Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

APPENDICES

OHIO
CRIMINAL SENTENCING COMMSSION

August 31, 2020

OHIO CRIMINAL SENTENCING COMMISSION

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APPENDIX A
Ohio Criminal Rule 32

Ohio Crim. R. 32

Rules current through rule amendments received through September 24, 2019

OH - Ohio Local, State & Federal Court Rules > Ohio Rules Of Criminal Procedure

Rule 32. Sentence

(A)Imposition of sentence.

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B)Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C)Judgment.

A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

History

Amended, eff 7-1-92; 7-1-98; 7-1-04; 7-1-09; 7-1-13.

Annotations

Commentary

Staff Notes

7-1-13 AMENDMENT

Rule 32(C) sets forth the four essential elements required for a judgment of conviction as defined by the Supreme Court of Ohio. See *State v. Lester, 2011-Ohio-5204*. The previous rule arguably required the judgment to specify the specific manner of conviction, e.g., plea, verdict, or findings upon with the conviction is based. The amendment to the rule allows, but does not require, the judgment to specify the specific manner of conviction. When a judgment of conviction reflects the four substantive provisions, as set forth by the Supreme Court of Ohio, it is a final order subject to appeal.

7-1-04 AMENDMENT

RULE 32(A) IMPOSITION OF SENTENCE.

Criminal Rule 32(A) was amended to conform with the Supreme Court of Ohio's decision in *State v. Comer, 99 Ohio St. 3d 463, 2003-Ohio 4165*. The *Comer* decision mandates that a trial court must make specific statutory findings and the reasons supporting those findings when a trial court, in serious offenses, imposes consecutive sentences or nonminimum sentences on a first offender pursuant to *R.C. 2929.14(B)*, 2929.14(E)(4) and 2929.19(B)(2). Crim.R. 32(A) was modified to ensure there was no discrepancy in the criminal rules and the Court's holding in *Comer.*

7-1-98 AMENDMENT

RULE 32 SENTENCE.

The 1998 amendment to Crim.R. 32 was made in light of changes in Ohio's scheme of victim's rights as well as the changes in the criminal law of Ohio effective July 1, 1996. Crim.R. 32(A) was amended to reflect the requirements of section 2929.19 of the Revised Code that both prosecutor and the victim, if present, be provided an opportunity to speak prior to the sentence being imposed. The victim provisions are intended as an acknowledgment of, rather than a substitution for, victim rights provided for by the Constitution of Ohio or by statute. (No additional right to notice beyond that created by Chapter 2930 of the Revised Code is intended.)

What was formerly division (A)(2), notification of right to appeal, became division (B), and was amended to reflect that a defendant should be informed, if applicable, of his or her right to appeal or to seek leave to the appeal certain sentences pursuant to section 2953.08 of the Revised Code whether the sentence was the result of a conviction or a plea. In the event of a right to appeal or seek leave to appeal a sentence or in the event of conviction, the court must advise the defendant of the applicable rights to appeal without payment, to have appointed counsel, to have documents provided without cost, and to have notice of appeal timely filed as provided under the previous rule.

Case Notes

Uniform Sentencing Entry Ad Hoc Committee

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OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX B
State v. Baker
119 Ohio St. 3d 197

STATE OF OHIO, APPELLEE, *v.* BAKER, APPELLANT.

[Cite as *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330.]

Criminal law — Judgment of conviction — Final appealable order — Crim.R. 32(C), explained.

(No. 2007-1184 – Submitted February 27, 2008 – Decided July 9, 2008.)

CERTIFIED by the Court of Appeals for Summit County, No. 23713.

SYLLABUS OF THE COURT

A judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. (Crim.R.32(C), explained.)

LANZINGER, J.

{¶ 1} This case was accepted as a certified conflict between the Ninth and Twelfth District Courts of Appeals to resolve what a judgment of conviction must include pursuant to Crim.R. 32(C) to become a final appealable order. See R.C. 2505.02, delineating final appealable orders. Two interrelated issues are included in this appeal, first, whether "the plea, the verdict or findings, and the sentence," Crim.R. 32(C), must be contained in one document; and second, whether the judgment of conviction must include the plea entered at arraignment. We hold that the judgment of conviction is a single document that need not necessarily include the plea entered at arraignment.

I. Background

{¶ 2} Appellant, Jermaine Baker, was convicted after a jury trial of having weapons under disability and obstructing official business.[1] The judgment of conviction, entered April 9, 2007, stated that "the Defendant was found GUILTY by a Jury Trial * * *." The judgment of conviction did not state that Baker had previously entered a not guilty plea at his arraignment on October 6, 2006, although that fact was reflected in the October 12, 2006 journal entry of arraignment.

{¶ 3} Baker filed his notice of appeal on May 7, 2007. The state moved to dismiss the appeal for lack of a final order because the judgment of conviction did not contain appellant's plea, citing *State v. Miller*, 9th Dist. No. 06CA0046-M, 2007-Ohio-1353, and *State v. Taylor*, 9th Dist. No. 06CA008964, 2007-Ohio-2038, ¶ 10. The Ninth District Court of Appeals agreed and dismissed Baker's appeal.

{¶ 4} Pursuant to App.R. 25, appellant filed a motion to certify a conflict between the districts, arguing that the Summit County Court of Appeals' opinion is in conflict with *State v. Postway*, 12th Dist. No. CA2002-06-154, 2003-Ohio-2689. In *Postway*, although the judgment entry of conviction stated that the defendant had been found guilty of robbery, it did not state that the defendant had pleaded guilty to that charge. Id. at ¶ 7. Another journalized entry stated that the defendant had pleaded guilty and that the court had accepted the plea. Id. The 12th District held that the two entries were "sufficient to meet the requirements of Crim.R.32(C)." Id. In so holding, the court cited the Ninth District's earlier case of *Wadsworth v. Morrison* (Apr. 1, 1992), 9th Dist. No. 2047, 1992 WL 67601, that had been overruled in *Miller*, 2007-Ohio-1353, at ¶ 10. Postway's conviction

1. The jury also found Baker not guilty of the offenses of receiving stolen property and possession of crack cocaine, and the court directed a verdict for him on the offenses of possession of marijuana, possession of drugs, and disorderly conduct.

had been based upon a guilty plea. *Postway*, 2003-Ohio-2689, at ¶ 2. Baker's conviction resulted from a jury verdict.

{¶ 5} The Ninth District Court of Appeals certified a conflict to this court as follows: "Must the judgment of conviction contain the defendant's plea, verdict or findings, and the sentence in one document to constitute a final, appealable order under R.C. 2505.02?" We accepted the certified question. *State v. Baker*, 114 Ohio St.3d 1505, 2007-Ohio-4285, 872 N.E.2d 948.

II. Analysis

{¶ 6} A court of appeals has no jurisdiction over orders that are not final and appealable. Section 3(B)(2), Article IV, Ohio Constitution ("Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *"). See also R.C. 2953.02. We have previously determined that "in order to decide whether an order issued by a trial court in a criminal proceeding is a reviewable final order, appellate courts should apply the definitions of 'final order' contained in R.C. 2505.02." *State v. Muncie* (2001), 91 Ohio St.3d 440, 444, 746 N.E.2d 1092, citing *State ex rel. Leis v. Kraft* (1984), 10 Ohio St.3d 34, 36, 10 OBR 237, 460 N.E.2d 1372. R.C. 2505.02(B) provides:

{¶ 7} "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶ 8} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment."

{¶ 9} Undoubtedly, a judgment of conviction qualifies as an order that "affects a substantial right" and "determines the action and prevents a judgment" in favor of the defendant.

{¶ 10} In entering a final appealable order in a criminal case, the trial court must comply with Crim.R. 32(C), which states: "A judgment of conviction

shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." Journalization of the judgment of conviction pursuant to Crim.R. 32(C) starts the 30-day appellate clock ticking. App.R. 4(A); see also *State v. Tripodo* (1977), 50 Ohio St.2d 124, 4 O.O.3d 280, 363 N.E.2d 719.

{¶ 11} We first observe that we are discussing a "judgment of *conviction*." In *State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239, 818 N.E.2d 272, ¶ 14, we explored the meaning of the word "conviction": "A 'conviction' is an 'act or process of judicially finding someone guilty of a crime; the state of having been proved guilty.' Black's Law Dictionary (7th Ed.1999) 335. Thus, the ordinary meaning of 'conviction,' which refers exclusively to a finding of 'guilt,' is not only inconsistent with the notion that a defendant is not guilty (by reason of insanity or otherwise), it is antithetical to that notion. Indeed, the notion that a person is *convicted* by virtue of being found *not guilty* is an oxymoron (a 'not guilty conviction')."

{¶ 12} There are four ways that a defendant can be convicted of a criminal offense. A defendant may plead guilty either at the arraignment or after withdrawing an initial plea of not guilty or not guilty by reason of insanity. A defendant may enter a plea of no contest and be convicted upon a finding of guilt by the court. A defendant may be found guilty based upon a jury verdict. A defendant also may be found guilty by the court after a bench trial. Any one of these events leads to a sentence. A court cannot sentence a defendant who is found not guilty. See, e.g., *Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239, 818 N.E.2d 272, ¶ 15 (a defendant found not guilty by reason of insanity is not sentenced but rather committed to a hospital). Furthermore, if a defendant maintains a not guilty plea throughout the litigation, the only way that this plea is

overridden is through proof beyond a reasonable doubt leading to a guilty verdict during a jury trial or a finding of guilt by the court after a bench trial.

{¶ 13} The phrase within Crim.R. 32(C) that has caused confusion is that a judgment of conviction must include "the plea, the verdict or findings, and the sentence." The Ninth District has stated that there are five elements that constitute a judgment of conviction: (1) the plea; (2) the verdict or findings; (3) the sentence; (4) the signature of the judge; and (5) the time stamp of the clerk to indicate journalization. *Miller*, 2007-Ohio-1353, at ¶ 5. In order to satisfy the first element, the appellate court held, "The trial court's judgment entry must comply fully with Crim.R. 32(C) by setting forth the defendant's plea of not guilty, guilty, no contest, or not guilty by reason of insanity." Id. at ¶ 10. Although this approach may be supported grammatically because in the phrase "the plea, the verdict or findings" the missing comma after the word "verdict" confuses whether "the plea, the verdict or findings" is intended to be a series, Baker's appeal should not be lost for the want of a comma.

