

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 is the third installment. The previous two were issued January of 1997 and January of 1998.

SB 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. It became effective on July 1, 1996. 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 release 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.
- **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 614-466-1833.

Timing

The new law became effective for crimes committed starting on July 1, 1996. In last year's report, it was pointed out that it took longer than anticipated for the new S.B. 2 offenders to work their way through the system and get to prison. It was nine months after the effective date before the number of offenders entering prison under S.B. 2 exceeded the number coming in under previous law.

We have now reached the point where the vast majority of offenders are coming in under the new law. Although, there still is a significant number coming in under the old law, with presumably most of those being probation violators. Also, now we have a sizeable number of offenders who are coming out of prison under S.B. 2, making it possible to study judicial release and post-release control.

However, now that there has been a couple of years experience with the new sentencing law, it is ironically more difficult to attribute changes in patterns in the justice system to it. Changes observed can be attributed to S.B. 2. But they also could be due to separate legislation, such as the felony drunken driving bill (S.B. 166) and sex offender registration (H.B. 180), both of which took effect in October, 1996. Also attitudes of police, prosecutors, defense attorneys, judges, prison officials, and the offenders may have changed independently of S.B. 2.

For example, the dramatic drop in crime rate that has been seen in recent years may have changed some of the patterns in court caseloads and prison intake. New guidelines for the Parole Board, that have resulted in more releases may also have had an effect.

Methodology

This report is not a formal, academic, impact evaluation. That will come later (see the discussion at the end of this report). 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. Now that the vast majority of offenders are coming through the felony system under S.B. 2, much of the analysis will examine the time after S.B. 2 took effect, State fiscal year 1998 (July 1,

1997 to June 30, 1998) compared to a similar period before S.B. 2, fiscal year 1996 (July 1, 1995 to June 30, 1996).

IS S.B. 2 MEETING ITS GOALS?

Here is some of what the Sentencing Commission anticipated from S.B. 2 and related budget measures:

- The prison population would decline initially as repeat petty thieves and lower level felons are steered into expanded community sanctions. Over time, the population would grow again, but at a slower rate than before S.B. 2.
- However, those sentenced to prison would receive longer real sentences and be more dangerous, on average, than those who went under former law.
- Common pleas court caseloads would fall somewhat and misdemeanor court caseloads would increase somewhat due largely to the change in the theft threshold and the elimination of the felony enhancement for repeat petty thefts.
- There would not be a significant change in the number of jury trials under S.B. 2.
- More offenders, particularly at the lower felony levels, would be placed into community sanctions rather than prison.
- Sentencing law changes would not mean longer stays in local jails awaiting trials and sentencing.
- Additional misdemeanants might end up in jail. However, with additional state funding for community misdemeanor programs, the net effect on jail space would not be that dramatic.
- The number of offenders coming out of prison under some type of supervision will increase.
- Even though a new type of appellate review was created by S.B. 2, appellate courts would not be

deluged with appeals under the new law. And there would be reimbursement to counties from the state if the appeals became too fiscally burdensome.

- The Commission anticipated some criticism of the new law from judges.

Here is what has happened to date.

- The prison population has declined, in part because of the changes regarding repeat petty thieves, guidance on sentencing lower level felons, and, perhaps most importantly, increased funding for, and availability of, community sentencing options. However, the decline has not been as great as anticipated.
- The percentage of prison intake for the highest felony classes (F-1s and F-2s) is larger under S.B. 2 than under prior law.
- Common pleas court caseloads have fallen somewhat. S.B. 2 might explain some of the difference, but other factors, such as a lower crime rate, are significant. We anticipated some increase in misdemeanor caseloads, but not as great as actually occurred.
- The number of jury trials has increased, but only very slightly.
- The proportion of felons to local punishments, as opposed to State prison continues to grow slightly, largely because of greater funding for community sanctions.
- S.B. 2 has not increased the time offenders spend in jail awaiting trial, sentencing, and transfer to prison.
- The number of offenders coming out of prison under supervision has increased.

- The number of appeals under the new law is surprisingly low. Money appropriated for additional appeals was returned to the State General Revenue Fund.
- A survey of common pleas judges found that 55% agreed or strongly agreed that S.B. 2's guidance is "good for the sentencing process."

The following analysis looks more carefully at these patterns.

Overall Prison Intake

Before S.B. 2 went into effect, the Commission's staff projected what the impact on prison intake would be. It projected an initial decrease of 4,140 offenders. Those offenders would be punished in the community under the community sanction provision of S.B. 2.

There has been a reduction in prison intake since the effective date of S.B. 2. But, the impact has not been as large as expected. This table shows the month by month prison intake starting the year before S.B. 2 went into effect (FY 1996).

