

# Monitoring Sentencing Reform

A Sentencing Commission Staff Report  
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**OHIO CRIMINAL SENTENCING COMMISSION**  
Chief Justice Thomas J. Moyer, Chairman  
David J. Diroll, Executive Director

## EXECUTIVE SUMMARY

- The Sentencing Commission has an ongoing duty to monitor any sentencing reforms that are enacted as the result of its proposals. Monitoring takes two forms: (1) assessing how the reforms work in practice; and (2) assessing sentencing data.
- To date, the General Assembly has adopted four major sentencing bills based on Commission proposals: S.B. 2 (1996) regarding adult felons; S.B. 179 (2002) juvenile offenders; S.B. 123 (traffic offenders); and H.B. 490 (adult misdemeanants).
- Since our last monitoring report, the Commission has recommended several refinements to the sentencing structure for adult felons and juvenile offenders. These were adopted by the General Assembly as H.B. 327 and H.B. 490 during 2002. Both bills were sponsored by Rep. Bob Latta. Both are summarized in this report.
- Since S.B. 179 (juveniles) took effect in 2002, and the traffic and misdemeanor bills are not effective until 2004, this report focuses on S.B. 2's felony sentencing reforms.
  - Generally, S.B. 2 is achieving its goals. There has been progress toward the goals of better managing prison populations, imprisoning more repeat offenders, and steering low level felons into community sanctions. Whether this has happened enough, or too much, is subject to debate. But record prison intake in 2001 and 2002 means there are dark clouds on the horizon.
  - Increased predictability also means that S.B. 2 is achieving the goals of promoting greater certainty and fairness. Offenders who commit similar offenses are getting more similar sentences. And those sentences are not based on illegitimate factors such as the race of the offender.
  - There are mixed signals as to whether the new law achieves the goal of prioritizing prison space for higher level and violent offenders. One study was inconclusive. However, another independent study clearly found that violent offenders as a percentage of overall prison intake grew significantly by 1998 (two years after S.B. 2 took effect) when compared to intake in 1990.

## SENTENCING COMMISSION DUTIES

The General Assembly created the Sentencing Commission (in Ohio Revised Code §§181.21 through 181.26) to:

- Study Ohio's criminal laws, sentencing patterns, and juvenile offender dispositions;
- Recommend comprehensive plans to the General Assembly that encourage public safety, proportionality, uniformity, certainty, judicial discretion, deterrence, fairness, simplification, more sentencing options, victims' rights, and other reasonable goals;
- Review correctional resources and recommend make cost-effective proposals;
- Work with the General Assembly as the plans are debated, work to implement them, monitor them, and periodically report on their impact;
- Review related bills introduced in the General Assembly and study sentencing and dispositions in other states; and
- *Monitor the impact of sentencing reforms that were enacted based on the Commission's proposals (§181.25).*

## SENTENCING COMMISSION PRODUCTS

To date, the General Assembly has enacted the following major bills based on Sentencing Commission proposals:

- **Adult Felons** - S.B. 2, effective July 1, 1996;
- **Juvenile Offenders** - S.B. 179, effective January 1, 2002;
- **Adult Misdemeanants** - H.B. 490, effective January 1, 2004; and
- **Traffic Offenders** - S.B. 123, also effective January 1, 2004.

[A fifth group of major proposals, covering **criminal forfeiture statutes**, will be presented to the General Assembly soon.]

Monitoring these measures takes two forms. The first involves gathering practitioners' concerns and sharing them with the General Assembly for "cleanup" legislation. The second is statistical, learning the impact of these measures on the justice system.

## MONITORING SENTENCING IN PRACTICE

In its monitoring role, the Commission relays issues raised by various practitioners to the General Assembly. Since 1996, this has led to three bills that refine the felony sentencing plan originally enacted as S.B. 2. The third of these bills (H.B. 327) was enacted by the 124<sup>th</sup> General Assembly in 2001, as was the first refinement of the S.B. 179 juvenile plan (H.B. 393).