{¶ 14} A more logical interpretation of Crim.R. 32(C)'s phrase "the plea, the verdict or findings, and the sentence" is that a trial court is required to sign and journalize a document memorializing the sentence and the manner of the conviction: a guilty plea, a no contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial.

{¶ 15} The Ninth District has failed to recognize that not all four methods of conviction have all five elements. Unlike a plea of no contest, which requires a trial court to make a finding of guilt, *State v. Bird* (1998), 81 Ohio St.3d 582, 584, 692 N.E.2d 1013, a plea of guilty requires no finding or verdict. *Kercheval v. United States* (1927), 274 U.S. 220, 223, 47 S.Ct. 582, 71 L.Ed. 1009 ("A plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive. More

is not required; the court has nothing to do but give judgment and sentence"). See also *State v. Bowen* (1977), 52 Ohio St.2d 27, 28, 6 O.O. 3d 112, 368 N.E.2d 843.

{¶ 16} The difficulty in interpreting "the plea" as *every* plea entered during the case is that pleas of not guilty or not guilty by reason of insanity cannot be the foundation for a conviction, which is the focus of Crim.R. 32(C). Announcing that it will not "search the record" to determine what plea a defendant has entered, the Ninth District has required additional language (of an initial not guilty plea, for example) to be added to a judgment of conviction for the order to be entertained as final and appealable. This requirement leads to a more serious problem, for a defendant may be caught in limbo. Unless a defendant in prison were to seek mandamus or procedendo for a trial court to prepare a new entry, appellate review of the case would be impossible.

{¶ 17} The Twelfth District's solution in *Postway*, allowing multiple documents to constitute a final appealable order, is also an erroneous interpretation of the rule. Only one document can constitute a final appealable order. "[Crim.R. 32(C)] now requires that a judgment in a criminal case be reduced to writing signed by the judge and entered by the clerk." *Tripodo*, 50 Ohio St.2d at 127, 4 O.O.3d 280, 363 N.E.2d 719.

{¶ 18} We now hold that a judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. Simply stated, a defendant is entitled to appeal an order that sets forth the manner of conviction and the sentence.

III. Conclusion

{¶ 19} By erroneously dismissing appeals of this nature, the Ninth District has unnecessarily complicated cases of those seeking appellate review of their convictions and sentences. Crim. R. 32(C) does not require what the court of

appeals mandates for a final appealable order. We answer the certified question by holding that the judgment of conviction is a single document that need not necessarily include the plea entered at arraignment, but that it must include the sentence and the means of conviction, whether by plea, verdict, or finding by the court, to be a final appealable order under R.C. 2505.02. We therefore reverse the judgment of the Court of Appeals for Summit County and remand the appeal of Jermaine Baker to the court of appeals for further proceedings.

Judgment reversed
and cause remanded.

PFEIFER, LUNDBERG STRATTON, and CUPP, JJ., concur.

O'DONNELL, J., concurs separately.

MOYER, C.J., and O'CONNOR, J., dissent.

O'DONNELL, J., concurring.

{¶ 20} I concur with the judgment reached by the majority.

{¶ 21} In my view, this case is not about the placement of a comma. Rather, it is an interpretation of Crim.R. 32(C), which was promulgated to notify a defendant that a final judgment has been entered in a criminal proceeding and that the time for filing an appeal has begun to run. In this instance, Baker entered a plea of not guilty at arraignment; the case proceeded to trial, and upon conclusion, the trial court failed to reflect Baker's not guilty plea in the final judgment entry of conviction. It makes little sense to require hypertechnical compliance with Crim.R. 32(C) in this circumstance. The occurrence of a trial leads to the ineluctable conclusion that a defendant has entered a plea of not guilty, because we do not conduct trials for those who have entered pleas of guilty. A better reading of Crim.R. 32(C) is to have the trial court delineate the plea when a defendant enters a guilty plea; doing so for a defendant who elects to go to trial has virtually no meaning.

{¶ 22} For this reason, I concur with the majority to reverse the court of appeals and remand this cause for further proceedings.

MOYER, C.J., dissenting.

{¶23} I must respectfully dissent, because the majority states that though the Ninth District Court of Appeals' conclusion is "supported grammatically" by the language and punctuation used in Crim.R. 32(C), there is "[a] more logical interpretation" of the rule.

{¶24} However, we have repeatedly stated that we first look to the plain language of a statute or rule and apply it as "written when its meaning is unambiguous and definite." *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52, citing *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463. Further, when we consider language used in a statute or rule, we "read[] words and phrases in context and construe them in accordance with rules of grammar and common usage." *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, at ¶ 40, citing *State ex rel. Rose v. Lorain Cty. Bd. of Elections* (2000), 90 Ohio St.3d 229, 231, 736 N.E.2d 886; R.C. 1.42.

{¶25} Crim.R. 32(C) is not ambiguous, and therefore the majority is wrong to apply its own "more logical interpretation" of the rule.

{¶26} The language at issue in this case is the first sentence of Crim.R. 32(C): "A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence." Unlike in the majority's syllabus language, which cites "Crim.R. 32(C), explained," the rule has no comma between "the verdict" and "or findings." Rather, the first sentence of the rule as written requires three elements that must be "set forth" in the "judgment of conviction": (1) the plea, (2) the verdict or findings, and (3) the sentence.

{¶27} If this court upon the recommendation of the Supreme Court Rules Advisory Committee (now the Commission on the Rules of Practice and Procedure in Ohio Courts) had intended to require *either* the plea, the verdict, or the findings be included in the judgment of conviction, we would have placed a comma after the word "verdict." See generally Garner, A Dictionary of Modern Legal Usage (2d Ed.1995) 714 (the inclusion of the final comma in a list of more than two is important to avoid ambiguities).

{¶28} The Ninth District Court of Appeals does not try to complicate Crim.R. 32(C) with lengthy analysis "interpreting" the rule. Rather, the court of appeals lists the five elements included in Crim.R. 32(C), as they are plainly stated:

1. the plea,
2. the verdict or findings,
3. the sentence,
4. the signature of the judge, and
5. the time stamp of the clerk to indicate journalization.

State v. Miller, 9th Dist. No. 06CA0046-M, 2007-Ohio-1353, at ¶ 5. The court of appeals then proceeds in *Miller* to review the trial court's judgment entry to locate each of the five elements. Finding one of the elements missing, the court of appeals concludes that the entry fails to comply with Crim.R. 32(C) and dismisses the appeal for lack of a final, appealable order. Id. at ¶ 20. The court of appeals then encourages the trial court to enter a proper judgment entry as soon as possible and instructs the defendant, if he desires to appeal, to file a new notice of appeal. Id. The court of appeals' well-reasoned and clear opinion in *State v. Miller* conveys the proper application of Crim.R. 32(C), and therefore the court of appeals' entry in *State v. Baker* should be affirmed.

{¶29} The majority states that the Ninth District "require[s] additional language * * * to be added to a judgment of conviction for the order to be

entertained as final and appealable" and that "[t]his requirement leads to a more serious problem, for a defendant may be caught in limbo. Unless a defendant in prison were to seek mandamus or procedendo for a trial court to prepare a new entry, appellate review of the case would be impossible."

{¶30} To the contrary, the Ninth District Court of Appeals has not required that additional language be included in the judgment of conviction; the court of appeals' decision has simply required the five elements required by this court's rule. If the majority's concern is that the rule creates a "more serious problem," then we should apply the rule as adopted by this court and request the Supreme Court Commission on the Rules of Practice and Procedure in Ohio Courts to review the issue to determine whether to recommend that the rule be amended.

O'CONNOR, J., concurs in the foregoing opinion.

Sherri Bevan Walsh, Summit County Prosecuting Attorney, and Richard S. Kasay, Assistant Prosecuting Attorney, for appellee.

Donald Gallick, for appellant.

Uniform Sentencing Entry Ad Hoc Committee

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APPENDIX C
Sentencing Entries Summary

OHIO
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SENTENCING ENTRIES SUMMARY

A total of 124 sentencing entries from Common Pleas courts in all 88 Ohio counties were received. In counties with more than one entry, the entries were either different types of sentences (such as a community control sentence or a prison sentence) or from different judges in the same court.

The entries were read through and coded for the elements they contained. This was an attempt to get a sense of what courts are already doing with their sentencing entries and learning what information could be included in a uniform sentencing entry. Potentially, a uniform entry could be used as a way to collect data on sentencing.

When an element is listed below as present in an entry, it indicates that this factor was mentioned or considered, not that it was necessarily part of the sentence handed down. For example, prison was mentioned in nearly all entries, even though not all entries involved sentences of incarceration. This could mean the entry said "prison is not consistent with the purposes and principles…" rather than handing down a prison term.

Overview

The following tables attempt to give an overview of the types of entries examined. The type of sentence included in the entry is relevant, as some elements of an entry only belong on certain types of entries. For example, a list of community control sanctions only make sense on community control sentence entries. The other two tables reflect the process of completing the sentencing entry: how it is completed and who, likely, completes the entry.

Types of Sentence	Number of entries	Percent of entries
Prison	68	55%
Community Control Sanction (CCS)	51	41%
Treatment in lieu of conviction (ILC)	2	2%
Other (blank form, fine, deferred sentence)	3	3%

Entry method	Number of entries	Percent of entries
Electronic checklist	3	3%
Electronic narrative	111	90%
Electronic narrative and checklist	7	6%
Handwritten narrative	2	2%
Combination narrative and checklist	1	1%

The method of completing the entry varied. Most were completed electronically, either into a narrative form or through a checklist. Handwritten narrative entries looked like traditional fill-in-the-blank forms. Some entries combined the methods and included a checklist for a portion of the entry, such as community control sanctions or statutory findings.