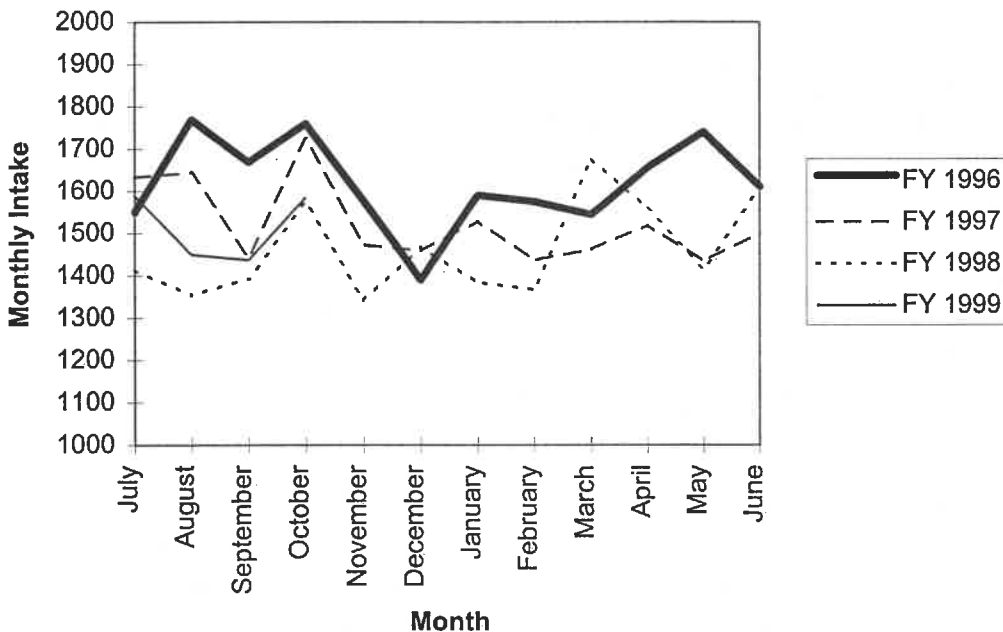
Note that in the transition year (FY 1997) immediately following the effective date of S.B. 2, there was not much impact on prison intake. Offenders were going through the justice system under both prior S.B. 2 law and S.B. 2. In FY 1998, the effect was more noticeable, with intake down 9.7% or 1,881 inmates versus FY 1996. While significant, this is below our forecasted diversions of 4,140. The first few months of the current fiscal year (FY 1999) show intake increasing slightly, although not as high as prior to S.B. 2. It is difficult to say why the decrease has not been as great as expected (or feared). The Sentencing Commission staff will study this further.

Watching prison intake is a good way of monitoring what is going on in the justice system as a whole. Someone's going to prison is the culmination of decisions by police, prosecutors, public defenders, judges, and of course

offenders themselves. Because so many people are involved in the process, attributing a change in prison intake to any one factor (or statutory change) is very difficult.

Nevertheless, the removal of repeat petty thieves from the prison system, and the expansion of community sanctions under S.B. 2 and the budget bills, probably are important factors in the reduction.

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



Is the Crowd Going to Prison Tougher than Before?

Last year, this report looked at offenders who were coming into prison at the same time under S.B. 2, and under prior law. It showed that the offenders going into DRC under S.B. 2 were a tougher crowd based on offense level: the percentage of first and second degree felons (F-1s & F-2s) entering prison in FY 1997 was 19.2% under prior law and 24.1% under S.B. 2.

New inmates continued to be tougher in FY 1998, but the difference was smaller than before. In FY 1998, the

percentage of F-1 or F-2 offenders was 22.2% compared to FY 1996's 20.4%:

Worse Offense Level at Intake *	FY 1996 % (Pre S.B. 2)	FY 1998 % (S.B. 2)
Death	0.08%	0.09%
Life	1.30%	1.24%
F1/F1	7.80%	9.70%
F2/F2	12.55%	12.51%
F3 Indef/F3	4.87%	15.74%
F3 Def, F4 Indef/F4	31.16%	24.24%
F4 Def/F5	42.10%	36.47%

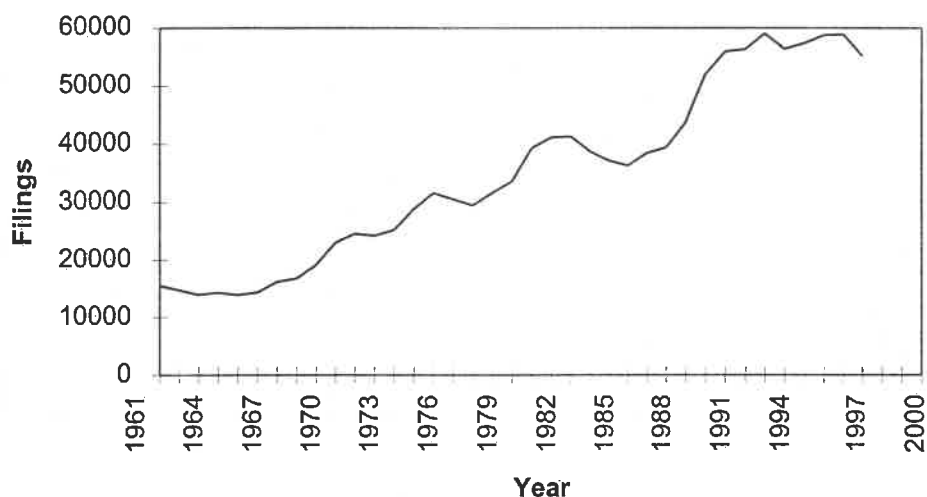
* Where two levels appear, the first is the level before S.B. 2 and the second is the equivalent level after S.B. 2 reordered offenses into 5 classes.

