

Monitoring Sentencing Reform

A Sentencing Commission Staff Report

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Ohio Criminal Sentencing Commission
Chief Justice Thomas J. Moyer, Chairman
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Introduction

Section 181.25 of the Revised Code requires the Sentencing Commission to monitor the impact that sentencing reform (Senate Bill 2) has had on state and local government. This memo is the second installment. The first was issued on January 1, 1997.

Key Findings

-Prison Intake - Prison intake is down by about 12% compared to a comparable period before S.B. 2 took effect. This is less than we anticipated, but nonetheless meaningful.

-Serious Offenders - As anticipated with the decrease in prison intake, the makeup of those coming into prison is more serious. About 24% of those coming to prison under S.B. 2 are F1s or F2s, while about 19% were F1s or F2s under the prior law.

-Guidance and Sentencing Ranges - Judges are using the full range of prison and non-prison sentences available, and are generally following the guidance enacted under S.B. 2.

-Continuum of Sanctions - A continuum of sanctions is now available to most judges around the state. There is some evidence of net widening

-Case Processing - S.B. 2 cases are not backlogging the court system as some had feared. Those coming to prison under S.B. 2 have less jail time credit than those coming to prison under prior law.

-Appellate Review - Initially, there were fewer sentenced based appeals than anticipated, but towards the end of 1997, they began to trickle in.

S.B. 2 Background

S.B. 2 and its companion legislation changed hundreds of sections of the Revised Code and reworked the way that judges sentence convicted felons. Some key provisions of the act are:

-"Truth in Sentencing" -- The sentence imposed by the judge in open court is the sentence served by the offender. "Good time" as previously known was abolished. For those sentenced under S.B. 2, parole as previously known was abolished.

-Tougher sanctions for high level offenders -- Especially repeat violent offenders. Judges are guided toward prison on high level offenders. Judges can guarantee 20 years in prison on serious repeat violent offenders. Limits on consecutive sentences were removed for those sentenced under S.B. 2.

-Community sanctions at the low end -- Judges are guided to sentence low level offenders without histories of violence or drug trafficking to sanctions within their community. Additional state funding was made available for expanding community sanctions.

-Appellate review of sentencing -- In certain limited circumstances, the prosecutor or offender is able to appeal a sentence imposed by a judge.

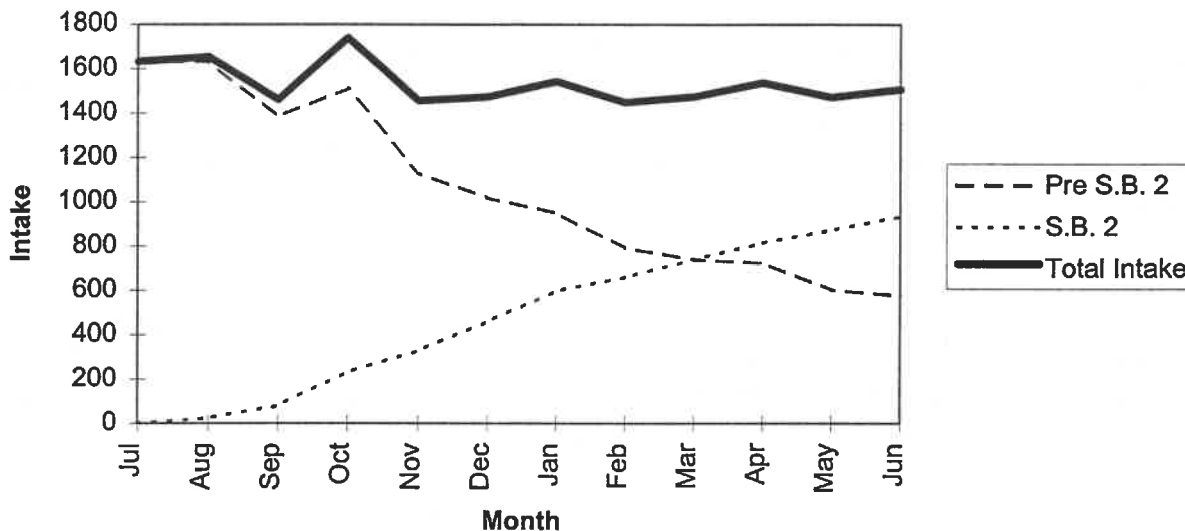
There are many other facets of Senate Bill 2. The Sentencing Commission and its staff are available to answer any questions that you might have. They can be reached at 466-1833.

Timing

S.B. 2 applies to crimes committed on or after July 1, 1996. The Sentencing Commission staff assumed there would be a delay before the effects would be visible, because the criminal justice system would take a few months to move offenders from crime to conviction. This phase-in period was in fact much longer than we anticipated. Therefore, initial results were tentative. By now however, some patterns are emerging. These patterns give us the clearest picture yet of the impact attributable to S.B. 2.

This graph shows the prison intake by month for FY 1997. It illustrates the phase-in period for S.B. 2. It was not until March of 1997, nine months after S.B. 2's effective date, that offenders sentenced under S.B. 2 made up one-half of total monthly prison intake.

FY 1997 Prison Intake by Statute



There are some areas such as the impact on local jails, the drug and alcohol intervention system, and the mental health system, where the data is not yet available to the Sentencing Commission staff. In the future, as information becomes available, the staff will report on impact in these areas as well.

Methodology

This report is not a formal, academic, impact evaluation. It does, however, attempt to gauge the effect of S.B. 2 on the justice system by using comparison groups and before-after analysis of available data.