Elements in Entries

90 to 100% of entries	• Presence of defendant • Charges (ORC Code) • Level of Offense • Facts of conviction and sentence • Judge signature • Journalization by Clerk • Date of hearing • Prison term • Court costs and/or fines • Presence of defense attorney • Prison term • Manner of conviction (plea, verdict, finding by court)

70 to 89 % of entries	• Specifics of post-release control (PRC)
	• PRC as mandatory or discretionary
	• Presence of prosecutor at hearing
	• Rights according to Criminal Rule 32
	  o Includes right to appeal
	• Principles and purposes of sentencing (ORC 2929.11)
	  o Two approaches:
	  ▪ Overall mention of ORC 2929.11, such as "…after considering all factors listed in §R.C. 2929.11 and 2929.12…" (ex: Fairfield)
	  ▪ List of the specifics of ORC 2929.11 (ex: Champaign)
	• Risk of recidivism and seriousness of offense (ORC 2929.12)
	  o Two approaches:
	  ▪ Mention of code broadly, such as "…balanced seriousness and recidivism factors under RC 2929.12" without listing specific factors (ex: Ashtabula 2)
	  ▪ Listing specific characteristics that applied to the case, or choosing items from a checklist (ex: Hardin and Holmes, respectively)

40 to 69% of entries

- Credit for time served
  - 100% of the sentences for incarceration specified credit for time served
- Community control sanction list
  - 100% of sentences for community control included a specific list of sanctions
  - For example: drug testing, license restrictions, curfew, travel, limits on who to associate with
  - These restriction specifics are not counted separately
- Consecutive or concurrent sentences (ORC 2929.14 (C)(4))
- Opportunity for victim to speak; victim advocate; victim impact statement
- Remand or order to convey defendant
- Restitution
- Mention of felony sentence guidance (ORC 2929.13)
  - Two approaches:
    - Overall mention of code and consideration in sentencing, such as "the court has considered the factors set forth in Ohio Revised Code Section 2929.13 and hereby finds…" (ex: Ottawa)
    - Checklist (ex: Greene) or specific findings based on ORC 2929.13 (ex: Mercer)
- Community Service in lieu of court costs
  - 68% of these entries specified an hourly rate for community service

20 to 39% of entries

- DNA collection (ORC 2901.07)
- Presentence investigation
  - Consideration, waiver, and/or presence
- Potential of an earned reduced sentence through participation in prison programs
- Consideration of ability to pay financial sanctions
- Criminal Rule 11
  - Specifically: plea was knowing, intelligent, and voluntary
    - Two approaches:
      - Statement that judge confirmed defendant's plea was "knowing, intelligent, and voluntary" (ex: Union)
      - List of each question/statement asked of defendant affirming this (ex. Jefferson 2)
- Federal firearm disability for those convicted of a certain degree of felony
- Sentence is the result of a joint recommendation or negotiated sentence

10 to 20% of entries	• Mandatory term for any of the sentence • Intensive prison programs (IPP) • Other restriction (e.g. substance testing, license suspension, travel, curfew, etc.) o Counted here only when separate from community control specifics • Specific instructions on what to do with seized property (contraband/evidence)

Less than 10%	• Registry (Sex offender, violent offender, arson, etc.)
	  o Requirements for defendant to be on a registry, and length of time
	  o Including specific tier, in the case of sex offenders
	• Risk Assessment result
	• TCAP eligibility
	• Specifications for outstanding warrants
	• Age of defendant
	• The consequences for failing to pay costs and fines, lack of financial plan, or a failure to appear at hearing about payment
	  o Most frequently, a registration block through the BMV
	• Citizenship of defendant
	• Work release
	• Judicial release
	• Photo of defendant
	• Civil rights of felons
	  o The removal of voting rights when incarcerated and the need to re-register post release was most frequently mentioned (ex: Huron)

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APPENDIX D
National Perspective

Judgment Sentence Form
Survey Responses from NASC members
12/19/19

	Alaska	Ohio	Kansas	North Carolina	Arkansas	Washington
Format of J&S Form	Hardcopy. Some judges have Word templates	Hardcopy. Currently investigating central entry system for Feb 2020.	Hardcopy in Adobe or Word.	Fillable Adobe or printed hardcopy.	Fillable Adobe, hardcopy or access-based program or data push from the Case Management program utilized by the State Prosecutor Coordinator.	Hardcopy. Some counties have software programs for their ownn forms.
Who is responsible for creation and maintenance of forms?	Administrative Office of the Courts. A Forms Attorney maintains the forms.	Individual courts. Currently investigating central entry system for Feb 2020.	The Sentencing Commission has a Forms Committee that makes change recommendations. Full Comission must approve changes.	Director of Administrative Office of the Courts has the statutory duty to prescribe uniform forms to be used in the offices of the clerks of superior court. (Gen. Stat. 7A-343(3)).	The Administrative Office of the Courts, the Sentencing Commission, and Prosecutor Coordinator make changes necessitated by statute, court rule or court opinion.	By authority of CrR 7.2(d), the Administrative Office of the Courts in conjunction with the Supreme court Pattern Forms Committee that creates and maintains the forms.
How often are they updated?			Anually	Twice. A fall meeting deals with changes from legislative session. A spring meeting addresses other changes that are not time sensitive.	Every other year after the legislative session.	The Pattern Form Committee meets at least once a year to consider changes to the forms, but may meet more often as needed
Is use of form required by statute?	No. Detailed data elements are required by court rule (Criminal Rule 32).	No. Considering mandated use of pending uniform entry system.	Yes. KSA 2019 Supp 22-3426(d) KSA 2019 Supp 22-3439(a) KSA 2019 Supp 21-6813	In some cases, a statutue mandates use of a specific AOC form (ex: Gen. Stat. 15A-145(4a)). Otherwise there is no requirement. AOC's Office of General Counsel indicates that practitioners do not frequently use their own forms and when they do it is not problematic.	Yes. A.C.A. § 16-90-802.	No.
Data collection on form errors	Contact Kathy Monfreda (kathyrn.monfreda@alaska.gov) at Dept of Public Safety	No.	No. DOC manually computes each case and hand enters sentence information.	No. The Dept of Public Safety used to keep data but no longer do. Common errors involve incorrect terms of imprisonment (e.g. maximum does not correspond with minimum).	No.	The Dept of Corrections collects error data on forms they receive.

Judgment Sentence Form
Survey Responses from NASC members
12/19/19

	Alaska	Ohio	Kansas	North Carolina	Arkansas	Washington
How do you address errors on form?	Contact Kathy Monfreda (kathyrn.monfreda@alaska.gov) at Dept of Public Safety	The Bureau of Sentence Computation of the Department of Rehabilitation and Correction sends letter to the courts for clarification and correction on prison admissions.	DOC sends correspondence is sent to the PA, DA, and Judge seeking clarification or correction. A follow-up notice sent at 6 weeks and 12 weeks after initial request.	The Dept of Public Safety's Combined Records Section sends a letter to the court seeking clarification or correction, based on *Hamilton v Freeman* case law which makes the incorrect judgment "binding until vacated or corrected".	The Division of Corrections has an Administrative Directive requiring certain fields on the sentencing order be filled out accurately. If there is a mistake, the order will be sent back for correction.	The Dept of Corrections and the Caseload Forecast Council send letters to the courts and PA for clarification and correction.

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX E
February 2020 Report to Chief Justice O'Connor

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

UNIFORM SENTENCING ENTRY AD HOC COMMITTEE
EXECUTIVE SUMMARY AND DRAFT UNIFORM SENTENCING ENTRY
Presented February 10, 2020

Felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehendible sentences is of the utmost import for the administration of justice and promoting confidence in the system. As such, Chief Justice Maureen O'Connor asked the Ohio Criminal Sentencing Commission (Commission) to convene a Uniform Sentencing Entry Ad Hoc Committee. The charge to the Uniform Sentencing Entry Ad Hoc Committee was two-fold: 1.) to develop a model, uniform felony sentencing entry and 2.) to work in conjunction with the Supreme Court's Commission on Technology and the Courts standards workgroup.

To accomplish its charge, the Uniform Sentencing Entry Ad Hoc Committee approached its work with the premise that the uniform sentencing entry should prescribe the most clear and concise minimum language required to comply with Criminal Rule 32 and existing case law. It was also understood that the uniform sentencing entry should allow supplemental case specific information to be incorporated, when necessary.

Further, the Uniform Sentencing Entry Ad Hoc Committee and the Commission on Technology and the Courts standards workgroup agreed to explore opportunities for standardizing and reporting sentencing information in a format that will improve the reporting and analysis of sentencing data. These two groups continue to coordinate efforts to develop key sentencing data elements and connect evolving sentencing structure with preparation of the sentencing entry.

The Uniform Sentencing Entry Ad Hoc Committee first met on October 18, 2019 and over the next several months met in person three times. At each of those meetings, business was conducted by consensus agreement of the majority.

The members of the Uniform Sentencing Entry Ad Hoc Committee generally found the development of the DRAFT Uniform Entry challenging, but worthwhile. Notably, members endorsed the fact that the work is not complete. Throughout the course of the debate, it was determined and agreed there are certain, important elements that precede sentencing but, not essential to the minimum language required for a uniform sentencing entry. Thus, there is a need for the development of a companion Method of Conviction (plea) Entry. The members acknowledged a willingness to continue their participation in this regard if Chief Justice O'Connor and the Commission concur and ask for their continued service.

Additionally, there were more spirited discussions and concerns expressed about roll-out of the uniform sentencing entry and expectations for implementation – i.e. is it a "tool"/best practice or a mandate. Other issues raised included: 1.) defining (and clarifying) its purpose and use – i.e. consistency and uniformity versus data collection; 2.) addressing disparate data systems, gaps and obstacles; 3.) defining (and clarifying) expectations before considering revisions to the Rule of Superintendence or Criminal Rule(s); 4.) identifying strategies to achieve buy-in versus resentment; and 5.) designating responsibility (to the Commission) for ongoing monitoring, oversight and making changes as necessary.

It is recommended that, after the aforementioned concerns are addressed, the Uniform Sentencing Entry Ad Hoc Committee reconvene for the purpose of developing a Method of Conviction Entry. Members can also identify and complete the remaining tasks associated with a reasoned, thoughtful roll-out strategy for implementation of the DRAFT Uniform Sentencing Entry.

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX F
State V. Dangler, Harper Memo

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

TO: Uniform Sentencing Entry Ad Hoc Committee

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: 05/15/20

RE: Ohio Supreme Court Jurisprudence

Two recent Ohio Supreme Court decisions are relevant to the discussions of the Ad Hoc Committee, and we wanted to provide those decisions to the group along with a brief synopsis of the cases.

In *State v. Dangler*, Slip Opinion No. 2020-Ohio-2765, decided May 5, 2020, the Court considered Crim R. 11(C)(2)(a)'s requirements that a plea colloquy include an explanation of the "maximum penalty involved," particularly as it relates to the Sex Offender Registration and Notification (SORN) duties the defendant would be subject to as a result of their conviction. Dangler claimed that the trial court judge did not adequately explain the requirements of registering as a Tier III offender, including the residency restrictions and community notification provisions of that classification. Justice DeWine, writing for the majority, held that for a non-constitutional issue like the nature of the maximum penalty involved, the defendant must show that they were prejudiced by the purported failure unless the trial court completely failed to comply with Crim. R. 11(C). Here, where the defendant alleged merely that the explanation of SORN duties was inadequate, the defendant could not meet that burden.