Court Filings

Prison intake is down, in part, because court filings are down as well. Before S.B. 2, the staff projected a measurable decrease in common pleas court filings and a slight percentage increase in criminal misdemeanor filings. This is due to S.B. 2's change in the theft law that led to many theft offenders being shifted from the felony system to the misdemeanor system.

In 1995 (the last full calendar year under pre-S.B. 2 law), there were 58,791 cases filed in common pleas courts statewide. In 1997 (the first full calendar year under S.B. 2) there were 55,162, a 6.2% decline. The decline is most likely due to S.B. 2's change in the theft law, which meant that many theft offenses that were felonies prior to S.B. 2 became misdemeanors afterward. This graph shows common pleas case filings since 1962. Note the drop in the number of cases filed in the last couple of years:

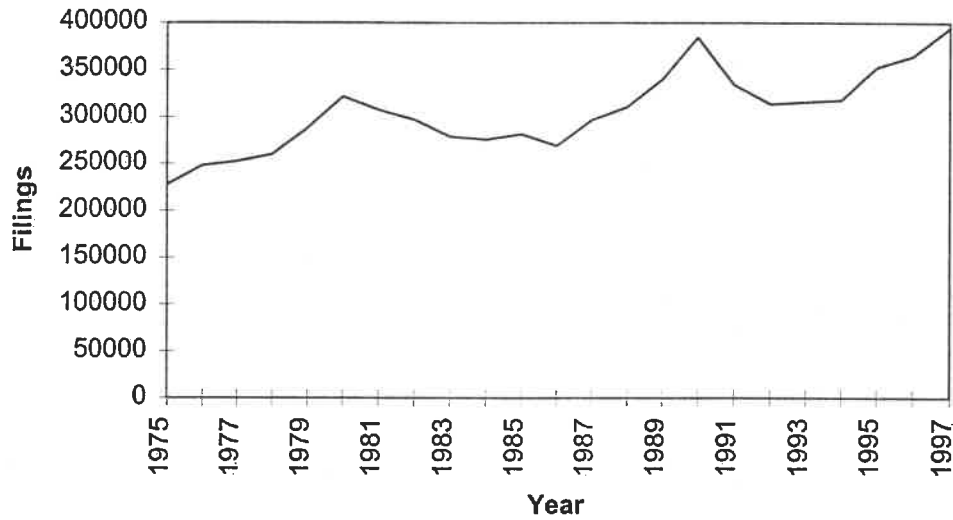
Common Pleas Criminal Filings 1961-1997



In the meantime, we projected that the number of criminal misdemeanors would increase by an amount similar to the decline in common pleas cases. In 1995, there were 352,415 criminal (as opposed to traffic) misdemeanors filed in municipal and county courts. We do not have good caseload records from mayor's courts. In 1997, there were 394,856 cases, an increase of 42,441 or 12.0%. While the change in the theft law is a factor, this is far more than could be attributed to that change alone. A possible explanation for this increase in caseload is the increased number of domestic violence arrests. Also, with federal assistance, there are considerably more police officers in Ohio. This means more arrests for misdemeanor crimes - especially when the more serious index crime rate is falling.

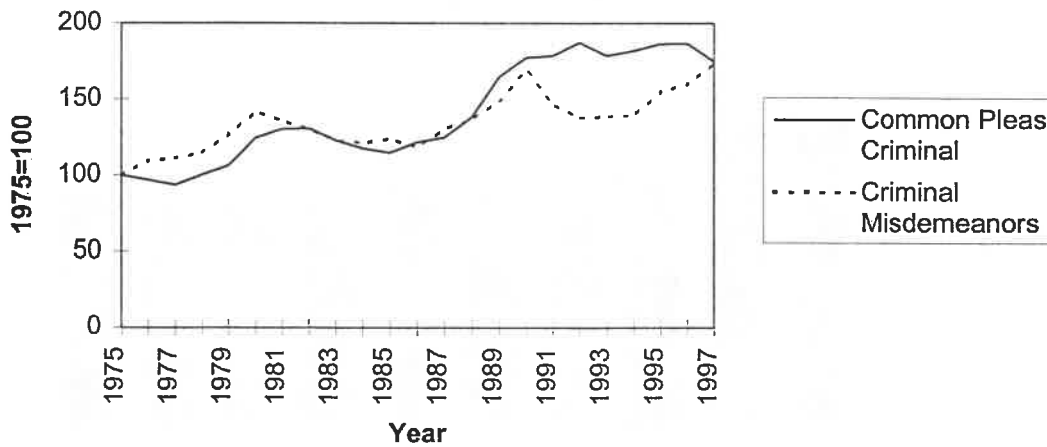
This graph shows municipal and county court caseloads for criminal misdemeanors since 1975. Note the rise in recent years:

Criminal Misdemeanor Filings 1975-1997



To illustrate this another way, the next graph shows the change in the number of cases filed in common pleas and municipal and county courts over the last couple of decades. So the graphs can be easily compared, they are equalized at 100 in 1975. Notice that in the last couple of calendar years, the number of common pleas cases has fallen, while the number of criminal misdemeanor cases has risen.