Sometimes it is difficult to pick what to use as a comparison group. For some of the analysis in this document, a time period after S.B. 2's effectiveness will be compared to a similar time period before S.B. 2. In the prison analysis, the offenders

coming in under S.B. 2 will be compared with the offenders coming in during the same time period for pre-S.B. 2 offenses.

Prison Intake

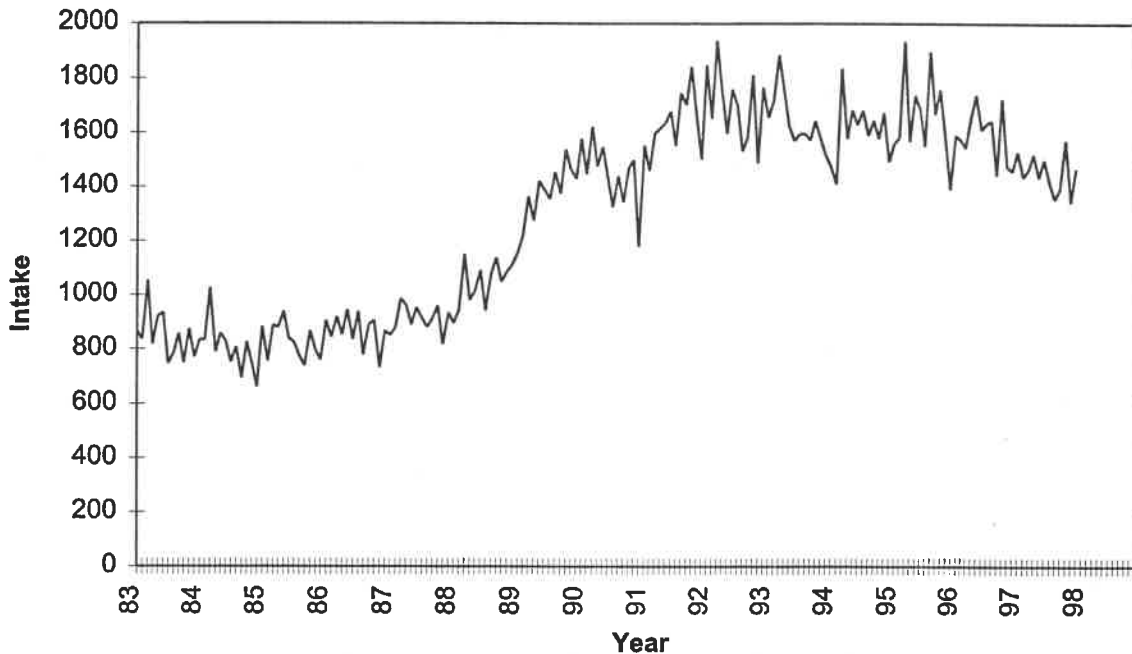
Prison intake is important in analyzing S.B. 2 for a number of reasons. It is one of the most easily measured phenomenon there is in the justice system. Intake is one of the crucial elements (along with time served) for forecasting prison populations.

In a nutshell, state prison intake has decreased versus the year before S.B. 2's effective date. The amount of the decrease depends on the period used in the analysis. Intake for the period of July-December 1997 is 12.0% lower than intake for the same period in 1995.

Change in intake over time coupled with court caseloads is the first step in assessing the impact of S.B. 2 on the local justice system. For example, a dramatic drop in intake could mean an increase in local corrections cost. Inversely, an increase in prison intake could ease pressure on the local systems.

This graph shows the overall trend in monthly prison intake over the last 14 years. Note that intake was relatively stable between 800 and 1,000 in the early eighties, and then it jumped dramatically with the arrival of crack cocaine. The trend stabilized at around 1,600 per month in the mid-nineties, but greater volatility emerged month to month. The last few months (when S.B. 2 is more fully in effect) show a slight but noticeable decline in intake with a decline in volatility.

Monthly Prison Intake 1983-1997



Last biennium's DRC budget was based on the assumption that 4,140 offenders who would have gone to prison under prior law would be punished in the community under S.B. 2. Assuming a baseline intake of 20,000 offenders, the budget assumed a decrease of 20.7%. In the short term, the prison population was expected to drop as well. In the long term, the population would grow, as more serious felons begin serving the stiffer prison sentences meted out under S.B. 2. The prison population would continue to rise (although not as quickly as under prior law), and would have, on average, a tougher class of criminals.