Interestingly, Justice Donnelly in a partial dissent discusses what would constitute best practices in explaining the nature of the maximum penalty involved in these cases, and goes on to suggest that the Court use its authority to issues rules requiring uniform, model plea forms in sex offense cases that clearly lay out all of the potential SORN obligations that would result from a conviction, and goes on to discuss the value of standardized plea forms for all offenses.

Commission staff have developed language for the method of conviction:plea form that can be used for each of the different registry offenses – Sex/Child Victim Offenders, Arson Offenders, and the Violent Offender database. That language is present as an additional instruction on the attached method of conviction:plea form, and a sample plea form in a sex offense case is also attached to give an idea of how the form might look in practice.

In *State v. Harper*, Slip Opinion No. 2020-Ohio-2913, decided May 14, 2020, Justice Kennedy writes for the majority and addresses whether errors in a sentencing entry regarding post-release control render the sentence "void" or "voidable." The Court overruled it's prior decisions and held that matters regarding errors in imposing post-release control only render the decision voidable, and those errors must be addressed on direct appeal. The Court refers to this as a "realignment" of its jurisprudence on the void vs. voidable debate, and bases the determination of a "void" sentence on a question of whether the sentencing court had proper jurisdiction over the case.

As to the work of the Ad Hoc Committee, our method of conviction and sentencing entries contain all statutorily required language for proper imposition of community control. Best practice at both sentencing and in a rule 11 plea colloquy would be to reiterate to practitioners the need to address these provisions both in the entries and on the record to avoid appellate issues down the road. Commission staff have also drafted the attached Post-Release Control imposed form, based off the Franklin County Common Pleas Court practice.

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX G
Justice Donnelly Letter

The Supreme Court of Ohio

65 South Front Street, Columbus, OH 43215-3431

Chief Justice
Maureen O'Connor

Justice
Michael P. Donnelly

Justices
Sharon L. Kennedy
Judith L. French
Patrick F. Fischer
R. Patrick DeWine
Michael P. Donnelly
Melody J. Stewart

Telephone 614.387.9090
Facsimile 614.387.9099
www.supremecourt.ohio.gov

May 7, 2020

Justice Paul E. Pfeifer
Executive Director
Ohio Judicial Conference
65 S. Front. St. 4th Fl.
Columbus, OH 43215

Re: Uniform written plea agreements and sexual registration form acknowledgments

Dear Justice Pfeifer,

Enclosed is a recent concurring/dissenting opinion I authored in the case of *State v. Dangler*, Slip Opinion No. 2020-Ohio-2765, that I would like to share with you. As you will see, I put forth an idea that I have been thinking about for quite some time that I believe would improve transparency in the plea-agreement process. I spoke with Judge John J. Russo, Second Vice Chair of the Ohio Judicial Conference, and he suggested that it would be a good idea to send you a letter to see if the Criminal Law & Procedure Committee would consider the matter for discussion.

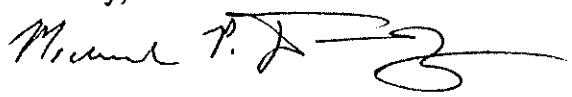
Since I joined the court, I've noticed that we have taken in a fair number of cases involving plea colloquies where the defendant-appellant argues that a trial court judge either forgot to inform the defendant of one of his/her fundamental rights or did not go far enough in explaining the collateral consequences the defendant would be subject to after he/she was sentenced. I am aware that, in order to combat the same issue that sometimes takes place at sentencing hearings, one of your committees is working on a uniform sentencing entry that could be used by trial court judges throughout the state of Ohio.

I am proposing for discussion that we move towards written plea agreements that outline all of the rights that we usually explain on the record at oral plea colloquies. The written agreements would contain attestations of counsel that they have sat down with their clients, discussed everything in detail, and answered all questions prior to the plea hearing. I believe this would make oral plea colloquies much more meaningful and would make the record crystal clear as to what information the defendant was provided concerning his/her negotiated plea agreement. I also believe we should create a rule for sex offenses that would require trial courts to use a similar type of form, which would contain all direct and collateral consequences of sex-offender classification. The form

would be provided prior to the plea hearing rather than solely at the sentencing hearing, which is what often occurs in some courtrooms.

If you would like to discuss any of these ideas in further detail please do not hesitate to contact me. Thank you for your consideration.

Sincerely,



Justice Michael P. Donnelly

Cc: Judge John J. Russo, Cuyahoga County Court of Common Pleas
Marta Mudri, Ohio Judicial Conference

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX H
Criminal Rule 11 Memo

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

TO: Uniform Sentencing Entry Ad Hoc Committee

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: 05/05/20

RE: Criminal Rule 11 Jurisprudence and the Method of Conviction Entries

At the last meeting of the Committee, members requested a review of Supreme Court of Ohio decisions surrounding Criminal Rule 11, to better inform the group's discussion of the necessary elements of a model plea entry. What follows is a brief synopsis of the some of the benchmark decisions on Crim.R. 11 as well as notes on the various method of conviction entries we have created for the committee's consideration.

It is important to note that Crim.R. 11 only requires that a plea of not guilty by reason of insanity be made in writing – Crim.R. 11(A) states that all other pleas may be made orally. Ohio Revised Code §2943.04 states that "Pleas of guilty or not guilty may be oral. Pleas in all other cases shall be in writing, subscribed by the defendant or his counsel, and shall immediately be entered upon the minutes of the court." As such, omissions from a plea form of a topic that is otherwise thoroughly covered in the plea colloquy typically do not result in review of the plea at the Supreme Court level. That being said, the method of conviction entries still serves a vital function in memorializing the plea agreements of the parties and reiterating to the defendant the rights that are being given up and the maximum penalties they could face as a result of their pleas.

Criminal Rule 11 Jurisprudence

Two decisions from 2008 serve as the touchstones for case law on Criminal Rule 11 plea hearings. In July of 2008 the Supreme Court in *State v. Clark*, 119 Ohio St. 3d 239 urged trial courts "… to avoid committing error and to literally comply with Crim.R. 11." In this case the trial court misinformed a defendant entering a guilty plea to aggravated murder as to the nature of their parole and post release control obligations. This error was present in both the plea form and the colloquy between the judge and the defendant. The Court held that the defendant had not made a knowing, intelligent, and voluntary waiver in light of this misinformation. *Clark* also gives a concise summary of the need for strict compliance with the constitutional advisements of Crim.R. 11 and for substantial compliance with the non-constitutional advisements during the plea colloquy. Clear and concise statements of the rights being given up and the maximum penalties involved, as well as accurate instructions as on parole and post-release control apply entries will help ensure knowing and intelligent waivers in plea hearings.

In December of the same year the Court decided *State v. Veney*, 120 Ohio St. 3d 176, in which the Court reiterated the need for strict compliance with the constitutional advisements of Crim.R. 11. A trial judge must explain all five of the rights set forth in Crim.R. 11(C)(2)(c) the plea colloquy: "… the right to a jury trial, the right to confront one's accusers, the privilege against compulsory self-incrimination, the right to compulsory process to obtain witnesses, and the right to require the state to prove guilt beyond a reasonable doubt." These rights are laid out in each of the guilty, no contest, and Alford sections of the method of conviction entry on pleas, and are reiterated in plea for on intervention in lieu of conviction plea form as well. The Court in *Veney* also touches on the distinction between the need for strict compliance with the constitutional advisements of Crim.R. 11(C)(2)(c) and the substantial compliance standard for the provisions of Crim.R. 11(C)(2)(a) and (b). Both of the latter provisions are covered thoroughly in our model entries; however, the

Committee may want to consider drafting an instructions section for these model entries that explains to courts, for example, what constitutes the "maximum penalty" in a post SB-201 world.

The Court revisited the *Veney* case recently in *State v. Miller*, Slip Opinion No. 2020-Ohio-1420 (2020). Here, while the trial court explained all of the rights in Crim.R. 11(C)(2)(c), the judge never specifically explained that those rights were being waived as a result of the plea. The Court held that while strict compliance with the constitutional rights advisements is necessary, an advisement must be made "in a manner reasonably intelligible to the defendant, that the plea waives the rights enumerated in the rule." The Court further went on to say that no specific words are necessary, nor is a literal reading of Crim.R. 11(C)(2)(c). The record as a whole most convey that the judge accurately stated the rights being given up and that the defendant understood that waiver.

Maximum Penalty

In *State v. Johnson*, 40 Ohio St. 3d 130 (1988) the Court addressed the requirement of Crim.R. 11(C)(2)(a) that the plea colloquy contain an explanation of the nature of the charge and of the maximum penalty involved. The Johnson court found that the reference to "the charge" in the singular meant that the defendant must understand the maximum penalty they may face for each and every crime to which they are pleading guilty. It did not require that the defendant be informed of the total penalty they could be subject to if all crimes were to be run consecutively. While in practice many judges also inform defendants of this number, it is not strictly required by law. However, *Johnson* was decided even before Senate Bill 2, and has not been addressed in light of the changes made to felony sentences by 132 GA SB201. Non-life felony indefinite sentencing can cause there to be a new "maximum term" that includes sentences from multiple counts plus an additional term. As this maximum term may not be tied to one specific count, the chart in the model plea form includes a row where the aggregate minimum term and the maximum term are laid out for the defendant and can be explained by the trial court during the plea hearing.

The sex offender registration requirements imposed in R.C. 2950 have also been the subject of litigation around the requirements of Crim.R. 11. Several appellate Courts have found that as requirements are punitive, the plea colloquy must include notice of the registration duties a defendant may be subject to as a consequence of their plea. Several similar cases have been accepted to the Supreme court for review including *State of Ohio v. Glen A. Gilbert* 2018-0461 (Sixth District), *State v. Steven H. Dornoff*, 2018-1125 (Sixth District), *State v. Maurice Johnson*, 2019-0119 (Eighth District), and *State v. Hagan*, 2019-Ohio-1047 (Twelfth District) Once the conflict amongst the districts is resolved by the Court, Commission staff will update the Committee on any needed additions to the method of conviction entries. Thanks to Judge Sean Gallagher for his help and prior research on this particular issue.