Common Pleas Criminal v. Criminal Misdemeanors



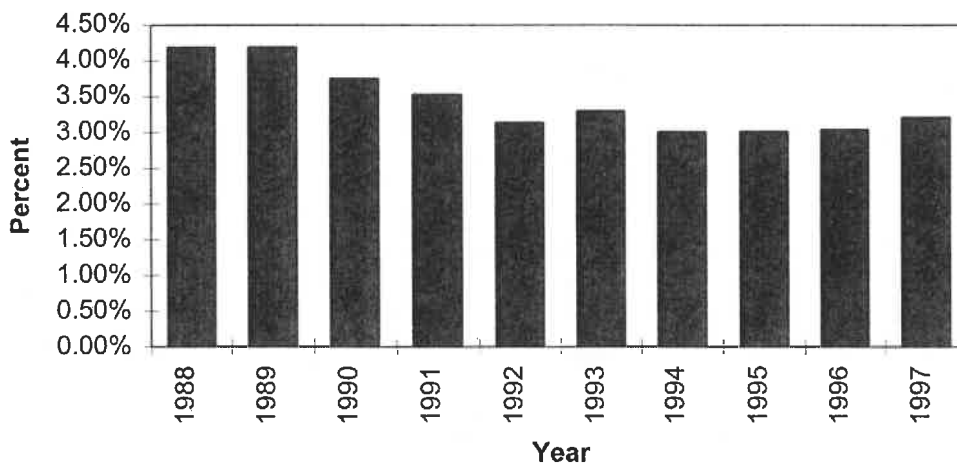
Jury Trials

One of the questions raised during the debate over S.B. 2 was whether it would cause a change in the number of jury trials. One theory went that because there was guidance against prison for some low level felons, there would be less of an incentive for a defendant to plea bargain a case, and more incentive to go to trial. Also, some felt that the tough mandatory terms for repeat violent offenders and major drug offender would force more jury trials. Since jury trials are expensive and slow, the changes could affect system efficiency.

The Commission did not anticipate any significant change in the number of jury trials. We felt that defendants would plead guilty about as often as before, even with the changes. And, while S.B. 2 changed the nature of mandatory prison terms, the total number of offenders facing mandatorics remained about the same as under former law.

The Supreme Court's *Ohio Courts Summary* tracks cases that terminate in jury trials. The following graph shows over the last several years, the proportion of jury trials to case filings. Note that the ratio in 1997 is little changed from that of 1995 and 1996, before there were many S.B. 2 offenders. While there is a slight up tick in percentage of jury trials in 1997, that percentage is still less than that of the late 1980's and early 1990's.

Percent Jury Trials

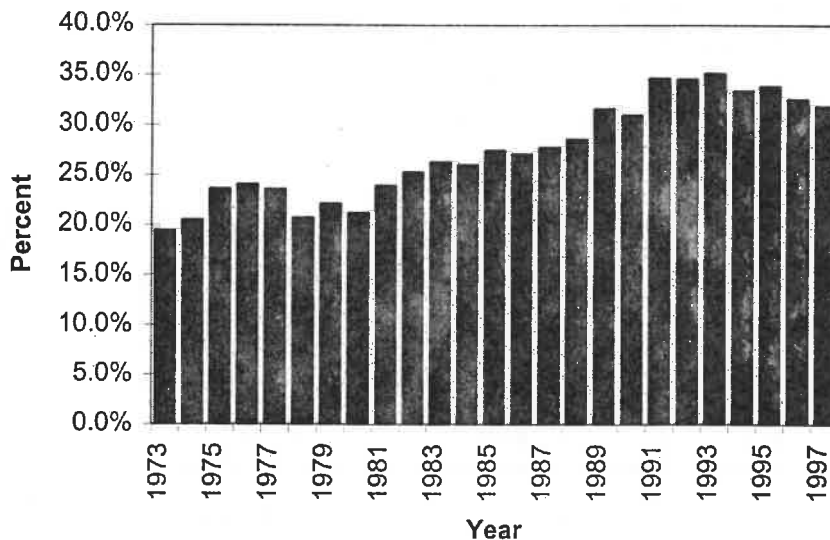


Imprisonment Decisions

Combining court caseloads with prison intake gives the sense of what proportion of common pleas cases result in a prison sentence.

As the next graph shows, the proportion going to prison increased over the years, peaking in the late 1980's and early 1990's. Since then, the ratio of prison intake to common pleas court filings has decreased.

Prison Intake v. Common Pleas Filings 1973-1997



Since the decrease started before the effective date of S.B. 2, the decline can be attributed to the increase in community corrections spending that started in the 1990s. However, codifying a continuum of sanctions in S.B. 2 and the successful push for greater community corrections planning and funding logically have contributed to the trend.