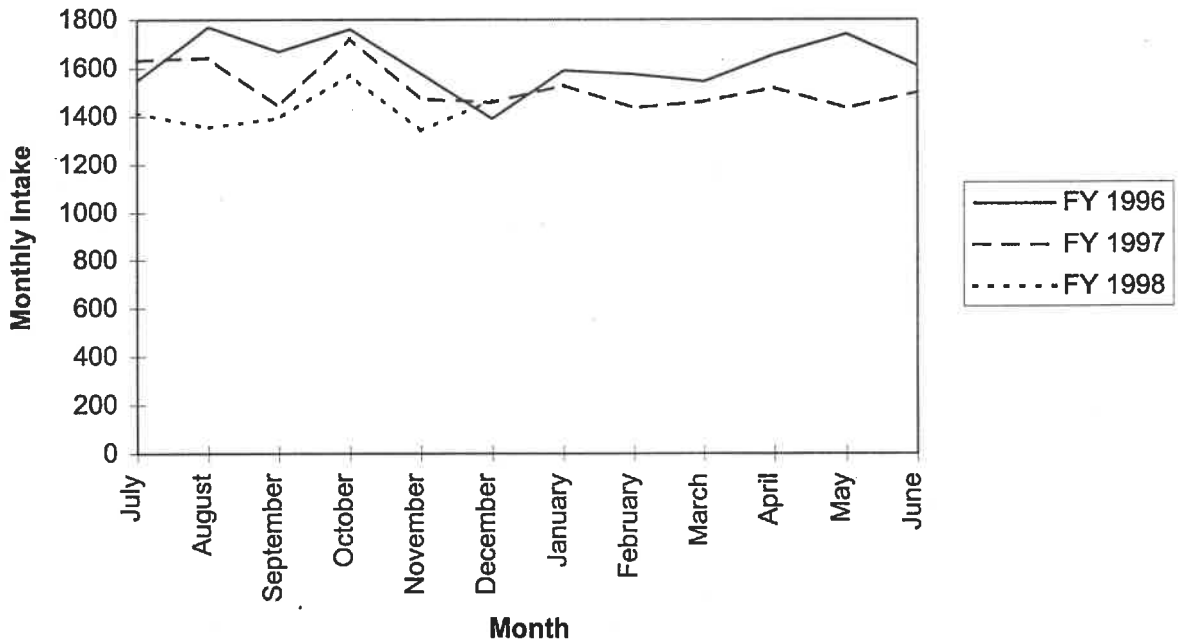
Has this happened? During FY 1997 (the first year of S.B. 2's effectiveness), 18,256 offenders entered Ohio's prisons. This is 1,175 fewer offenders (or 6.05% less) than the 19,431 offenders that came into the prison system during FY 1996. The number of diverted offenders is far lower than our estimated 4,140. However, the phase-in period was much longer than we anticipated. Reported intake from July through December of 1997 is down by

12.06% from the same period in 1995. It is clear that the prison system has not dumped offenders onto the local justice system the way some had feared.

While prison intake has declined, there are possible explanations other than the effect of S.B. 2. Crime rates overall have fallen, both nationally and in Ohio. The link between crime rates and overall prison intake is fairly weak, but intake should eventually reflect the recent drop in crime rate. The dramatic expansion in community corrections funding may have played a part, and perhaps would have generated the reduction in intake without S.B. 2's help.

The following graph shows the prison intake by month for the period just before and just after S.B. 2 went into effect. Note that prison intake for FY 1997 (the first, transition year of S.B. 2) is generally lower than FY 1996 (the last year of prior law) and that July to December of 1997 (FY 1998 - the first six months of S.B. 2's full effectiveness) is generally lower still.

State Prison Intake - Pre and Post S.B. 2



Here is a comparison of monthly prison intake before (FY 1996) and after (FY 1997) S.B. 2 became effective. Note that the vast majority of offenders who went to prison before S.B. 2 continue to go to prison afterward:

Total Prison Intake Pre and Post S.B. 2

Month	FY 1996 Intake	FY 1997 Intake	FY 1998 Intake	Pct Change Since FY 1996
July	1,550	1,633	1,414	-8.77%
August	1,769	1,644	1,354	-23.46%
September	1,669	1,443	1,393	-16.54%
October	1,760	1,725	1,573	-10.63%
November	1,577	1,476	1,342	-14.90
December	1,390	1,458	1,467	+5.54
January	1,590	1,529		
February	1,575	1,436		
March	1,544	1,462		
April	1,656	1,519		
May	1,740	1,434		
June	1,611	1,500		
	=====	=====	=====	=====
Total	19,431	18,256	8,543	-12.06%

Are the Prisons Holding a Tougher Crowd?

One of the goals of S.B. 2 was to make sure there are prison beds for the most serious offenders in the state. Because of the reclassification of offenses under S.B. 2, it is difficult to get an apples to apples comparison to quickly measure whether or not this has occurred. Nonetheless, a rough assessment can be made using DRC's FY 1997 intake data.

The Department of Rehabilitation and Correction has been flagging the S.B. 2 cases as they come in. To examine this more closely, we divided the FY 1997 prison intake data into two groups:

- 1) Pre-S.B. 2 group - Where the most serious commitment offense was under pre-S.B. 2 law (12,671 prisoners - 68.8% of the total).
- 2) S.B. 2 group - Where the most serious commitment offense was under S.B. 2 (5,733 prisoners - 31.2% of the total).

To analyze the impact of S.B. 2, we compared the two groups. Any difference between the two groups we generally attribute to the effects of S.B. 2.

This table shows the percentage of FY 1997 prison intake by offense level. Note that the proportion of F1s, F2s, and F3s is higher under S.B. 2 than a roughly comparable group under prior law, and the proportion of F4s and F5s is lower than under prior law. This is evidence that S.B. 2 is resulting in a more serious prison intake cohort.