More recently, the Supreme Court in *State v. Bishop*, 156 Ohio St. 3d 156 (2018) held that the sentencing court must inform the defendant of the potential penalties of 2929.141 where the defendant commits a new felony while on post release control. This language is reflected in the post release control advisements on the method of conviction entries.

No Contest Pleas

In *State v. Jones*, 116 Ohio St. 3d 2111(2007) the Court held that: "… for a no contest plea, a defendant must be informed that the plea of no contest is not an admission of guilt but is an admission of the truth of the facts alleged in

the complaint, and that the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." This language is reflected in the method of conviction entries nearly verbatim.

Alford Plea

Under *North Carolina v. Alford*, 400 U.S. 25 (1970), when a defendant maintains their innocence of the crimes charged, the trial court may not accept a guilty plea without a determination that the defendant has made a rational decision to enter a guilty plea based on the strong probability of a guilty verdict after a trial. This type of plea has not been prohibited in Ohio. However, when a defendant makes strong protestations of innocence, trial courts must adequately enquire as to the reasons the defendant wishes to enter a guilty plea to ensure the plea is being knowingly, intelligently, and voluntarily made. The *Alford* plea language in the method of conviction entry attempts to briefly summarize this finding by the judge, but the committee should consider this language carefully and consider an instruction on the issue for trial courts. Commission staff will continue to examine how *Alford* pleas are handled in Ohio, and update the draft accordingly. If this is an issue your court has dealt with previously, please reach out and let us know how it is typically handled.

Method of Conviction Entries Generally

Items for Committee to consider –

- What tone of voice should this document take? Is it an entry explaining in past tense what the court did at the hearing? Or is it a plea form being filled out by the parties, signed, and presented to the judge for review and signature.
- Who will be creating this document? How can we make this work easily for the largest number of jurisdictions?
- Do members wish to include an instruction sheet, similar to the sentencing entry?
- An instruction will be added, per members requests, for suggested language in the case of an uncounseled plea/trial.

Intervention in Lieu Entry

- Adopted Fairfield county approach of initial statement of amended/dismissed charges. Attempted to use format of existing charts that would allow both the indicted charges and their amendments/dismissals in one format.
- Added language regarding the waiver of speedy trial rights throughout the document.
  Included language from sentencing entry on imposition of community control sanctions, bond, restitution, etc – the sentencing pieces that go into a grant of ILC – as a separate page attached to the ILC plea form.
- Removed several optional sections from standard plea form, as they do not apply to the offenses eligible for ILC (e.g. mandatory prison terms, indefinite sentencing).
- Shortened several sections and dialog options by removing language that did not apply to ILC eligible offense.

Diversion Entry

- Simple and straight forward – contains time waiver for both the period of the diversion program and anytime between termination and reinstatement.
- Included chart detailing charges that are being diverted.
- Committee should discuss if this document should include amendment/dismissal provisions.

Not Guilty by Reason of Insanity

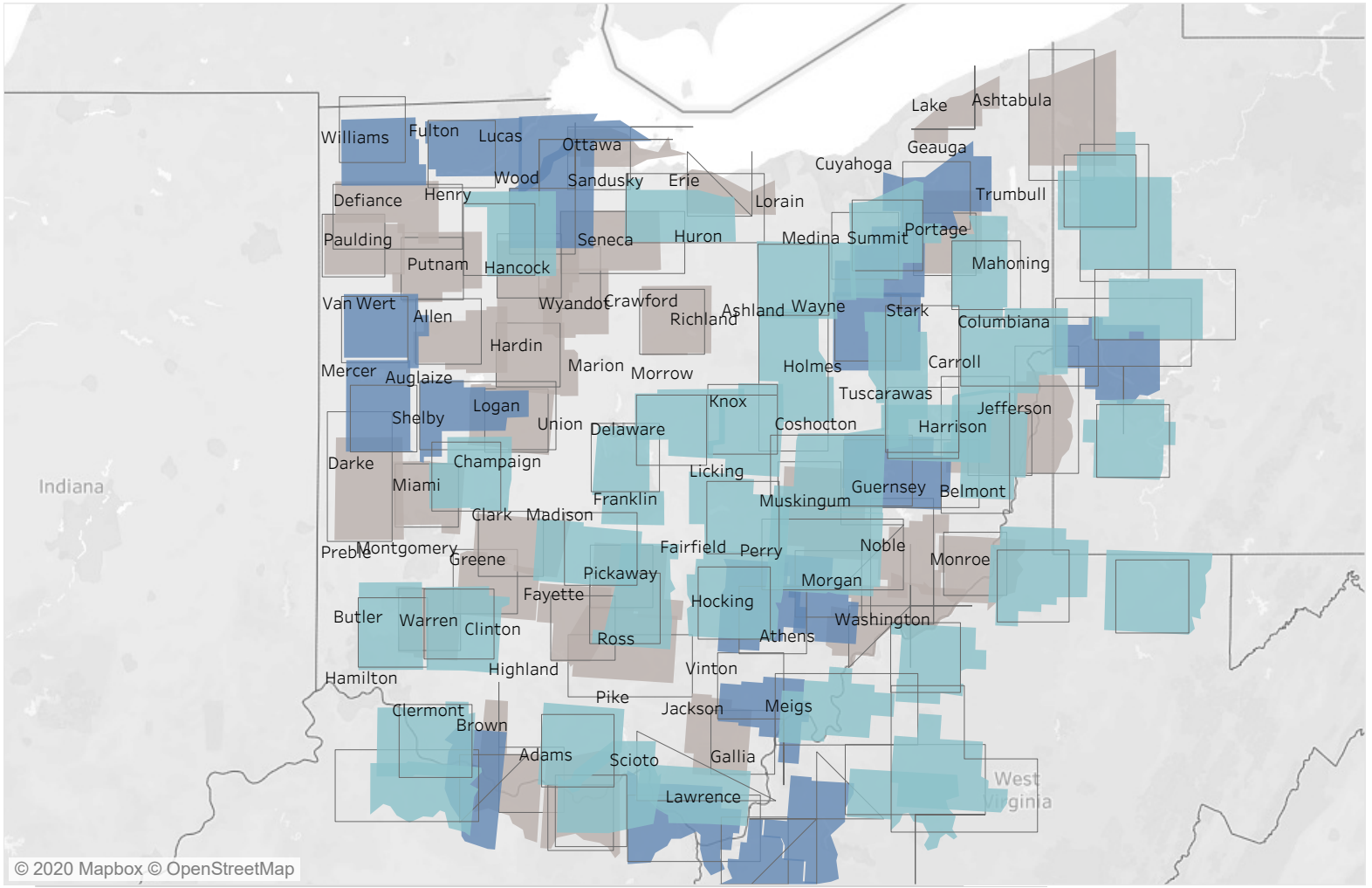
- Used the previous form for verdict at trial for basis of the NGRI verdict document.
- No space for stipulation as NGRI cannot be stipulated to without some form of trial. Committee should discuss need for language on jury waiver or if this would go into a different form.
- Second page is the NGRI sentencing entry – Committee should discuss if verdict chart should be repeated there.
- The NGRI sentencing entry will likely need ample space for Court's to fill in their own information and include detail regarding what testimony was heard, what evidence was entered into the record, and any stipulations that would support their finding by clear and convincing evidence that the defendant is subject to hospitalization/institutionalization.

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

APPENDIX I
Method of Conviction Summary & Map

Method of Conviction and Sentencing Entries, Ohio Courts of Common Pleas.



Court files a plea or trial entry that is stand alone, and separate from the sentencing entry.	37
[AND] Our court files a plea or trial entry that is combined with the sentencing entry.	19
No Response	32

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX J
Sample Data Dictionary

OHIO
CRIMINAL SENTENCING COMMISSION

Data Elements	Definition	Data Level	Data Type	Choices if Data Type is "Selection"
Individual ID		Individual	alphanumeric(?)	
Gender	Gender identification of the offender; ideally should be self identification	Individual	Selection	Man, Woman, non-Binary, trans* (depends on system)
Race	Racial identification of the offender, ideally should be self identification. Maybe multiple selections. Primary source is law enforcement booking.	Individual	Selection	American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White
Ethnicity	Ethnic identification of offender; self-identified; primary source is law enforcement booking	Individual	Selection	Hispanic or Latinx, non-Hispanic or Latinx
Date of birth	DOB of offender; primary source is booking	Individual	Date	MM/DD/YYYY
US Resident	Offender resides primarily in United States.	Individual	Selection	Y/N
State of Residence	State of offender's primary residence	Individual	Selection	50 States
County of Residence	County of the State (8) of offender's primary residence	Individual	Selection	Counties by State
Zip Code of Residence	Zip code in county (9) and state(8) of offender's primary residence	Individual	Numeric	

Data Elements	Definition [SOURCE]	Data Level	Data Type	Choices if Data Type is "Selection" OR Format if "Text Entry"
ID number (sentencing entry ID?)		Case	alphanumeric(?)	
Individual ID	Unique ID to de-identify individual	Case	alphanumeric(?)	[connect with CMS]
Date	Date Sentence Imposted [MFJ]	Case	Date	MM/DD/YYYY
County	County of Sentencing Court [OCN]	Case	Selection	Numeric--two digit county code
Judge	Name of Judge imposing Sentence [OCN]	Case	Selection or Text Entry	Judge name [Last Name, First Name MI]
Attorney	Name of Defendant's Attorney	Case	Text Entry	[Last Name, First Name MI]
Court Reporter	Name of Court Reporter or Electronic Reporting System	Case	Selection	Individual or Electronic Reporting System
Interpeter used	Use of a provisionally qualified (Sup.R. 81 (G)(3)) or certified foreign language or sign language interpreter who has received certification from the Supreme Court Language Services Program (according to Sup.R. 81 and Sup. R. 82)	Case	Selection	Y/N
Entry Type	Type of Entry-- define each type	Case	Selection	Sentencing, ILC/Diversion, NGRI
Victim Inquiry (pursuant to Marsy's Law)	Indicates the victim has been consulted. "Victim" defined (in accordance with constitutional amendment effective Feb. 5, 2018) as person against whom tihe crimial act is committed or the person directly and proximately harmed by the criminal offense.	Case	Selection	Y/N
Victim or Victim Representative Present	*Present at sentencing hearing and given opportunity to speak*	Case	Selection	Y/N
Count Number of the Entry	Sequence number (1...n) uniquely identifying each convicted count within a case [MFJ]	Count	Selection	Numeric
Stautory offense code	The Ohio Revised Code number for the convicted count [MFJ]	Count	Selection	ORC code section
Name of the Offense	The name of the offense associated with ORC [MFJ]	Count	Text Entry (or selection?)	Automatic Population with RC entry?
Offense Level	The specific offense level [severity] provided by ORC for each count [MFJ]	Count	Selection	F1, F2, etc.