### **H.B. 327 - Felony Sentencing Refinements**

Sponsored by Rep. Bob Latta, Am. Sub. H.B. 327 took effect July 8, 2002. The bill:

- Clarifies that drug traffickers, cultivators, manufacturers, and those charged with corrupting and steroid offenses are *not* eligible for intervention in lieu of conviction (§2951.041).
- Clarifies that a court may make a recommendation on placing an offender in a prison boot camp without making a formal finding on the offender's eligibility for the camp (§§2929.14(K), 2929.19(D), 5120.031, & 5120.032).
- Specifies a penalty for making a false statement in a drug prescription, order, report, or record (§2925.23).
- To better deal with offenders on post-release control (PRC) after serving a prison term, the bill:
  - Makes more prominent in the sentencing law the additional penalties faced for felony PRC violations (§§2929.141 & 2967.28);
  - At final release from PRC, allows the Adult Parole Authority to classify the release as "favorable" or "unfavorable" and gives DRC six months to adopt rules setting criteria (§2967.14);
  - Instructs courts to consider unfavorable termination as a factor indicating likely recidivism in future sentencing (§2929.12(D)(1)).
- Gives the Sentencing Commission until 7/1/02 to report to the General Assembly on forfeiture statutes (§181.25).
- Makes clear that persons currently in prison can be charged as repeat violent offenders, making them eligible for additional penalties (§2929.01).
- More clearly guides judges toward imposing a prison term on offenders who commit crimes while in prison (§§2929.13(B)(1)(g) & 2929.14(B)(1)).

- Clarifies that a prison term can be imposed consecutively to another prison term for a single offense committed while awaiting trial or sentencing or while under community supervision for an offense. Also makes clear that consecutive terms can be imposed for acts arising out of multiple courses of conduct (§2929.14(E)(4)).
- Clarifies judicial release eligibility for persons serving exactly 10 years (§2929.20). As now, judicial release is not available for sentences longer than 10 years.
- Clarifies that domestic violence committed under Federal law, another state's law, or another state's municipal ordinance counts as priors to enhance the penalty for the offense in Ohio (§2919.25).
- The bill also contains other provisions that were not generated by the Sentencing Commission, including: expense reimbursements for members of the Ohio Council for Interstate Offender Supervision (§5149.22); using certain violent offenses to disqualify future applicants for nursing licenses or dialysis technicians' certificates (§§4723.09, 4723.28, 4723.72, 4723.74, 4723.75, & 4723.77); and makes clearer that the unauthorized use of property offense covers any cable service or system (§2914.04) and can be enforced by civil actions (§2307.62).

### **H.B. 393 - Juvenile Sentencing Refinements**

Also sponsored by Rep. Latta, H.B. 393 refined the juvenile law reforms originally enacted by the 123<sup>rd</sup> General Assembly in S.B. 179 (repeat violent offenders, etc.). H.B. 393 took effect July 5, 2002. In short, it:

- Regarding blended sentencing for serious youthful offenders (SYOs):
  - Clarifies how an SYO case begins (§2152.13).
  - Asks the Supreme Court to amend the Juvenile Rules to allow magistrates to handle ministerial aspects of SYO cases (e.g., arraignment and bail), but not trials and sentencing.
  - Clarifies that an offender must be 14 before an adult sentence is invoked, whether from DYS or from a community sanction, and gives the judge more flexibility on the adult sentence (§2152.14).
- Harmonizes S.B. 179 with S.B. 3, the juvenile sex offender registration (J-SORN) law and clarifies some

provisions (§§2152.19, 2152.82, 2152.83, 2152.84, 2950.01, 2950.04, 2950.09, & 2950.14).