Level	Pre S.B. 2 Percent	S.B. 2 Percent
Death	0.09%	0.03%
Life	1.24%	0.75%
F1/F1	7.20%	10.05%
F2/F2	11.95%	14.02%
F3 Indef/F3	4.35%	16.35%
F3 Def, F4 Indef/F4	30.24%	24.65%
F4 Def/F5	44.93%	34.14%

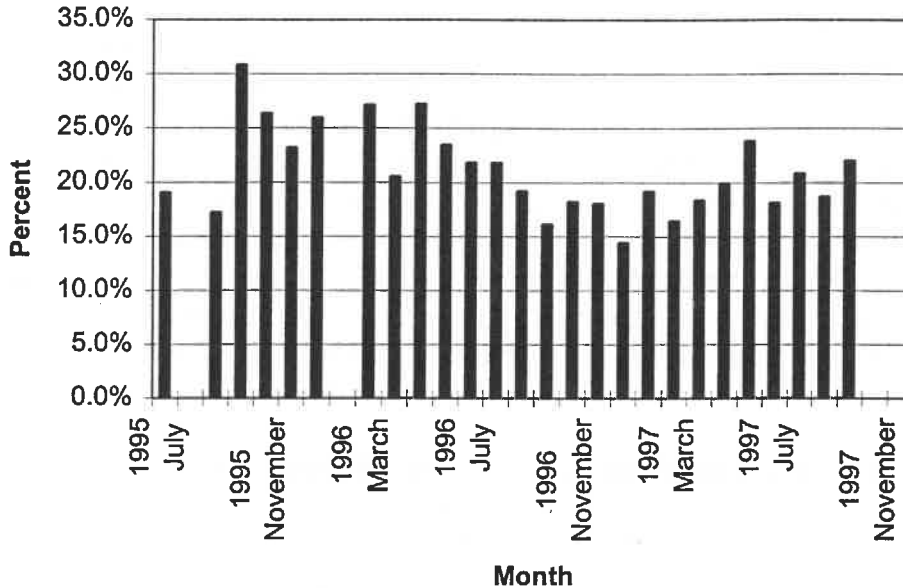
Prior Prison Terms

Another measure that is easy to obtain is the number of inmates with prior prison terms coming into the system. In theory, as overall intake declines, and as more serious offenders make up a greater portion of prison intake, the portion of the prison intake consisting of offenders who have served prior prison terms should go up.

DRC reports monthly on the number of offenders coming into prison who have prior prison terms in their record. During FY 1996, third time (or greater) prison commitments made up about 24% of the total intake. During FY 1997, those commitments made up only 19% of the total intake. This is evidence that the prison system is not necessarily growing tougher, at least if toughness is measured in terms of inmates with multiple prior prison terms.

This graph shows the proportion of incoming prisoners who have two or more prior prison terms. Notice that the number has gone down since the effective date of S.B. 2. This would be evidence that the prison intake is not growing as tough as expected.

Percent of Intake with 2 or More Prior Prison Terms



Data is missing from March of 1995 and February of 1996.

However, the data may be explained if the more chronic offenders who cycle through the prison system are disproportionately low level offenders. If that is the case, by diverting low level offenders from prison, one might expect the proportion of third or more prison veterans to decrease. So in a way, having fewer short term, repeat prison offenders is evidence that more serious offenders are going to prison under S.B. 2.

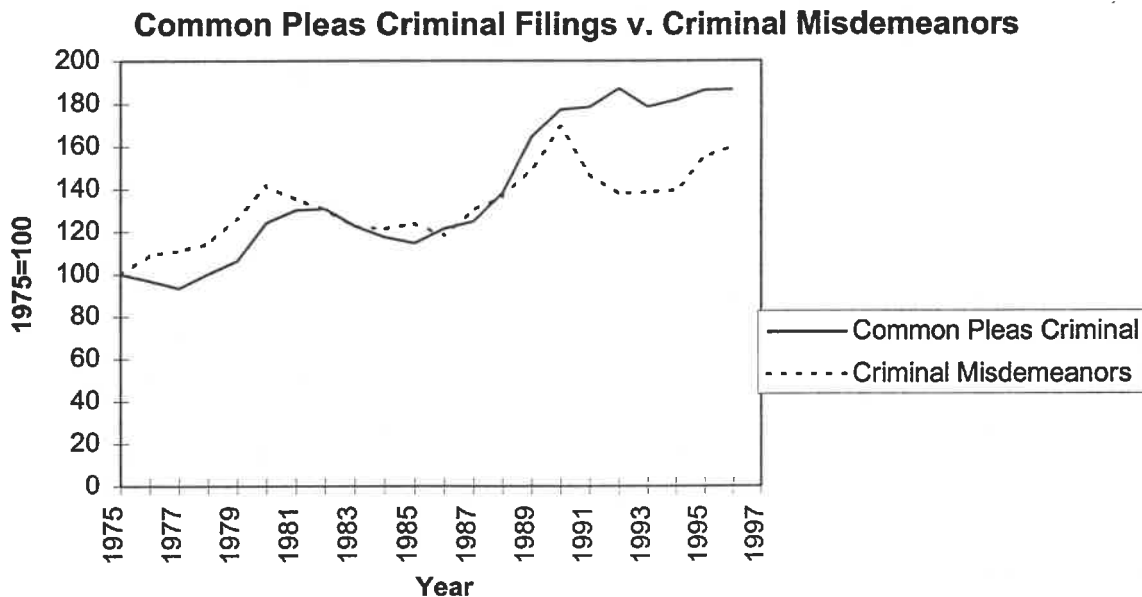
Court Filings

How has S.B. 2 affected the number of cases going through our trial courts? Because of the change in the theft statute under S.B. 2, we predicted that there would be a noticeable shift in cases from common pleas courts to misdemeanor courts. The shift would be greater as a percentage in common pleas courts because they process fewer cases than municipal courts to begin with.

The Supreme Court tracks court caseload data from year to year. The data from 1996 shows a slight decrease (0.12%) in common pleas court criminal filings and a slight increase (3.38%) in

misdemeanor court criminal (non-traffic) filings. The magnitude of these changes probably are not attributable to S.B. 2. The data from 1997 should be more telling when it comes out this spring.

