMPT, particularly from prosecutor and victim. Can prosecutor subpoena DRC staff to testify at these hearings?
  - **Concerns about timeframe** – some courts worried that 90 days is not sufficient time to schedule a hearing, have defendant transported, review information, etc.
    - **Feasibility of conducting hearings via videoconference?**
    - **Must a court schedule a hearing? What if they wish to agree to the reduction?**
  - **Appellate review of denial of ERMPT** – Is a denial by the sentencing court of a reduction subject to review under 2953.08? Can DRC appeal that decision, or just the defendant?
  - **Still eligible for earned credit** – These defendants are still eligible for some form of earned credit – does that count towards a presumed early release date?
  - **Removal of judicial veto** – Should the release decision be purely administrative and determined by DRC – judges have expressed concern about the lack of meaningful discretion in reviewing ERMPT.
- **JUDICIAL RELEASE ISSUES** – can a defendant still apply for judicial release after the expiration of the minimum term? Does the judge then have authority to return them to prison if they violate community control?
- **EXTENDING INCARCERATION BEYOND MINIMUM TERM** – is this administrative decision subject to appellate review? A provisions providing for appellate review could be inserted into 2953.08.
  - **Is defendant entitled to counsel at the hearing?**

# OHIO

## CRIMINAL SENTENCING COMMISSION

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TO: Senator Eklund and Senator O'Brien

FROM: Sara Andrews, Director

RE: Sentencing Commission Study of Sub. Senate Bill 3

DATE: April 15, 2019

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We appreciate the opportunity to participate in the conversation to craft sensible drug reform law in Ohio. As previously mentioned, constructive conversation about treatment and program resources, capacity, outcomes and, importantly movement toward a data-informed environment is critical to getting it right. Data at the aggregate level will provide Ohio a framework designed to move people with drug and mental health needs into treatment that works and reduce criminal justice involvement.

Empowering the Commission to collect aggregate criminal justice data will provide an unprecedented level of information for system practitioners and policy makers that can in turn be used to develop and implement new law enforcement interventions and policing strategies, to refine extant criminal justice policies, and to leverage resources and programming to improve outcomes. Robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system and guides people who need treatment into effective programs.

Thus, as discussed, below is draft language authorizing (and obligating) the Sentencing Commission to regularly monitor and report on the implementation, application, and administration of the provisions in Sub. Senate Bill 3:

**NEW Sec. 181.27.** In addition to its duties set forth in sections 181.23 to 181.26 of the Revised Code, the state criminal sentencing commission is hereby designated a criminal justice agency as defined in Revised Code section 109.571 and as such is authorized by this state access to computerized and other databases administered by state and local agencies or jurisdictions for the purposes of the administration of criminal justice. The state criminal sentencing commission, within 90 days after the effective date of this section, pursuant to section 181.23, shall study the impact of sections relevant to 133rd General Assembly Senate Bill 3, including but not limited to, changes to sections 1901.20, 1907.02, 2925, 2941.1410, 2953.31, 2953.32, 2953.52, 5119.93, 5119.94 and submit its findings to the general assembly and the Governor in a report that contains the results of the study and recommendations December 31<sup>st</sup> of every even numbered year beginning in 2020.

# OHIO

## CRIMINAL SENTENCING COMMISSION

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### RIGHTS RESTORATION AND RECORD SEALING IN 133<sup>rd</sup> G.A.

The 133<sup>rd</sup> General Assembly has undertaken several efforts to alleviate collateral consequences of conviction, introducing legislation aimed at expansion of intervention in lieu of conviction, record sealing, and expungement procedures.

#### HOUSE BILL 1

HB1 was developed based upon the recommendations of Chief Justice Maureen O'Connor, as discussed at the Commission's December 2018 meeting. It was introduced by Representatives Plummer and Hicks Hudson on 5/21/19 and voted out of the House Criminal Justice Committee on 6/13/19 at its fourth hearing. It addresses both intervention in lieu of conviction and record sealing procedures.

Subject	Current law	Proposed Changes in HB 1
<u>Intervention in Lieu</u> R.C. § 2951.041	<p>(A) Court may reject request outright or may grant request, staying proceedings and ordering an eligibility and/or addiction assessment and intervention plan.</p> <p>(B) Lays out eligibility criteria court to consider.</p> <p>(C) After hearing, court may grant or deny ILC</p>	<p>(A) <b>Requires</b> court to hold a hearing when “offender alleges that drug or alcohol usage ... was a factor leading to the criminal offense”</p> <p>(B) Excludes felony sex offenses from ILC consideration.</p> <p>(C) Establishes a <b>presumption that ILC be granted</b> “unless court finds specific reasons .... [ILC] would be inappropriate” and requires those reasons to be memorialized “with particularity, in a written entry.”</p> <p>Limits length of intervention plan under ILC to a maximum 5 years.</p>
<u>Record Sealing</u> R.C. § 2953.31 R.C. § 2953.32	<p><b>All Felony convictions F4 or F5:</b> Offender not eligible for sealing if convicted of 5 or more felonies.</p> <p><b>F3 Conviction:</b> Offender may seal 1 felony, 2 misdemeanors, or 1 felony and 1 misdemeanor.</p> <p><b>Timing of sealing eligibility:</b> 3 years from final discharge if convicted of 1 felony. 4 years from final discharge if convicted of 2 felonies. 5 years from final discharge if convicted of 3-5 felonies.</p>	<p><b>All Felony convictions F4 or F5:</b> Removes 5 felony cap and allows unlimited sealing of F4 and F5 convictions.</p> <p><b>F3 Conviction:</b> Offender may seal 2 felonies, 4 misdemeanors, or 2 felonies and 2 misdemeanors.</p> <p><b>Timing of sealing eligibility:</b> 1 year from final discharge for F4 and F5 convictions. 3 years from final discharge for F3 convictions.</p>

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### SENATE BILL 160

Senate bill 160 was introduced by Senators O'Brien and Rulli on 6/10/19 and awaits committee assignment. It would establish provisions allowing for expungement of a criminal record where an individual has lived a law abiding life for a substantial period (10-20 years) since final discharge of the offense, and eliminates the waiting period to seal a "no bill" grand jury decision.