- Clarifies that an SYO's "dispositional sentence" means he or she is "adjudicated delinquent" for purposes of J-SORN (§2950.01(N)).
- Harmonizes S.B. 179 with the body armor spec law (S.B. 222), giving the court discretion to impose up to two years (§2152.17(D)(1)).
- Restores a parent's right to inspect a child's juvenile record, while shielding arrest records and witness statements from parental disclosure (§§2151.18(A) & 2152.71(A)).
- Sets the maximum amount of community service by unruly children at 175 hours (§2151.354(A)(2)).
- The bill also contains other provisions that were not generated by the Sentencing Commission, including:
  - Carries over DYS's authority to grant releases for medical reasons, subject to court approval during the "minimum" term (§§2152.16(B)(2) & 5139.05).
  - Allows DYS's Release Authority to delegate power to hearing officers, while removing S.B. 179 language on the Authority's quorums and votes (§5139.50).
  - Makes optional language that currently mandates DYS to designate that some employees carry a firearm (§5139.53).
  - Corrects H.B. 11 by specifying that the new court in Muskingum County is a domestic relations, not juvenile, court (§2301.03(AA)).
  - Creates a narrow exception to the juvenile tobacco law (S.B. 218) to allow legitimate research (§2151.87 & 2927.02).

### **For More Detail**

For a more detailed summary of H.B. 327 and H.B. 393, contact the Sentencing Commission at 614-466-1833 or click on the Sentencing Commission prompt on the Supreme Court's website ([www.sconet.state.oh.us](http://www.sconet.state.oh.us)).

## MONITORING SENTENCING DATA

### Data in This Report

As with prior monitoring reports, the data-related part of this report focuses on the changes made to sentencing for adult felons by S.B. 2. The juvenile reforms, effective in 2002, are too new for meaningful analysis and the traffic and misdemeanor bills do not take effect until next year.

### Ohio Prison Population Trends

**Prison Population.** Ohio's prison population grew steadily from the early 1970s to the late 1990s. This growth occurred in good times and bad. It occurred whether the crime rate was up or down.

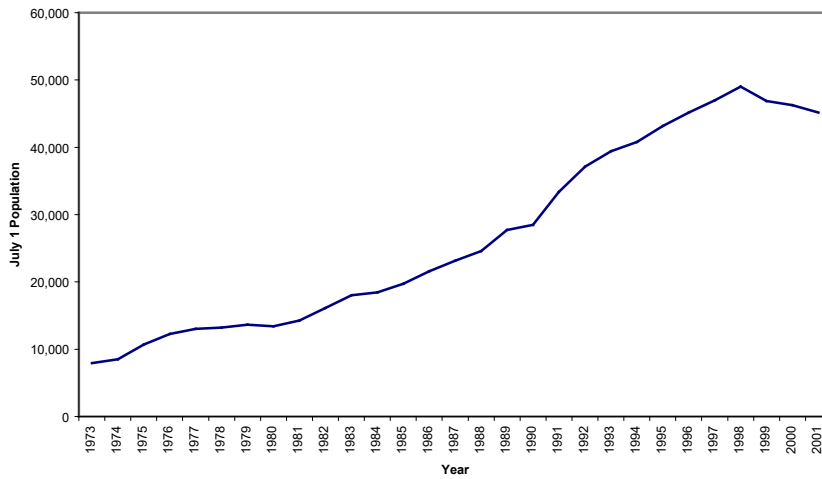
One goal of S.B. 2 was to make prison growth more measured. It was not a crash diet for the prison population. It was weight management.

S.B. 2 took effect July 1, 1996. However, with the lag time between arrest and sentencing, it was not until later in 1997 that the majority of inmates entering prison were sentenced under the new law.

The Sentencing Commission expected the prison population to dip initially. Thereafter, the Commission expected the population to grow gradually, but at a slower rate than before. While S.B. 2 intended to steer more high level felons to prison, it also guided greater numbers of lower level felons to community sanctions. S.B. 2 also eased prison crowding by shifting repeat petty theft cases from felony courts to misdemeanor courts.

Has S.B. 2 met this goal? Data from the Department of Rehabilitation and Correction show that Ohio's prison population peaked at 49,100 in 1998. Since then, it dipped and leveled in the 45,000 range. S.B. 2's sentencing reform can take some credit, especially since the General Assembly helped make it work by dramatically increasing spending for residential and nonresidential community sanctions. A lower crime rate, the long term lockup of many chronic felons, and other factors also play significant roles in the reduction.