This graph shows the relative changes since 1975 (when the Supreme Court started keeping records on misdemeanors) in misdemeanor court criminal (non-traffic) filings and common pleas criminal filings. It compares the relative change since 1975 (which is set at 100). Notice that in recent years, the common pleas criminal cases have grown faster than misdemeanor court criminal cases. Also notice that in 1996 (the last available year), there is a slight upturn in criminal misdemeanor filings and an even slighter downturn in common pleas court filings.

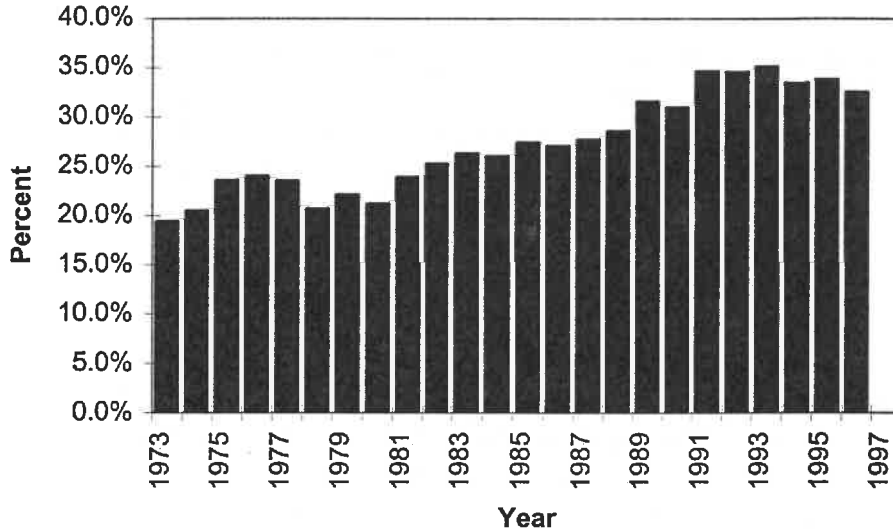


Imprisonment Decisions

Are more felons getting prison sentences? The graph below shows the ratio of common pleas court filings to prison intake. This can be used to approximate the number of common pleas court cases that result in a prison sentence. Because of the change in the theft statute, the proportion of offenders getting prison sentences would be expected to rise under S.B. 2 (because theft offenders would get disproportionately more community sanctions).

The graph shows that there has been a decline in prison intake relative to common pleas criminal filings. The decline is attributable to the increase in the availability of community sanctions statewide. Again, the 1997 data will be more telling when examining these numbers

Prison Intake v. Common Pleas Filings 1973-1997



Time to Process Cases/Jail Time Credit

One of the initial concerns of S.B. 2 was an expected increase in time to process cases through common pleas courts. If the sentencing hearing took longer, courts would be able to process fewer cases in the same amount of time, which would cause backlogs in the system. Greater backlogs in the system would result in longer jail time credit for those offenders coming into prison under S.B. 2 than under prior law.

That in fact was not the case for FY 1997. Those coming in under S.B. 2 had an average jail time credit of 66.15 days, and those coming in under the pre-S.B. 2 law had an average jail time credit of 84.36 days. Offenders are doing less jail time before going to prison under S.B. 2 than they were under prior law.

Impact of the Felony OMVI Law

It is unclear how the new drunken driving law (S.B. 166 of the 121st General Assembly) will skew the impact of S.B. 2. S.B. 2 diverted some offenders from the state prisons to community sanctions starting July 1, 1996. Starting in mid-October 1996, 5th-time drunken drivers began to be diverted from local jails into the state prison system. With these offenders coming into prison, analyzing S.B. 2's effect on prison intake will become more tricky. Much of the time, drunken drivers can be removed from the analysis (if the data allows). But as time passes, disaggregating the effect of S.B. 2 and S.B. 166 will be difficult.

Where are Judges Falling in the Ranges?

One of the most difficult things to assess when forecasting the impact of S.B. 2 was where judges' sentences would fall in the new prison term ranges. The guidance in S.B. 2 steers judges to sentence first time prison bound offenders to the lower end of the range. It reserves the top of the ranges for the most serious and chronic offenders. Since sentences at the maximum of each range can trigger an appeal of right, judges anecdotally said that they would sentence one notch below the maximum in order to avoid an appeal.

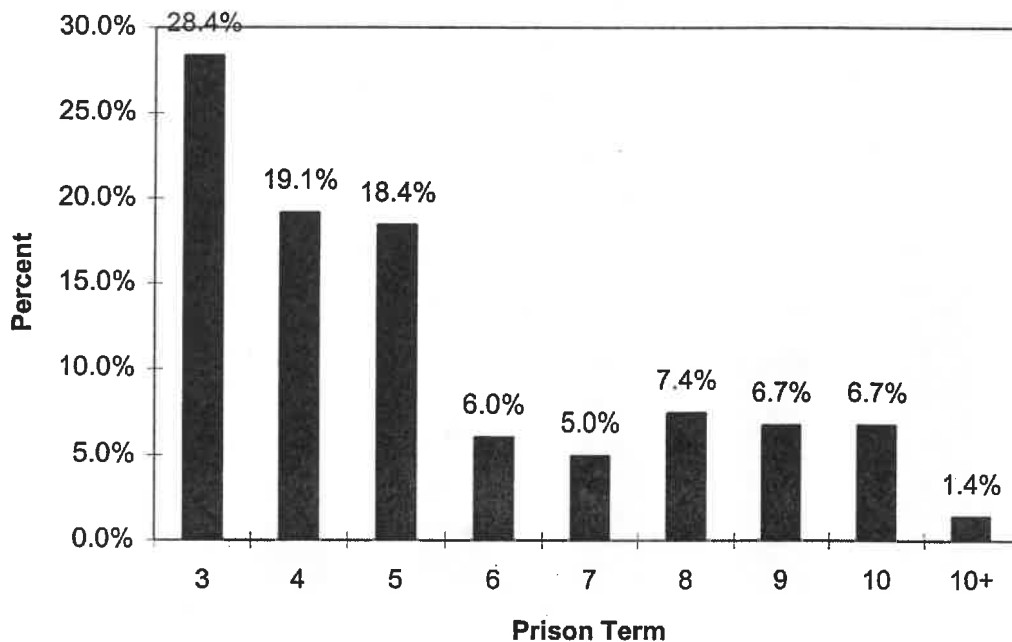
In forecasting the impact of the Sentencing Commission's recommendations, we projected the judges would fall near the bottom of the range about 40% of the time, around the middle of the range about 40% of the time, and near the top of the range about 20% of the time.