OHIO
CRIMINAL SENTENCING COMMISSION

Method of Conviction	Convicted count means of disposition [MFJ]	Count	Selection	Guilty Plea, Alford Plea, No Contest Plea, Jury Trial, Bench Trial
Date of plea or verdict	Date of Disposition	Count	Date	MM/DD/YYYY
Merger of Offenses (if yes):	(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one. (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them. [ORC 2941.25]	Case	Selection	Y/N
counts merge with another for final conviction and sentence	*There are other counts that merge with this count, under ORC 2941.25 (above) for final conviction and sentence*	Count	Selection	Y/N
Merger does not apply to any other counts	*Under ORC 2941.25 (above), merger does not apply to any other counts*	Count	Selection	Y/N
Counts do not merge	*Counts do not merge under 29141.25 for final conviction and sentence*	Count	Selection	Y/N
TCAP (Does county participate?) (if yes):	Participant in the Targeted Community Alternatives to Prison Program	Case	Selection	Y/N

TCAP Applicable	*No person sentenced by the court of common pleas of a voluntary county to a prison term for a felony of the fifth degree shall serve the term in an institution under the control of the department of rehabilitation and correction. The person shall instead serve the sentence as a term of confinement in a facility of a type described in division (C) or (D) of this section. Nothing in this division relieves the state of its obligation to pay for the cost of confinement of the person in a community-based correctional facility under division (D) of this section.[ORC 2929.34 (B)(3)(c-d])*	Case	Selection	Y/N
Applicable: Months in Detention	*Only if TCAP is applicable in this case, enter the sentenced term of incarceration in months*	Case	Selection	Numeric
Applicable: Local Detention Facility	*Only if TCAP is applicable in this case, select the name of the local detention facility where the defendant is to serve their term of incarceration*	Case	Selection	Local detention facility
Not Applicable: Offense is specific type ineligible for TCAP and/or req mandatory prison term	*F5 was an offense of violence RC 2901.01, sex offenses 2907, violation of 2925.03 or mandatory term offense*	Case	Selection	Y/N

Not Applicable: Previously convicted of felony offense of violence	*(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;* *(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;* *(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;* *(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section. [ORC 2901.01(9)]*	Case	Selection	Y/N
Not Applicable: Previously convicted of felony sex offense	*Previously convicted of violation of ORC chapter 2907.02 through 2907.40*	Case	Selection	Y/N
Not Applicable: Req'd to serve concurrent to another sentence for a felony req'd to serve in prison		Case	Selection	Y/N

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Overcoming Prison Presumption (per R.C. 2929.12)	There is a presumption in favor of imposition of a prison term for: 1. Non-mandatory first- and second-degree felonies, 2. Certain third degree felony drug offenses (see the Sentencing Commission's Drug Offense Quick Reference Guide) as well as 3. Third degree felony theft of firearm R.C. 2913.02(B)(4), certain Gross Sexual Imposition offenses R.C. 2907.05(A)(4) or (B), or Importuning R.C. 2907.07(F) **This presumption may be overcome by the sentencing court. SELECT 'YES' IF:** **The court finds this presumption is overcome and that a community control sanction or combination of community control sanctions:** • Will adequately punish defendant and protect the public from future crime because the applicable factors under R.C. 2929.12 (F) indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism 1) Prior to committing the offense, the offender had not been adjudicated a delinquent child. (2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense. (3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years. (4) The offense was committed under circumstances not likely to recur. (5) The offender shows genuine remorse for the offense. • Does not demean the seriousness of the offense because one or more factors under R.C. 2929.12 (C) indicate that the defendant's conduct was less serious	Case	Selection	Y/N

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Mandatory prison term due to prior convictions (if yes):	Select 'Yes' if prison term is mandatory for this count based on prior offenses that include any of the following: **ORC 2929.13(F) (6)** Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses; and **ORC 2929.13 (F) (7)** Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses: (a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses; (b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.	Count	Selection	Y/N
Code used	Revised Code Section used to justify mandatory prison term due to prior convictions	Count	Selection	R.C. 2929.13(F)(6) or R.C. 2929.13(F)(7)
Prior Convictions	Describe the prior convictions that necessitate mandatory prison term on current count.	Count	Text	Detail prior convictions for mand. Term

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APPENDIX K
Draft Glossary of Terms

OHIO
CRIMINAL SENTENCING COMMISSION
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Glossary of Ohio Criminal Justice Sentencing Terms

The definitions below are presented to help with interpretation of data contained in Ohio's felony sentencing database. These are not legal definitions; please see the Ohio Revised Code for statutory definitions of these terms.

Bond

An amount of money posted on behalf of a criminal defendant to secure release before trial. In securing this release, the defendant agrees to abide by certain conditions and return to court for trial.

Community Control

A sanction for criminal behavior that is not incarceration in a prison and may be either residential or non-residential.[1] Community residential sanctions include a community-based correctional facility that serves the county (CBCF), a jail, a halfway house, or an alternative residential facility.[2] A nonresidential community control sanction may include a term of day reporting, electronic monitoring, alcohol monitoring, community service, drug treatment, intensive probation supervision, basic probation supervision, a term of monitored time, drug and alcohol use monitoring, curfew, requirements for employment and education, or participation in victim-offender mediation.[3]

Concurrent Sentence[4]

A sentence that occurs when a defendant is sentenced for more than one count and the sentences run simultaneously, rather than sequentially. For example, if a defendant was sentenced concurrently for two criminal counts: one year in prison for the first count and three years in prison for the second count, the defendant would serve three years in prison because the one-year sentence was served at the same time as the first year of the three-year sentence.

Consecutive Sentence[5]

A sentence that occurs when a defendant is sentenced for more than one count and the sentences run sequentially, rather than simultaneously. For example, if a defendant was sentenced consecutively for two criminal counts: one year in prison for the first count and three years in prison for the second count, the defendant would serve a total of four years in prison for the two counts.

[1] O.R.C. 2929.15(A)(1)
[2] O.R.C. 2929.16(A)
[3] O.R.C. 2929.17 (A-L)
[4] "Glossary of Criminal Justice Sentencing Terms." Pennsylvania Commission on Sentencing.
[5] "Glossary of Criminal Justice Sentencing Terms." Pennsylvania Commission on Sentencing.

Count[6]

Each separate charge in a criminal complaint.

Court Costs and Fees[7]

Monetary amount assessed to defendant to defray administrative costs of litigation. Court costs are not a criminal sanction and, as such, do not serve a punitive, retributive, or rehabilitative function.

Definite Sentence[8]

A prison sentence that releases offenders at the expiration of the term. Applies to felony level 3, 4, and 5 offenses and non-life felony 1 and felony 2 offenses committed before March 22, 2019.

Earned Credit[9]

An amount of extra days, beyond what is actually served, toward the satisfaction of a person's stated prison term. This credit is awarded based on the satisfactory participation and completion of specific programs while incarcerated. The total amount of earned credit shall not exceed eight percent of the total number of days in the person's prison term,[10] except for particular programs. For certain achievements such as: the completion of a high school diploma or high school equivalence, therapeutic drug program, all three phases of a specific intensive outpatient drug treatment program, a career technical vocational school program, a college certification program, or a certificate of achievement and employability specified in the Ohio Revised Code the person shall earn ninety days or a ten percent reduction in the stated prison term, whichever is less.[11]

Fines[12]

A financial sanction imposed upon a defendant.

Firearm Disability[13]

Restrictions on the acquisition, possession, or use of a firearm due to previous criminal activity.

[6] *Collins Dictionary of Law*. 2006. Retrieved July 29 2020 from https://legal-dictionary.thefreedictionary.com/count
[7] "Collection of court Costs and Fines in Adult Trial Courts Benchcard." The Supreme Court of Ohio. Revised July 2020. ; Strattman v. Studt, (1969), 20 Ohio St.2d 95.
[8] "Felony Sentencing Quick Reference Guide." Ohio Criminal Sentencing Commission. December 2019.
[9] O.R.C. 2967.13(A)(1)
[10] O.R.C. 2967.13(A)(3)
[11] O.R.C. 2967.13(A)(2)
[12] "Collection of court Costs and Fines in Adult Trial Courts Benchcard." The Supreme Court of Ohio. Revised July 2020. ; Strattman v. Studt, (1969), 20 Ohio St.2d 95.
[13] O.R.C. 2923.13

Forfeiture

The loss of property by an offender as the result of illegal conduct.[14]

Jail Time Credit

The number of days credit awarded towards the stated prison term for time served awaiting trial while being held for the case in question.

Joint Recommendation

A sentence recommended and agreed upon by all parties and adopted by the court.

Jurisdiction (Geographic)[15]

The geographical area from which a jury is drawn and the court in which proceedings are held.

LEADS[16]

The Law Enforcement Automated Data System, operated by the Ohio Highway Patrol. A state data repository that allows law enforcement, courts, and prosecutors to access information on driving records, vehicle ownership, stolen property, missing persons, warrants, and parole status as well as driver's license images and criminal histories. LEADS also connects with the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications Systems (NLETS) to access information about out-of-state individuals.

Mandatory Sentence

A statutory requirement that a certain sentence length be imposed for a specific offense.

Maximum Sentence

The greatest possible amount of time a person may serve in prison for their convicted offense(s).

Method of Conviction

Also referred to as a manner of disposition; the way that the court case was closed and the sentenced offender was convicted. Examples include:

[15] Dictionary of Criminal Justice Data Terminology: Terms and Definitions Proposed for Interstate and National Data Collection and Exchange. 1981
[16] "LEADS Interface." Northwest Ohio Regional Information System.

Guilty plea

A defendant's formal answer to criminal charges admitting that they committee the offense(s) listed.

Jury trial

A trial held with the outcome (in a criminal case, guilty or not guilty) determined by a jury.

Bench trial

A trial held with the outcome (in a criminal case, guilty or not guilty) determined by a judge.

Alford plea

A formal claim registered by the defendant in which the defendant does not admit guilt, but may admit to certain facts as presented by the state.