Jail Crowding

Many feared that the changes in S.B. 2 related to low level felons, and the repeat misdemeanor offenders would put additional pressure on already crowded jails. In response the Sentencing Commission recommended and the General

Assembly approved a budget that had a considerable increase in funding for community corrections programs that divert people from jails. This new funding mechanism was very popular with counties applying for new community correction money.

So have more offenders found themselves in county jails? The answer to that question is difficult, and will require data analysis beyond this current report. However, a basic sense can be found by looking at jail data that is reported to DRC's Bureau of Adult Detention.

This table shows the capacity and average daily population for full service and minimum security jails in Ohio. Notice that the percent of capacity has been increase each year, around the effective date of S.B. 2. This increase could be due to S.B. 2, but it could also be due to the change in state law regarding arresting domestic violence perpetrators.

Year	Full Service and MSJ Capacity	Average Daily Population	Percent of Capacity
1995	14,811	12,793	86.4%
1996	14,773	12,935	87.6%
1997	15,631	14,106	90.2%

The Sentencing Commission staff will work on a more complete analysis of the impact of S.B. 2 on jails in the coming months. Also, we will continue to monitor the impact that the felony drunken driver law has had on jails.

Jail Time Credit

S.B. 2 sets forth purposes and factors to be considered in every case, and guides judges based on the felony level involved. Some observers feared that S.B. 2 would slow the process, leading to longer stays in jail awaiting trial, sentencing, and transfer to prison for those who do not make bail. The Commission felt these delays would be minimal.

The best measure of these delays is the amount of jail time credit given to inmates entering prisons. (By law, an inmate's prison sentence must be reduced by time already

served in jail awaiting trial, sentencing, and transfer to prison.)

Last year, this report examined the jail time credit of prisoners coming in under S.B. 2, compared to those prisoners coming in under pre-S.B. 2 law. Despite claims that S.B. 2 slowed down the process, the S.B. 2 offenders had far less jail time credit.

While we did not anticipate that the group would have more jail time credit, we did not expect it to be considerably lower either. A possible explanation for the effect was that the last few offenders going through under pre-S.B. 2 law were the complicated, left over cases that for some case-related reason took a long time to process, giving the offender more jail time credit than the average pre-S.B. 2 case. Meanwhile, the S.B. 2 cases that came through first, during FY 1997, were the easiest of cases, which would presumably have less than average jail time credit.

To test this, we looked at the average jail time credit for offenders coming into prison during FY 1996 (just before S.B. 2's effective date), and compared it to the average jail time credit for S.B. 2 cases in FY 1998. The results were nearly identical between the two groups (73.1 days in FY 1996 versus 74.8 days in FY 1998). However, when considering that there are fewer, felony cases, the fact that the average jail time credit is nearly the same means that S.B. 2 cases are not backing up the court system as some had feared.

Release Decisions and Post Release Control

Now that S.B. 2 has been in effect for over two years, we have data to analyze the last key part of the law: how felons finish their prison terms. S.B. 2 limited the Parole Board's ability to release prisoners to those serving life sentences. It also replaced shock probation with judicial release, and allowed the Parole Board to provide for supervision of those who finished their stated prison terms.

When the Commission's staff projected the impact of S.B. 2, it had to make assumptions about how these things would work. On one hand, judicial release is very similar to shock probation under prior law. On the other hand, with

the abolishment of parole and the possibility of post release control for low level offenders, the idea of releasing someone early so that they can be supervised is less compelling.

Post-release control supervision is somewhat like parole in terms of day to day supervision, but it does not have the same potential prison terms for violators. Prior to S.B. 2, indefinite sentences often allowed Adult Parole Authority to return violators for years. While this did not happen often, it is still of great interest.

This table shows the releases for pre-S.B. 2 offenders and S.B. 2 offenders for FY 1996 through FY 1998. To simplify the analysis, the table focuses on the primary release mechanisms. Other ways an offender can be released (appeal bond, pardon, death, escape, transitional control) have been excluded because the reports generated by DRC with release information do not distinguish between S.B. 2 and pre-S.B. 2 offenders.

S.B. 2 Offender Releases

	FY 1996		FY 1997		FY 1998	
Judicial Release	0	0.0%	38	8.6%	770	13.7%
Post Release Control	0	0.0%	190	43.0%	2583	46.0%
End of Stated Prison Term	0	0.0%	214	48.4%	2258	40.2%

Pre S.B. 2 Offender Releases

	FY 1996		FY 1997		FY 1998	
Shock Probation	2,538	14.4%	2,119	12.7%	1,082	9.8%
Parole	3,331	18.9%	3,385	20.3%	3,497	31.6%
Shock Parole	356	2.0%	179	1.1%	92	0.8%
Expiration of Definite Sentence	11,375	64.6%	10,953	65.8%	6,380	57.7%

Note that under S.B. 2, 59.8% of the offenders coming out of prison in FY 1998 received some sort of supervision, either post-release control or judicial release. This compares to FY 1996 under pre-S.B. 2 law, when only 35.3% of the offenders coming out of prison were supervised.

Felony OMVI Law

The Sentencing Commission staff also is closely monitoring the impact of the felony drunken driving law that went into effect in October of 1996. Under it, a fifth OMVI within six years carries a mandatory prison term. Formerly, these offenders were held in local jails.