Under pre S.B. 2 law, judges were not guided as to where in the prison ranges a particular offender might be sentenced. Nor were they encouraged to reserve the top of the sentencing range for the most serious offenders. Plus, with indeterminate sentencing, and good time, it was unclear how long offenders were going to serve. Consequently, where the judges sentenced in the prior law range was not as predictable or proportionate as under S.B. 2. This was particularly true for higher level offenders.

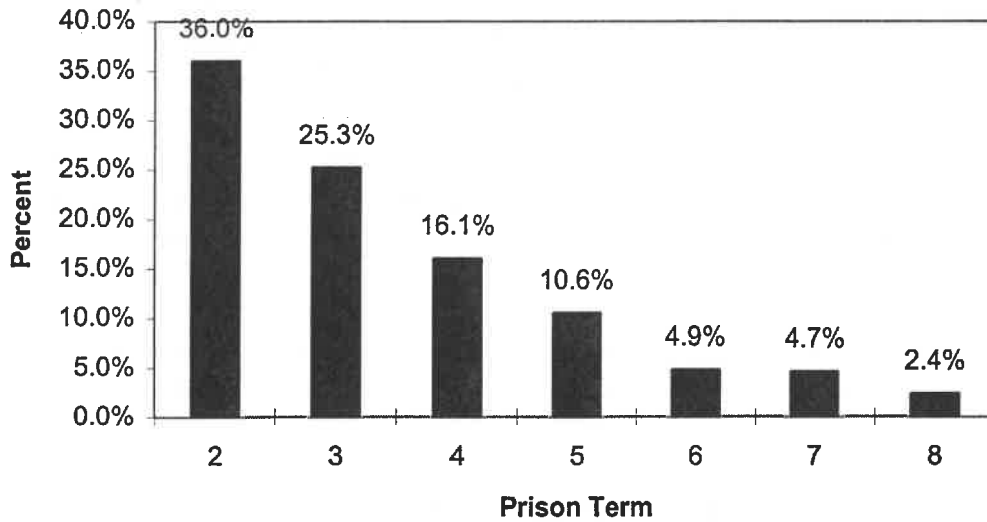
Here are graphs showing how judges fell in the ranges for offenders with only one commitment offense (consecutive sentences were removed from the analysis). The graphs show that for F1s, F2s and F3s, the judges used the entire ranges and reserved the higher parts of the range for the fewer, more serious offenders. The judges used the lower halves of the ranges for most F1, F2 and F3 offenders. For the lower level F4s and F5s, the judges tended to sentence to terms on standard cutoffs, similar to the ones used under the prior law. The graphs show that judges on average are falling a little lower in the ranges than we anticipated.

The graphs also show that judges are not disproportionately using one step below the maximum to avoid appeals, as some said would happen.

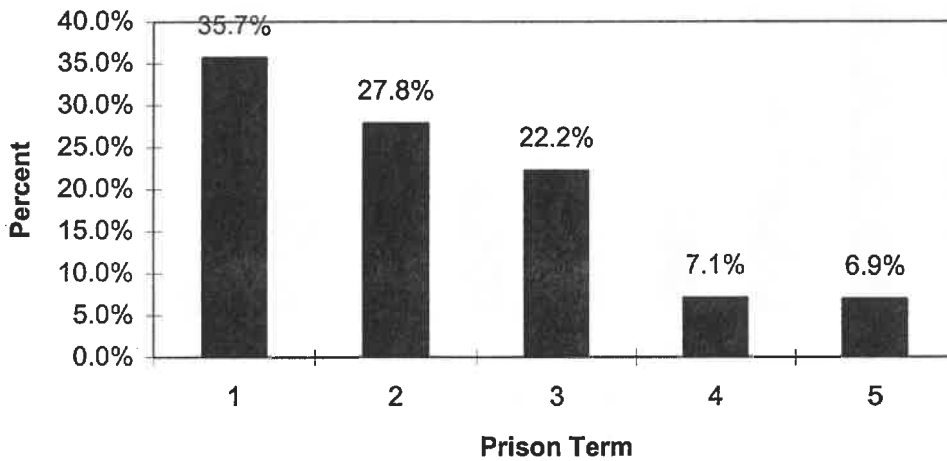
**F1 Prison Sentencing Pattern
FY 1997**