Minimum Sentence

The shortest possible amount of time a person may serve in prison for their convicted offense(s).

Offense Levels

Offense level refers to the classification of crimes in Ohio. The levels of criminal offenses include aggravated murder and murder and then felonies of the first (F1), second (F2), third (F3), fourth (F4), and fifth (F5) degree**.** An F1 offense is considered the most serious classification of offense (excepting aggravated murder and murder) and F5 the least serious.

Post-Release Control[17]

A period of supervision by the adult parole authority after an offender's release from imprisonment.

Presentence Investigation[18]

A report ordered by the court and completed by court staff inquiring into: the circumstances of the offense, criminal record, social history, present condition of the defendant, and criminal history of the defendant. Presentence investigations may include physical and mental examinations of the defendant, drug testing, and/or a victim impact statement. In Ohio, all persons convicted or pleading guilty to a felony receive a presentence investigation report unless it is waived by agreement of the defendant and prosecutor.

[17] O.R.C. 2967.01(N)
[18] O.R.C. 2951.03(A)(1)

Prison

An institutional facility under the jurisdiction of the state (or federal) government, which houses offenders convicted of felonies.

Property Disposition

The distribution of property other than contraband or that which is subject to forfeiture, as agreed to by all parties.

Repeat Violent Offender Enhancement/Specification[19]

A sentencing enhancement specification reserved for offenders convicted of aggravated murder, murder, a violent felony 1 or 2, or a felony 1 or 2 attempt of violence with a prior conviction for one or more of the same offenses. For qualified offenders, the court must impose the maximum authorized prison term. If an offender has 3 or more repeat violent offenses in 20 years (including current offense), the court must impose an additional 1 to 10 years to maximum authorized prison term.

Restitution

Requirement for the defendant to compensate victim(s) for value lost or stolen during commission of the convicted crime(s).

Risk Reduction[20]

A sentence in which the court recommends that the inmate may be released from prison after serving 80 percent of the sentenced term. Certain offenses, such as murder, violent felony 1 or 2, or sexually oriented offenses, are not eligible. Mandatory sentences are not eligible for risk reduction.

Specifications

Aggravating circumstances to an underlying offense, with sentencing requirements. Examples of specifications include the use of a firearm in the commission of the offense, or a repeat violent offender specification (see above).

[19] "Felony Sentencing Quick Reference Guide." Ohio Criminal Sentencing Commission. December 2019.; O.R.C. 2929.14(B)(2)(b).
[20] "Felony Sentencing Quick Reference Guide." Ohio Criminal Sentencing Commission. December 2019.; O.R.C. 2929.143; O.R.C. 5120.036

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APPENDIX L
Excerpt From the Commission on Racial Fairness Report

The Report of the

Ohio

Commission

on

racial fairness

Commissioned
by
the
Supreme
Court
of
Ohio

and the Ohio State Bar Association

OSBA

The Report of the Ohio Commission on Racial Fairness

Please note: This is only an excerpt of the larger report of the Commission on Racial Fairness. For the full report, please visit :

https://www.supremecourt.ohio.gov/Publications/fairness/fairness.pdf

CRIMINAL JUSTICE AND SENTENCING

The Criminal Justice System is comprised of numerous participants, including police, prosecutors, defense counsel, probation officers and judges. The Commission spent considerable time conducting personal interviews, reviewing and digesting numerous reports and statistical data, and observing the criminal justice system as it relates to disparate sentencing in Ohio. Based on its work, the Commission concludes that many minorities perceive that Ohio's criminal justice system discriminates against them because of their race or minority status. This perception is not unique to Ohio, but represents the views of many minorities throughout the United States.

While the Commission recognizes that racial discrimination does not account for all differences in treatment of white people and minorities, it concludes that a factual basis for this perception clearly exists.

The Commission recognizes that many factors affect the sentence ultimately imposed by each sentencing judge.[1] The police decision to arrest, the prosecution decision to charge and what charges are brought; the criminal code itself; the skills, abilities and resources of defense counsel; the willingness of the parties to plea bargain; the particular jury selected; the nature of the particular criminal conduct; the background of the accused; the manner in which the pre-sentence report is prepared; the predilections of the particular sentencing judge, as well as other factors all effect the penalty that an individual defendant may be required to endure.

What is clear is that the differences that minorities percieve between their treatment at the hands of the criminal justice system and the treatment afforded whites for the same offenses have a basis in statistical fact. Yet, based upon the strength of the data developed by the Commission, we are unable to say with certainty that these statistical results, and the perceptions that they foster, are solely the result of pervasive racial discrimination in Ohio's criminal justice system.

Because the statistical disparity *does* exist, however, if Ohio's criminal justice system does not undertake extraordinary efforts to address these perceptual problems and to dispel their

racial contexts, significant numbers of our minority citizenry will continue to believe that there is no justice for people of color in this state.

The consensus of the available research acknowledges that minorities are more frequently sentenced to prison and generally receive harsher penalties than do whites. As previously noted, the debate, as in the school desegregation cases of the past, revolves around the question of whether it can be definitively stated the cause for this disparity is racial discrimination and whether the appropriate remedy is some form of mandatory sentencing and sentencing guidelines.

Racially Disproportionate Sentencing and Figures

"In Ohio, blacks are arrested, convicted and sentenced to prison almost 10 times as frequently as whites. One in 523 whites in the state will spend some time in prison, while for blacks the number grows to one in 53. The state's incarceration ratio of blacks to whites is 9.81, which is 28 percent higher than the national average." This quote comes from a report, "*Intended and Unintended Consequences: State Racial Disparities in Imprisonment*," written by Marc Mauer, assistant director of the Washington-based Sentencing Project. The report also finds that from 1988 to 1994, the national figures of the black rate of incarceration in state prisons increased from 6.88 times that of whites to 7.66. In Ohio, the racial disparity increased by 21 percent, from 8.13 to 9.81. Twelve states and the District of Columbia incarcerate blacks at a rate of more than 10 times that of whites. Ohio is thirteenth on the list with a rate of black incarcerations of just under 10 to 1.[2]

Ohio's Death Row

As of September 29, 1997 there were 174 people on Ohio's death row, all male and no female. Of the 174, 81 are classified as Caucasian, two Native American, two other, two Latino, and 87 African-Americans.[3] Black males compose approximately five percent of the Ohio population, yet they compose 50 percent of death row inmates.

The issue here is not whether one is a proponent or opponent of capital punishment or whether those on death row deserve to be there. The issue is the integrity of the criminal justice system, whether black males are looked upon as

expendable and treated differently than white males resulting in disparate sentencing.

One hundred seventy-five (175) people were the victims of those currently residing on Ohio's death row. Of those 175 victims, 124 were Caucasian and 42 were African-American.[4] The numbers speak for themselves. A perpetrator is geometrically more likely to end up on death row if the homicide victim is white rather than black. The implication of race in this gross disparity is not simply explained away and demands thorough examination, analysis and study until a satisfactory explanation emerges which eliminates race as the cause for these widely divergent numbers.

Variables of Sentencing

Disparate sentencing adversely affects minorities. The question is whether disparate sentences are justified by variables that are associated with legitimate purposes. For example, did prior convictions play a role in the sentence, or did violence during the commission of the offense play a role in the sentence?

Prior to evaluating racial fairness in sentencing, it is necessary briefly to review a few sentencing variables that occur before a court is involved in the matter. The variables are:

Politics and the political function
Arrest (decisions and policy)
Charging decisions and applicable charge
Prosecutorial roles in decision-making
Effectiveness of defense counsel
Sentencing judge

Politics (in the broad sense) is a variable in sentencing. What constitutes a crime in Ohio is a legislative function.[5] Whether particular charges disproportionately affect a particular race may be the result of legislation.[6]

Arrest is another variable in sentencing. Departmental decisions play a role in who is most likely to be arrested and ultimately sentenced.

The decision to charge and what charges are brought are variables in sentencing. With legislative enactments that cur-

tail judges' discretion in sentencing, such as mandatory sentences and sentencing guidelines, a prosecutor's role becomes more powerful. Therefore, the racial attitudes of some prosecutors may play an extremely important role, for instance in such matters as the manner in which they go about jury selection.[7]

Prosecutors must also prioritize time and resources. The question is, "Does the race of the defendant or victim play a role in the decision to charge or what charge will be brought?" Does race play a role in the decision to negotiate a plea, thus affecting the sentence?

Stephen B. Bright, Director of the Southern Center for Human Rights in Atlanta, Georgia, has written that one reason "for the disparities in seeking the death penalty was racial bias by the prosecutors in their dealings with the families of the victims." Mr. Bright wrote that in cases "involving white victims, the prosecutors met with the victim's family and deferred to their family's decision about whether to seek the death penalty. But prosecutors did not even consult with family members in cases involving black victims, and the families of African-Americans were often not even notified of the dates of proceedings or the resolution of the case with a plea bargain." (The Champion, January/February 1997, p. 22).

Finally, another important variable in sentencing is the effectiveness of defense counsel. Because the non-white groups studied for this report are disproportionately represented in the ranks of the indigent defendant, determining the quality of the services that they receive from their court-appointed counsel has both racial and economic implications for the criminal justice system. Indigent defendants are generally presented with one or more of the following options for legal representation in the defense of criminal charges brought against them. Those options are: 1) self-representation, 2) representation by the office of a public defender established by the government, or 3) representation by court-appointed private counsel who have contracted with the government to provide the service. Obviously, those who represent themselves are at a great disadvantage when confronted with the resources that the criminal justice system can marshal. However, the disadvantage is only slightly diminished if the lawyers who are charged with the responsibility of protecting the rights of this populations harbor inappropriate racial attitudes regarding clients that they receive by the luck of the

draw. It is therefore important that sound methods for evaluating the performance of this important part of the system, both prior to and at the time of sentencing, on the critical issue of race be in place.

In some Ohio counties, court-appointed counsel receives as little as $150 per misdemeanor case and $300 per felony case.[8] Public Defender caseloads are usually grossly overloaded. With such meager fees paid, questions are raised. Can counsel afford to provide adequate representation? Are minority defendants treated differently than white defendants by court appointed white counsel? Do white counsel stereotype young black defendants? These are legitimate questions especially in light of how minority lawyers perceive their own treatment by the bar and bench in general (as addressed in other areas of the Commission's report). These questions will not be answered in this report, but are raised here because anecdotal evidence at least suggests that these factors have an effect on sentencing. (The concepts of "stereotyping the African-American Defendant" will be reviewed later in this report.)