When offenders fully move through the system, there will be an estimated 3,300 offenders per year eligible for a mandatory prison term. There have not been nearly so many offenders going to prison yet. During FY 1998, 81 came to prison with a drunken driving offense. This compares to 13 in FY 1997.

That there are so few compared to the projection is partially due to the fact the an offender must have a second felony level drunken driving offense in order to get the mandatory prison term, and that has taken longer than expected.

There also may be fewer offenders committing their fifth drunken driving offense because of the deterrent value of a felony conviction and prison term. It is also possible that the local justice system is adjusting and informally diverting offenders away from a possible prison sentence. This issue needs more study.

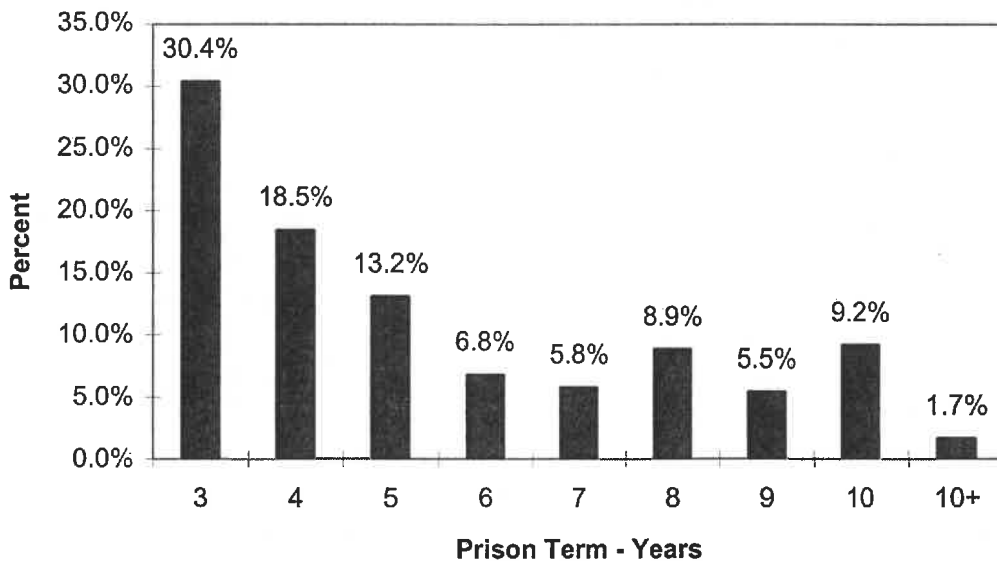
However, since chronic drunken drivers, on average, have the longest stays in local jails, the felony OMVI law eventually will free significant local jail space, while increasing the prison population.

Where are Judges Falling in the Ranges?

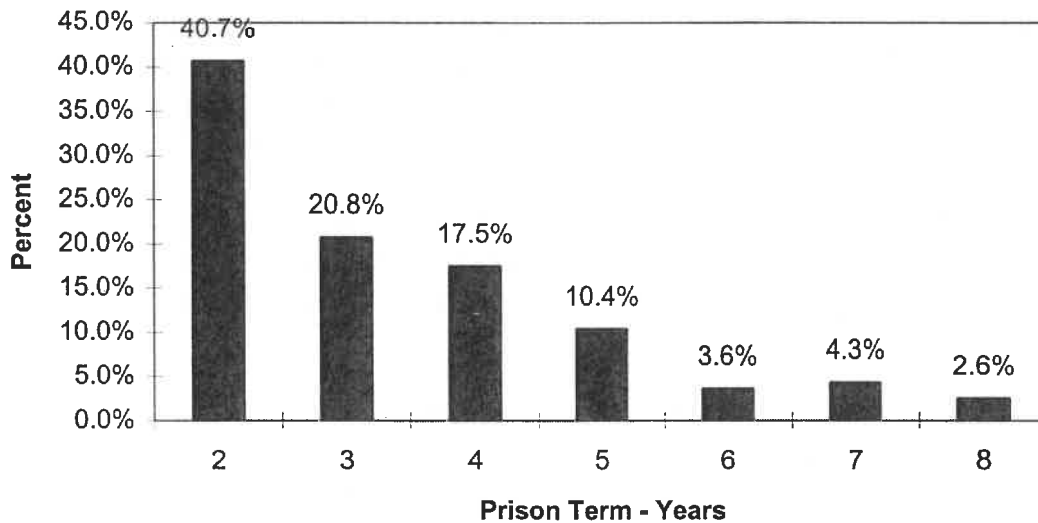
One of the most difficult things in projecting the impact of S.B. 2 on prison populations was where judges would fall in the newly created sentencing ranges. Now with two years of

data we have a pretty good sense of what is happening. The following graphs show where judges have fallen in the prison term ranges on offenders with single offenses for each felony level during FY 1998:

**F1 Prison Sentencing Pattern
FY 1998**



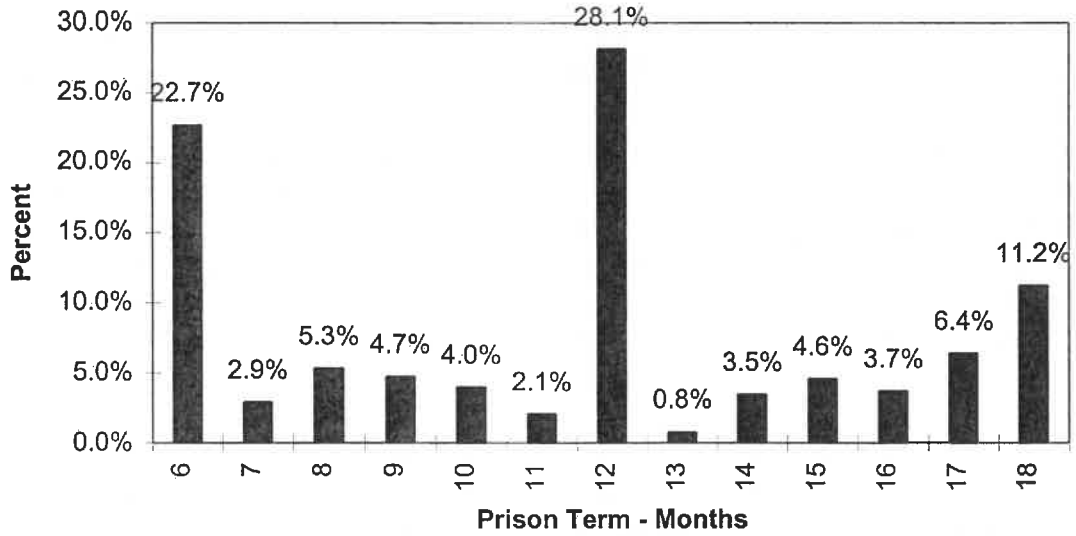
**F2 Prison Sentencing Pattern
FY 1998**



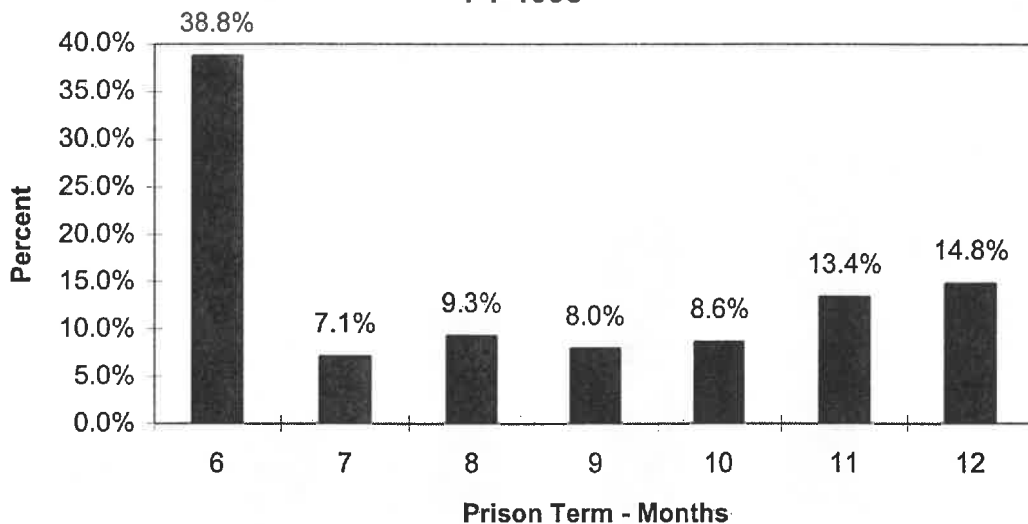
**F3 Prison Sentencing Pattern
FY 1998**



**F4 Prison Sentencing Pattern
FY 1998**



F5 Prison Sentencing Pattern FY 1998



Note that judges are not disproportionately using one step below the maximum, as some had predicted, in order to avoid potential appeals. Also note that these distributions are very similar to those reported last year.