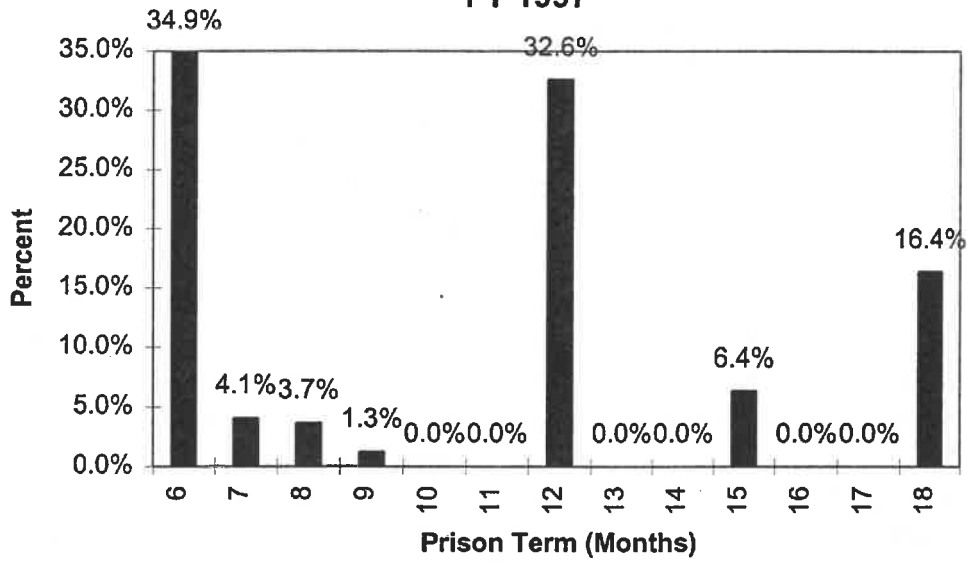
F2 Prison Sentencing Pattern FY 1997



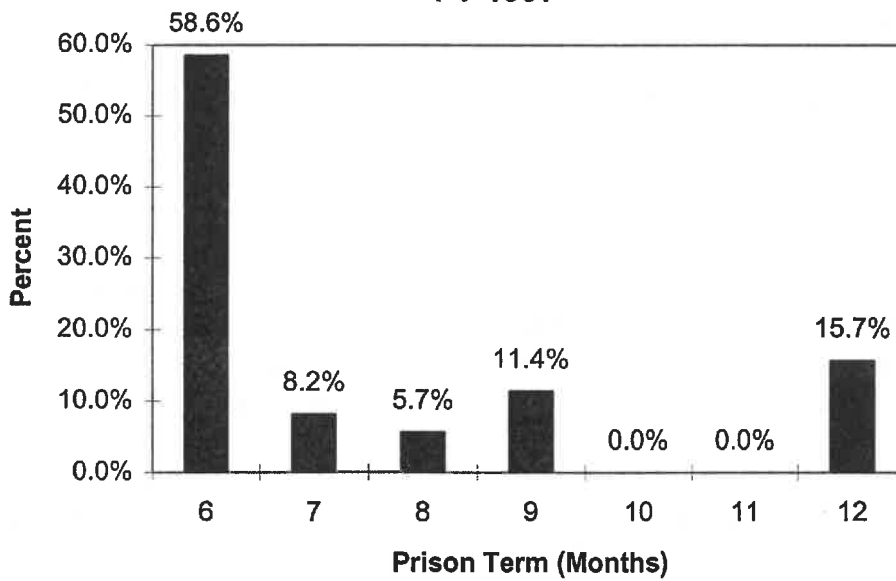
F3 Prison Sentencing Patterns FY 1997



**F4 Prison Sentencing Pattern
FY 1997**



**F5 Prison Sentencing Pattern
FY 1997**



State Funding and Net Widening

One of the major components of the S.B. 2 package was a dramatic increase in funding for community corrections. The budget for FY 1996 and FY 1997 for halfway house slots, community based correctional facility beds, and community nonresidential sanction funding increased by about \$44 million (about 53% more than the previous biennium). It also (for the first time) set apart a separate line item for community misdemeanor funding.

Money was also set aside for counties to use in planning for the arrival of S.B. 2. While many counties were very successful in preparing for the law change, others were hampered by the lack of available data and by deadline pressures.

The increased appropriation was designed to allow local justice officials to create a continuum of sanctions for their community. The money was to be used for punishing offenders diverted from prison under S.B. 2. But it was also designed to provide appropriate sanctions for offenders who were in the community who might otherwise have received basic probation supervision.

Of great interest then, is whether previously prison bound offenders sentenced under S.B. 2 went into those programs, or whether the expanded community correction slots went to offenders who were already in the community.

To examine this issue, we looked at the community corrections funding provided in each county, and examined whether the amount spent there resulted in a reduction in prison intake. The easiest way to do this is to compare the change in prison intake for a county before and after receiving funding with the number of diversions that the county anticipated when making their grant application.

For the FY 1997 grant cycle, counties projected diverting 7,214 from prison, an increase of 976 over FY 1996. During that period, the prison intake dropped by 1,175. So, 83% of the people diverted from prison are accounted for by community nonresidential programs that punish felons. Given the expansion of slots in community residential sanctions, halfway house slots, and misdemeanor sanctions, it is safe to say that there is evidence of net widening that may be substantial.

Examining the data by county is even more interesting. A number of counties who received additional money in FY 1997 under the community nonresidential program actually sent more offenders to prison in FY 1997 than in FY 1996.