Ohio's Prison Population since 1973



Here is some bad news. According to DRC Research Chief Steve Van Dine, the number of new inmates coming to Ohio prisons in 2001 was an all time high (20,669). And 2002 data, while not yet official, indicate another record intake total.

**Criminal History and Offense Level.** S.B. 2 created a sentencing structure under which prison terms are preferred for persons with longer criminal histories, and for those sentenced for higher level offenses. Conversely, the bill guided judges to place more low level felons in other sanctions.

S.B. 2 seems to be working to steer chronic offenders to prison. Chronic offenders (three or more priors) has grown from 16.6% of annual intake in 1995 to 23.8% in 2001. Meanwhile, the percentage of persons being committed to prison for the first time shrunk from 60.7% in 1998 to 54.2% in 2001.

These data come from DRC's 2001 Institutional Reports.

**CRIMINAL HISTORY AND PRISON INTAKE**

<b>YEAR</b>	<b>PERCENT WITH NO PRIOR PRISON TERM</b>	<b>PERCENT WITH 3 OR MORE PRIORS</b>
<b>2001</b>	54.2%	23.8%
<b>2000</b>	56.1%	21.9%
<b>1999</b>	58.5%	20.3%
<b>1998</b>	60.7%	19.0%
<b>1997</b>	NA	17.9%
<b>1996</b>	NA	18.8%
<b>1995</b>	NA	16.6%

**Felony Level.** Another part of S.B. 2's strategy was to steer more high level felons toward prison, while guiding judges to place more low level felons in other sanctions.

Two studies attempted to measure this. In one, the Commission staff joined with researchers from the University of Cincinnati in a study funded by the National Institute of Justice. The survey sampled pre- and post-S.B. 2 cases in 25 Ohio counties.

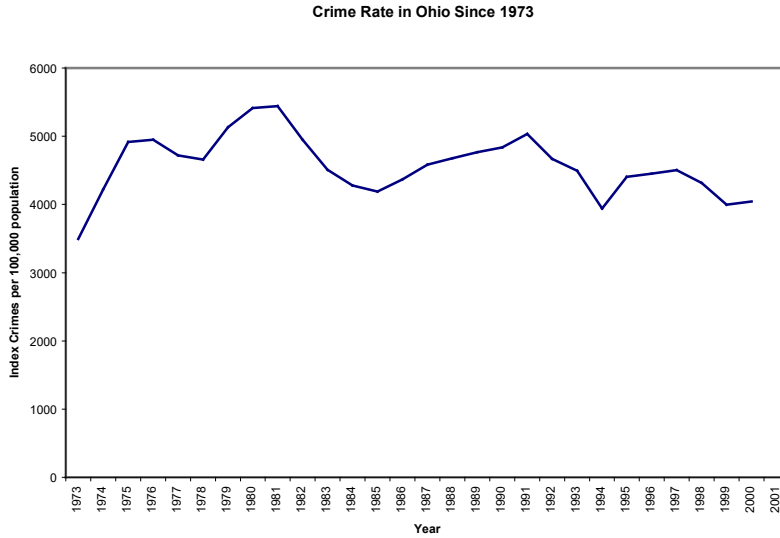
The results were inconclusive. The overall percentage of felony cases going to prison is slightly lower after S.B. 2--41.9% to 37.6% (see "The Likelihood of a Prison Term" below). That was not surprising, given the greater availability of community sanctions and the lower crime rate after S.B. 2 took effect. However, the Commission was surprised that the percentage of violent offenders sent to prison dipped somewhat. Since the survey used data from the first year of sentencing under S.B. 2 (1997), perhaps this can be explained by the learning curve for the sentencing reforms.

A second study produced better news. As part of a national review of "truth in sentencing" laws (including S.B. 2), Case Western Reserve University sociologist William Sabol compared the prison population in 1990 with that in 1998. Overall intake grew by a modest 4.9% during that period, *but intake for violent crime rose by 30.5% and intake for property crime declined by 25.4%*. Controlling for crime and arrest rates, Sabol concludes that a tougher group was coming to prison in 1998, which can be attributed to S.B. 2.