Appeals

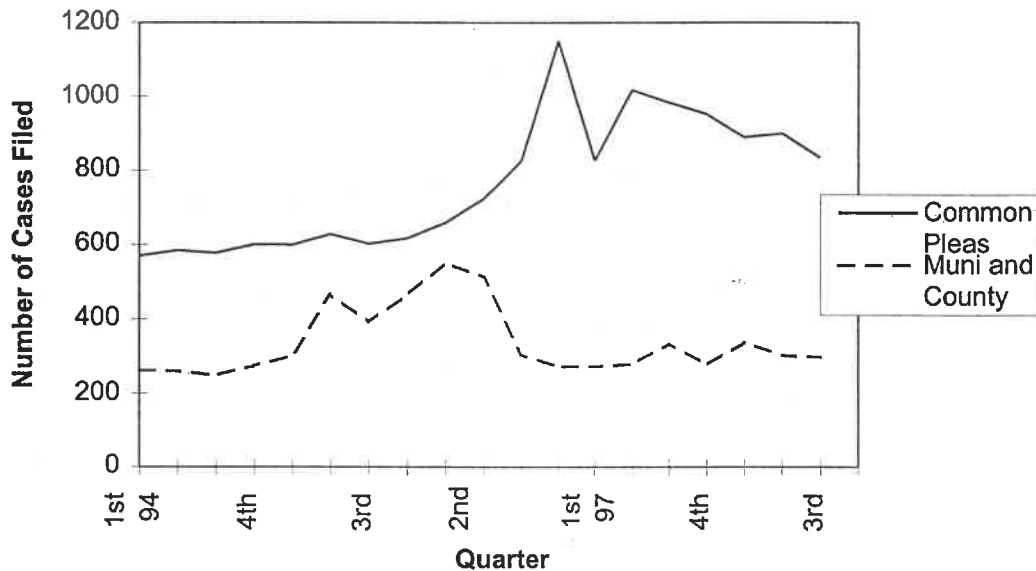
As S.B. 2 was being considered, there was a great deal of interest in the number of appeals that there would be under the new appellate review provisions. Money was set aside, and a special Felony Sentencing Appeal Cost Oversight Committee was created in statute. The Commission's staff monitored appellate court caseloads closely to see if there was a big jump. To just about everyone's surprise, there have been very few appeals, especially given the number of offenders who are coming into prison with a sentence that gives them an appeal of right.

This graph shows the number of criminal appeals by quarter coming out of the Ohio's common pleas courts and (for comparison purposes) misdemeanor courts. It shows that there has not been a dramatic change in the number of appeals since the effective date of S.B. 2. The spike in the third quarter of 1996 is most likely due to appeals associated with the sex offender registration law and could also be due to inmate appeals challenging the lack of

retroactivity of S.B. 2 (an issue that was resolved fairly quickly).

In April of 1998, the Felony Sentencing Appeal Cost Oversight Committee met to look at the possibility of distributing state money to counties to reimburse them for the cost of appeals due to S.B. 2. The FY 1998-1999 budget contained \$2 million per year to cover these costs. The Committee decided that there had not been enough appeals in FY 1998 to justify creating a mechanism to spend the money, and returned the appropriation to the state General Revenue Fund.

Statewide Criminal Appeals by Quarter



Formal Evaluation

This report is not intended to be a formal, academic style, impact evaluation of Ohio's new felony sentencing law. Rather, it is designed to report on the data from available sources. Unfortunately, it is difficult to attribute effects (or lack of effects) observed in the data to changes in sentencing laws. Also, it is difficult to answer very specific questions about certain kinds of offenders and sanctions.

In order to more fully and more formally evaluate the impact of S.B. 2, a data-rich study is needed. Such a study would be similar to the Offender Tracking Study that was prepared by the Commission staff in 1992.

The University of Cincinnati's Division of Criminal Justice along with the Sentencing Commission research staff has received a partnership grant from the National Institute of Justice to study the impact of S.B. 2. The study is being headed by the Commission's staff, and Dr. John Wooldredge and Ph.D. candidate Skip Carboneau at the University.

The study (which has already begun) will collect data on approximately 7,000 felony cases before and after the effective date of S.B. 2. The goal is to compare the pre-S.B. 2 cases with the S.B. 2 cases, and statistically control for as many other variables as possible. This will give us the best data yet to study the impact of S.B. 2.

The sample will be drawn from county prosecutor offices, with the cases followed up through local probation departments and DRC.

The data, which will be collected largely by University of Cincinnati students, can be used for many purposes. One is to assess the impact of S.B. 2 on sentencing; another is to better predict the impact of changes in law on the prison population.

Judicial Opinion

In preparation for the grant, and as a starting point for his Ph.D. dissertation, Skip Carboneau surveyed Ohio's general division common pleas judges about their opinions on Ohio's felony sentencing law. He asked judges whether they thought that the law was meeting some of its stated goals.

While a more detailed analysis will likely be assembled in the coming months, Mr. Carboneau did provide the Sentencing Commission staff with the raw data of the responses that had been coded as of early December 1998. There were 133 responses in the sample.

55.0% agreed or strongly agreed with the statement "In general, SB 2 Guidelines are good for the sentencing

process". 64.6% agreed or strongly agreed with the statement "Adjusting to SB 2 guidelines has been relatively easy for most judges".

Meanwhile, 67.4% agreed or strongly agreed with the statement "The sentence presumptions of SB 2 have diminished the authority of the sentencing judge". Only 31.9% agreed with the statement "The members of the Ohio Criminal Sentencing Commission understand the perspectives of judges on sentencing issues".

The survey also asked judges for some background information about themselves. It was interesting to see how judges from differing backgrounds viewed S.B. 2:

	Percent of felony judges who Strongly Agree or Agree that SB 2 guidance is "good for the sentencing process".
Overall	55.0%
Large County Judges	59.5%
Medium and Small County Judges	51.6%
Former Prosecutors	55.2%
Former Defense Attorneys	57.2%
Former Non-Criminal Litigants	60.7%
Former Other Experienced Attorneys	48.8%
>10 yrs on the bench	49.2%
<=10 yrs on the bench	60.3%
Men	55.7%
Women	47.7%

The University of Cincinnati will continue to analyze this survey data. There will be further reports in the coming months.