Appeals

S.B. 2 created a mechanism under which, in a limited number of circumstances, sentences could be appealed by offenders and prosecutors. As S.B. 2 was going through the General Assembly, the appellate court judges, County Commissioners' Association of Ohio, and others raised concerns about the cost of these appeals and the impact that they would have on the justice system.

At the time, we were unclear about how many appeals there would be and how much they would cost. The Sentencing Commission staff guesstimated that there would be 1,389 appeals in the first year. The estimated cost per appeal was \$876, for a total cost of just under \$1.22 million. The County Commissioners were worried that this was too little, and lobbied for the \$2 million that is currently in the budget. H.B. 215 (the current state budget bill) appropriated \$2 million in each year of the biennium for the purpose. The money is to be distributed by the Supreme Court based on recommendations of the Felony Sentence Appeal Cost Oversight Committee established in section 2953.08 of the Revised Code.

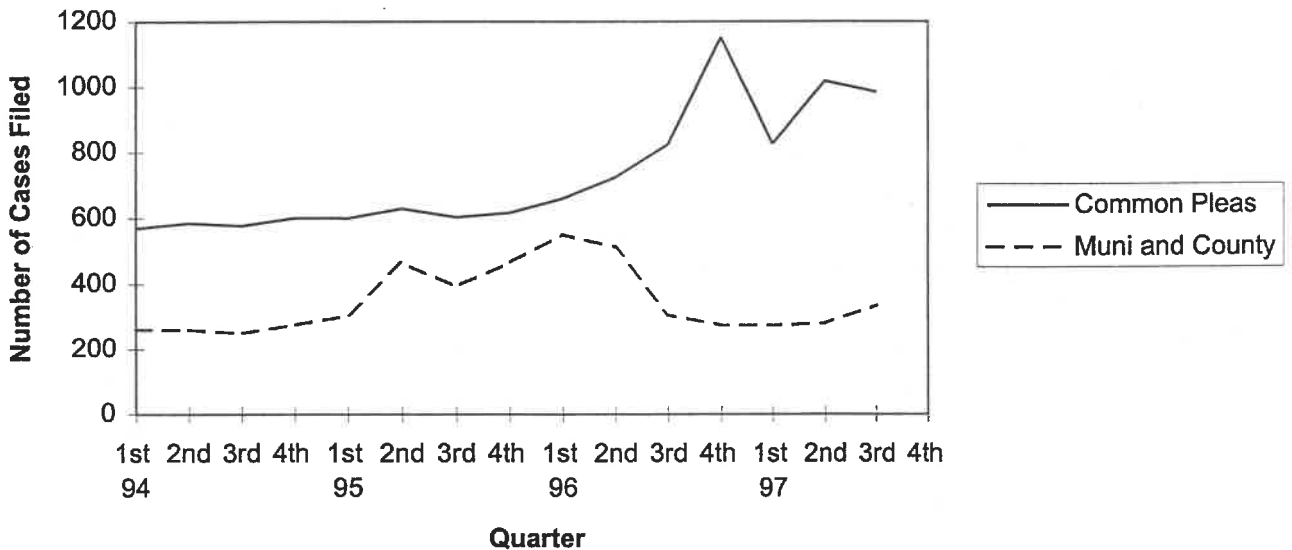
At first, the number of appeals related to the new sentence review provisions was nowhere near our projections. We have been tracking the overall number of criminal appeals quarterly. There was a temporary increase in the number of criminal appeals filed from common pleas courts in the third and fourth quarters of 1996. However, anecdotal evidence suggests that the source of the appeals are challenges by existing prison inmates to S.B. 2's lack of retroactivity (which are not eligible for cost reimbursement under the statute). Also, inmates were filing their post-conviction relief petitions before the deadline imposed by S.B. 4 (which was not part of the S.B. 2 sentencing reform package) of the 121st General Assembly.

The number of appeals in the first quarter of 1997 fell back from a peak in the 4th quarter of 1996. In the second quarter of 1997, the number of appeals filed again jumped, but not as dramatically as 4th quarter of 1996. The third quarter of 1997 was also higher than the historical trend. We do not know for sure if this pattern is attributable to the felony sentencing appeal provisions of S.B. 2, but we assume that it is.

Anecdotal reports have turned up a small, but probably growing number of appeals under S.B. 2. The small number is especially surprising since during FY 1997, 725 offenders came into state prison at the top of the sentencing range for their level of offense, which makes them eligible for an appeal of right. It is even more surprising given the dire prediction of some, particularly in the defense bar, and on the appellate bench, over the number of cases that would be appealed.

This graph shows the criminal appellate filings coming out of common pleas and (for comparison purposes) misdemeanor courts. The first spike in common pleas filings is probably attributable to S.B. 4's deadline on post-conviction relief. The increase in the most recent two quarters is probably attributable to S.B. 2.

Appellate Filings by Quarter - 1994 to 1997



The Commission staff will also track and monitor appellate court decisions regarding sentences.

Felony Sentencing Appeal Cost Oversight Commission

This group was established in law as a means of distributing money to counties to cover any increased costs associated with S.B. 2's appellate review provisions. The Sentencing Commission staff serves as the staff of the Oversight Commission. The Oversight Commission is made up of eight members, including a state representative, senator, appellate judge, common pleas judge, state public defender, prosecutor, Supreme Court chief justice, and director of the office of budget and management.

The budget appropriated \$2 million to cover the cost. The Oversight Commission was given the responsibility to determine whether and how much particular counties might be reimbursed. Because of the few appeals, the group did not meet during FY 1997, but it does plan to meet in FY 1998.