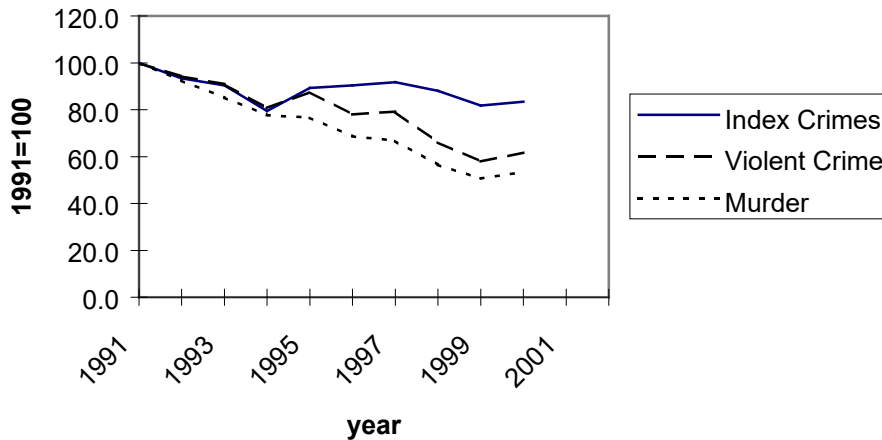
## Crime Rates

Following the national trend, Ohio's crime rates generally declined in the 1990s. However, also following the national pattern, the crime rate rose at the end of the decade. It is too early to know if this will be a trend.

The FBI's Uniform Crime Reports show recent patterns.



## Ohio Reported Crime, Violent Crime, Murder Since 1991



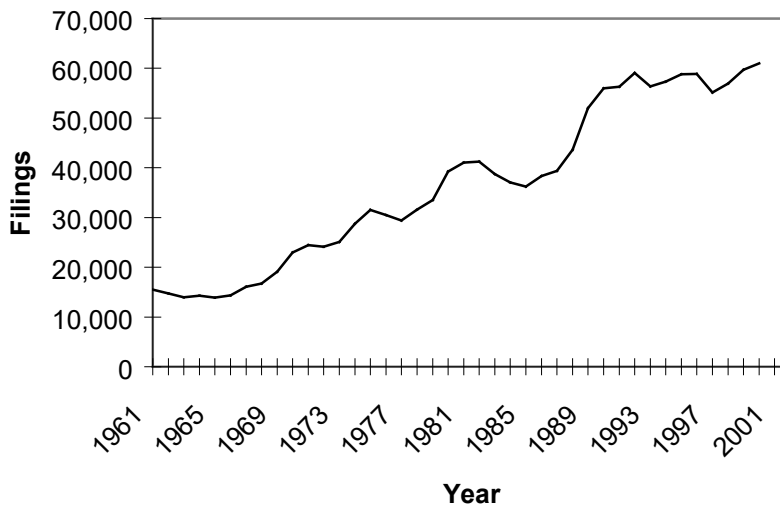
## Court Filings

When S.B. 2 passed, the Commission predicted a dip in common pleas (felony) court filings and a small increase in municipal and county (misdemeanor) court filings. The anticipated changes were because the felony theft threshold increased from \$300 to \$500 in S.B. 2 and repeat petty thieves were no longer chargeable as felons.