Subject	Current law	Proposed Changes in HB 1
<b>Record Sealing</b> R.C. § 2953.32 R.C. § 2953.52	<b>Timing of sealing eligibility – "No bill"</b> Requires 2 year waiting period to apply for sealing of records when a grand jury reports a "no bill".	<b>Timing of sealing eligibility – "No bill"</b> <b>Removes</b> waiting period, allowing immediate application for sealing when a "no bill" is reported by a grand jury.  <b>Adds</b> new provision (1)(2) in 2953.32 allowing a person who has sealed their record under that section to later apply for expungement under new § 2953.39.
<b>Expungement</b> R.C. § 2953.39	Proposed new section – Current expungement only available in very limited circumstances.	Establishes a mechanism allowing application for <b>expungement</b> of non-excluded misdemeanor or felony offenses after: <ul style="list-style-type: none"> <li><b>F3, F4 and F5 and misdemeanor offenses</b> 10 years from final discharge.</li> <li><b>F2 offenses</b> 15 years from final discharge</li> <li><b>F1 offenses</b> 20 years from final discharge</li> </ul> <p>Expungement petition must state grounds for relief on its face or court can deny petition without a hearing. At a hearing the court must determine by a preponderance of the evidence that the applicant has not been convicted of a <b>disqualifying offense</b> since the time of final discharge. The court then must consider any objections by the prosecutor, input from the victim, and specific factors laid out by the statute to determine if the applicant represents a threat to society. Presumption in favor of granting application.</p> <p><b>Excluded Offenses:</b>            Aggravated Murder, Murder, Voluntary Manslaughter, Permitting Child Abuse, Patient Abuse, Kidnapping, Abduction, Unlawful Restraint, Aggravated Arson, Terrorism, Domestic Violence, Trafficking in Drugs, and Unlawful Sexual Conduct with a Minor.            Violations of 4511.19 (OVI).            Sexually oriented offenses or child victim oriented offenses.            Substantially equivalent municipal ordinance violation</p> <p><b>Disqualifying Offenses:</b>            Any felony, violation of 4511.19, or a sexually oriented/child victim oriented offense or substantially equivalent municipal ordinance violation.</p>

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65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE 614 3879305 • FAX 614 3879309

TO: Members of the Ohio JR 2.0 Ad Hoc Committee

FROM: Thomas J. Stickrath, Director – Ohio Department of Public Safety  
Sara Andrews, Director – Ohio Criminal Sentencing Commission

RE: Ohio JR 2.0 Final Summary

DATE: May 16, 2019



The final scheduled meeting of the Ohio Justice Reinvestment (JR) 2.0 Ad Hoc Committee was on November 8, 2018. The goal of the group was to “develop a statewide public safety strategy to reduce crime, improve behavioral health treatment and adopt more cost-effective sentencing, corrections and supervision policies.” The work resulted in four related policy objectives: reducing violent crime, expanding mental health and drug treatment, reducing recidivism and its costs, and improving criminal data collection – all of which received final votes by committee members. [More information is available here.](#)

The work of JR contributes to the ongoing commitment to reasoned, thoughtful criminal justice reform efforts in Ohio. As such, the recommendations of the group have been instructive and some are being pursued in whole or in part, as they conceptually align with several key provisions in Governor DeWine’s proposed budget, current Executive agency and Supreme Court of Ohio initiatives and legislative efforts, including Sub. Senate Bill 3. Those common themes address issues such as:

- Building on Ohio’s effective treatment system and its positive outcomes with recovery. Recovery Ohio is designed to coordinate a statewide strategy and system of accountability to achieve improved prevention, treatment, and recovery outcomes for Ohioans, including an emphasis on those involved with criminal justice.
- Continuing to strengthen support for law enforcement efforts to reduce violent/drug crimes and bolster collaboration between law enforcement and treatment professionals in Ohio.
- Expanding treatment to people suffering from mental illness and supporting programs that target substance use disorders, including the use of Medication Assisted Treatment.
- Expand access to and the number of specialized dockets in Ohio courts.
- Establishing a presumption of community supervision and allocating funds for locally managed probation departments to ensure people supervised in Ohio’s communities are receiving treatment to address addiction and mental health needs.
- Improving behavioral health care coordination and recognizing the prevalence of mental illness among incarcerated Ohioans.
- Modernizing and streamlining sentencing laws through examination of the length of community supervision terms, focusing supervision based on risk and needs, reducing administrative complexity of the Revised Code and enhancing opportunities for judicial release.
- Movement toward a statewide criminal justice data repository, including maximizing the Ohio Criminal Sentencing Commission efforts.

We are proud to have participated in JR 2.0 – engagement proved to be constructive and helpful in building relationships, identifying challenges and using information to guide us in developing the most impactful policies for a safer, fairer and more cost-efficient criminal justice system. We are confident that the work of JR will assist state leaders of the three branches of government and practitioners in the advancement of comprehensive criminal justice system reform and a data informed approach that will achieve positive change in criminal justice policy for Ohio.