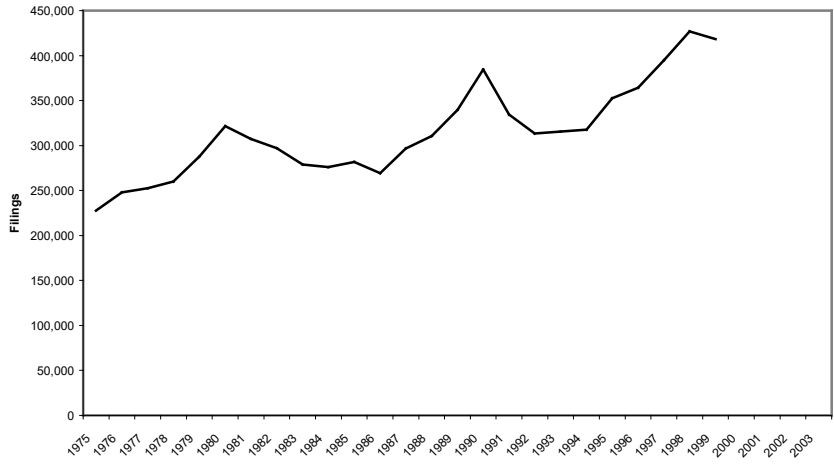
As expected, common pleas filing dropped and municipal and county court filings increased in the wake of S.B. 2. But the misdemeanor court increase was greater than can be attributed to the theft changes in S.B. 2. As noted in earlier reports, two non-S.B. 2 changes probably help explain the extra burden on misdemeanor courts: the preferred arrest policy in domestic violence cases and the significant increase in the number of peace officers in Ohio (over 25% more than in 1995).

As you can see, court filings do not mirror crime rates.

**Common Pleas Criminal Filings since 1961**



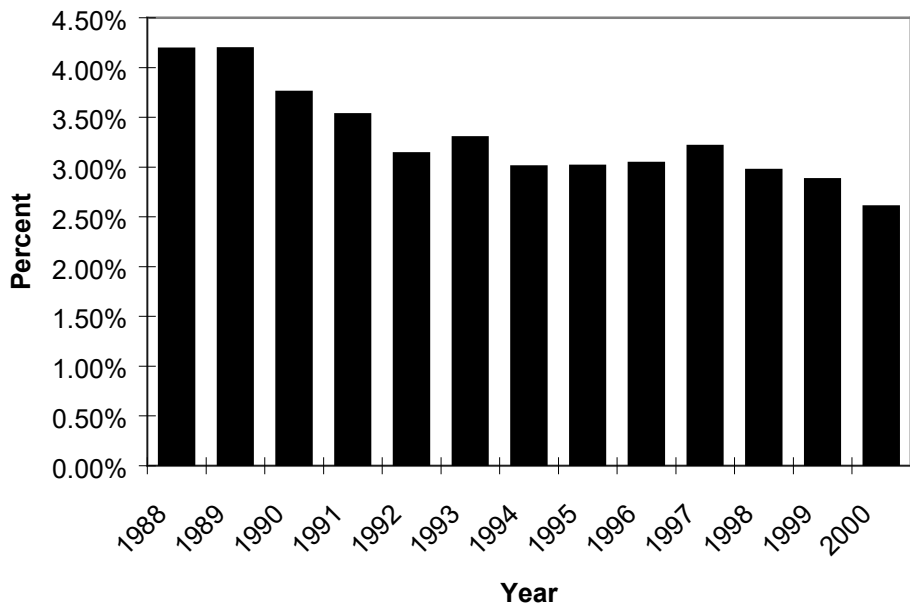
Criminal Misdemeanor Filings Since 1975



### Jury Trials

Some judges predicted that the more definite sentencing structure in S.B. 2 would mean more jury trials, which can be time-consuming and expensive. In fact, the percentage of felony cases tried by jury is lower now than in 1996. Juries try only about 3% of felony cases statewide.

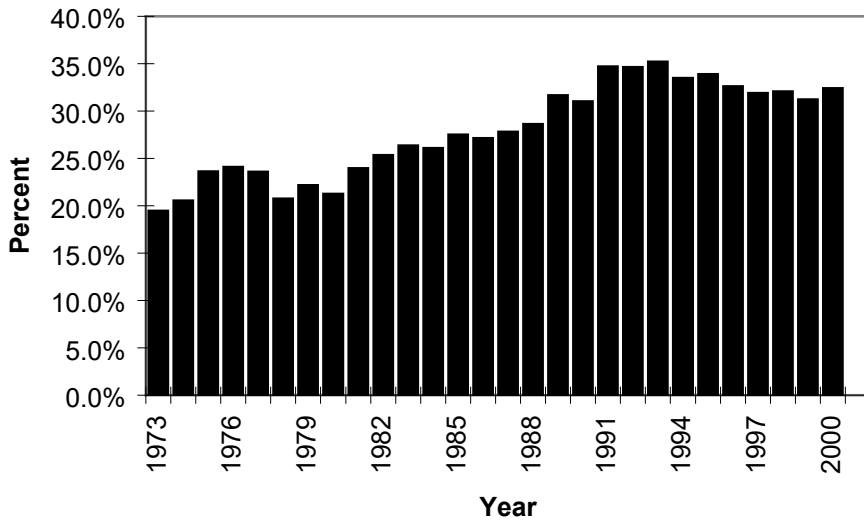
Common Pleas Court Percent Jury Trials



### Likelihood of a Prison Term

From the early 1980s into the early 1990s the percentage of felony cases resulting in a prison term increased from about 20% to nearly 35%. Since S.B. 2 took effect, this percentage has consistently remained in the low 30s.

**Prison Intake v. Common Pleas Filings Since 1973**

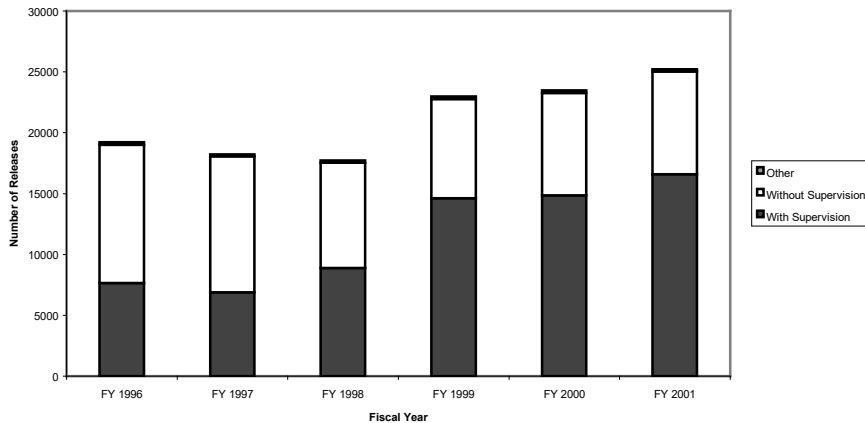


### Supervision for Prison Releasees

One goal of S.B. 2 was "truth in sentencing". That is, the time imposed in open court is the time served. Administrative releases were virtually eliminated for crimes committed after July 1, 1996. One misconception about S.B. 2 is that its determinate sentences meant less supervision upon release from prison. In fact, another goal of the bill was to make more offenders eligible for supervision. Parole release decisions were eliminated, but eligibility for parole-type supervision (called "post-release control") actually increased.

The table shows that the percentage of offenders who leave prison under supervision has grown since S.B. 2 took effect in 1996.

Release by Supervision Status since FY 1996



### Sentencing Fairness

Another goal of S.B. 2 was to make sentencing more consistent and ultimately fairer. How can we measure this? If sentencing decisions can be better explained statistically by legal factors under S.B. 2 than under prior law, then the law is more fair and certain. That is, do the nature of the offense and the offender's criminal history (legal factors) do a better job of predicting who goes to prison and who does not than they did under the old law? Similarly, what is the predictive value of non-legal factors such as race?

Using data from the UC survey mentioned earlier, we found that offense level and criminal history could predict imprisonment in 63.8% of the cases in the pre-S.B. 2 sample. After S.B. 2, offense level and criminal history could predict imprisonment in 68.3% of the cases. Since these legitimate factors do a better job of predicting imprisonment decisions after S.B. 2, it is a sign that the law is fairer than prior law.

Taking this a step further, we looked to see whether the race of the offender improves the ability to predict imprisonment. If so, it would be evidence of racial bias in sentencing decisions. We found that race did not improve predictability in either the pre- or post-S.B. 2 sample. This indicates that there is not systematic racial bias in imprisonment decisions.