Lawyers who receive adequate resources can afford to do more in the representation of the client. So the question here may be more one of economics than of race. Where attorneys are hired, typically more resources are available for investigation, fees, DNA testing and the like. Most courts are reluctant to pay or authorize payment for investigator fees and/or special testing in order to adequately represent the indigent defendant (minority or non-minority). Thus, in Ohio, failure to approve fees because of indigence may implicate both the issues of race and the allocation of scarce public resources.

Ohio Judges

Most Ohio judges are white.[9] Because American demographics have shifted but have not changed, the majority of Ohio judges grew-up in predominately white neighborhoods. They had limited, if any, real interaction with minority students while attending undergraduate and law school.[10]

It is with the above stated background that the young law school graduate and future judge is often thrust into the role of Assistant Prosecutor, Assistant City Attorney or Assistant Attorney General to have initial interaction and encounters with minorities—i.e., he or she as prosecutor and the minority as criminal defendant, handcuffed and shackled. Thus, stereotypes are reinforced.

The Commission believes that empathy depends on what people are familiar with and apathy rests in the unfamiliar. Human beings empathize with emotions, feelings, and environments with which they are familiar and do not relate to emotions, feelings, and environments with which they are least familiar.

Judges are human, and prejudices, perceptions, and stereotypes are not lost with the elevation to the bench. The question remains: Does a judge's past and present environment influence sentencing decisions? All sentencing judges must make every effort to assure that the answer in each case is a resounding "NO!"

Putting The Question Of Race on the Table

The Commission randomly selected a representative number of Ohio judges at the municipal, common pleas and appellate court levels and solicited their input on the question of racial fairness in criminal sentencing before the state's trial courts. Each judge was invited to offer comments either by means of a personal interview in chambers, an interview by telephone, or a narrative response by letter.

Also contacted were a representative sample of Ohio's court administrators and clerks of court. Each administrator and each clerk was asked to provide information and data that the Commission could study to determine whether race might be implicated as a crucial factor in the sentencing patterns of Ohio's trial courts.

The response to our request was disappointing. Of those approached, the Commission heard from only one municipal court judge, two common pleas court judges, and one appellate court judge.

All of the court administrators and clerks of court contacted by our staff indicated an inability to be of assistance. Their inability was occasioned by the fact that none compiled or maintained their records in such a way as to allow for the determination of the race of the individuals sentenced by their respective courts.[11]

The commission was aware that the sentencing reforms contained in Senate Bill 2 included a request from the leg-

islature to the Ohio Supreme Court that it "adopt a rule to have each court keep on file a form that has the case number, the judge's name, the race, ethnic background and the religion of the offender."[12] We, therefore, approached the staff of the Ohio Sentencing Commission for assistance in completing this aspect of our study. They provided us with several forms they had submitted to the Ohio Supreme Court for approval and adoption pursuant to the new sentencing statute provisions. We are informed, however, that, as of this date, no form has met with the Supreme Court's approval, primarily because of the significant clerical and logistical challenges that capturing, storing and retaining the information would impose upon the state's criminal trial courts.

Our inability to empirically validate the information obtained from testimony on this topic at the Commission's public hearings leaves us unable to conclude that the greater percentage of minority citizens than white citizens sentenced to prison is because a majority, or even a significant minority, of Ohio's trial court judges make sentencing decisions that are not race-neutral.

What we can say without fear of contradiction is that the number of minority citizens sentenced to prison is grossly disproportionate to any reasonable correlation with their numbers in the general, lower social-economic, or even, criminal populations. The national controversy involving the disparate sentencing imposed for crimes involving the possession or use of crack cocaine provide a good case in point. In the mid-to-late 1980's, crack was viewed as the scourge of the universe and harsh sentencing policies were enacted across the country to deal with the problem. We have since learned that crack is no more dangerous than cocaine ingested in its powdered form. Still, many jurisdictions persist in the application of draconian penalties for the possession of crack that are greatly disproportionate to those imposed for the possession of cocaine in its powdered form. Because crack is the drug of choice of many African-American drug users, these laws have had a racially disproportionate impact on the African-American community. For example, in February of 1995, the U. S. Sentencing Commission released a thorough and meticulously documented report, Special Report to the Congress: Cocaine and Federal Sentencing Policy, confirming that harsher federal sentences for crack were being imposed almost exclusively on

blacks and other minorities. It found that African-Americans accounted for 88% of those convicted for Federal crack offenses, while just 4% of those convicted were white. Congress and the President responded by ordering that yet another study be conducted.

Georgia's implementation of a "two strikes and you're out" law involving second convictions for certain drug offenses results in life imprisonment for those convicted on a second offense. One study of their records revealed that life imprisonment had been sought in 1% of eligible cases involving white defendants and 16% of those cases involving African-Americans similarly situated. Ninety-eight percent of those serving life sentences under this law are African-American.[13]

These statistics seem to reveal some disturbing questions about the possibility of selective prosecution in drug cases. Though a National Household Survey on Drug Abuse found that 75% of those reporting cocaine use were white, 15% black, and 10% Latino, crack use figures showed that 52% of users were white, 38% were black, and 10% Latino. The data also showed that defendants in the crack cases tended to be at the lowest level in the distribution chain.

It should also be noted that numerous studies have revealed race as a predominate factor in determining the application of the death penalty in this country, according to a report issued by the National Association of Criminal Defense Lawyers. No less an authority than Congress' General Accounting Office found in 1990, research then available revealed "a pattern of evidence indicating racial disparities in the charging, sentencing, and the imposition of the death penalty" at the state level.[14] A March1994 report by the House Judiciary Committee Subcommittee on Civil and Constitutional Rights concluded, "Racial minorities are being prosecuted under federal death penalty law far beyond their proportion in the general population or in the population of criminal offenders." The report went on to say that while 75% of those convicted under the provisions of the 21 U.S.C. Section 848 (the "drug kingpin" provision of the Anti-Drug Abuse Act of 1988) law have been white, and only 24% of those convicted have been black, almost 90% of those against whom the statute's death penalty sanction have been imposed have been minorities.

None of these statistics supports a broad statement that individual judges, courts, or, for that matter, other parts of the criminal justice system are purposely going out of their ways to "get" minority citizens. However, given the strength of some public hearing testimony presented before this Commission, it is impossible to escape the conclusion that such individuals exist.

Intended or not, disparate end results suggest that, when laws are drafted in such a way that they target certain minority communities for enforcement, and combine with arrest policies focusing on those same communities, and are then joined with sentencing guidelines, practices and policies that have devastating impacts on those exact same minority groups, a legitimate grievance is identified which demands redress, if fundamental fairness is to be obtained.

For these results alone, the means to develop, analyze and act upon the types of information this Commission found unavailable are essential to a definitive determination of the validity of the strong-held perception, in some quarters, that there is one sentencing standard for whites and another for others.

As members of the Commission discovered, the information is not easily obtained and is subject to multiple interpretations. The announcement of a call for yet more study will undoubtedly be met with derision from a minority community that expected ***this*** study to be definitive. However, an institutional commitment to a process of regular and ongoing data collection, analysis, and reporting, as well as both agency and individual accountability will eliminate the excuse of "lack of information" as a convenient shield for those who would hide their inability or unwillingness to assure equal treatment to all those involved in our state's criminal justice system and serve as a weapon for equal justice for all, rather than just another dilatory review.

Americans continue to be singularly uncomfortable when it comes to discussing issues of racial fairness candidly and constructively. Judges and lawyers are not immune to this aversion. We recommend and strongly urge the Supreme Court of Ohio and the Ohio State Bar Association to take whatever steps are necessary to require that the members of the legal profession put the issue of racial fairness on their professional agendas. These two organizations are uniquely qualified to force this discussion out into the open and to

keep it there until the juxtapositioned attitudes of the criminal justice system and the disaffected minority community are addressed and reconciled.

Critical Analysis of Previous Ohio Sentencing Commission Report on Disparity in Sentencing

The Commission's staff reviewed previous reports and efforts by the Ohio Criminal Sentencing Commission's staff. The goal was to identify potential disparity in sentencing based on race in Ohio. The review of the findings fostered a number of concerns which will be addressed in the sections below.

As part of its review of the existing research, the Commission reviewed the Ohio Sentencing Commission staff report entitled Disparity and Uniformity in Criminal Sentencing (1993). That report uniformly recognized racially disparate results in Ohio's criminal sentencing patterns. Nonetheless, the staff report also uniformly found non-racial causes to explain those results. Our analysis of the same data causes us to question the Sentencing Commission's conclusions and to suggest that further research in this area is not only desirable but mandatory.

The report begins with a disclaimer, "Generally, numerical disparity in sentencing can be explained by who is arrested, or by other factors that are generally perceived to be legitimate."[15] The report goes on to state in relevant part:

> "Once arrested in Ohio, roughly the same percentages of whites and non-whites are sentenced to prison for serious crimes (such as homicide, sexual assault, robbery, burglary, and drug trafficking). Thus, imprisonment decisions for serious crimes can be mostly explained by arrest."

Even if this conclusion was true in 1993 (i.e., roughly the same percentage of whites and non-whites are sentenced to prison), the statement does not tell the reader anything about the disparity in the sentences of those sent to prison or about modified sentences and shock probation. For instance, if 33 percent of Ohio's black population were sent to prison for drug-related crimes, and one percent of Ohio's white population were sent, then "roughly the same percentage"

would be sent, but the number of whites should far exceed the number of blacks in prison because there are more whites in Ohio.

The Sentencing Commission's report attempted to explain the disparate sentences it found. It said, in part:

> ... the explanation lies in the type of drug abused and in the enforcement of drug laws against street level transactions. A greater percentage of cocaine offenders than marijuana and pharmaceutical offenders are African-American. Since cocaine is more serious under Ohio law than marijuana, there are disproportionately more African-Americans drug offenders in Ohio's prisons.

The staff did not footnote or cite any authority to support the above conclusion. The Commission found no data to support the Sentencing Commission's findings that a greater percentage of cocaine offenders are black. Moreover, the Commission was unable to determine what "cocaine offender" means as presented in the Sentencing Commission Staff report. Does it mean all drug abuse offenders who use cocaine or just those who were arrested for possession of crack or free-base cocaine? Does it mean offenders who traffic or were arrested for trafficking in cocaine related offenses?

We question how the Ohio Sentencing Commission staff determine the race of those "involved" in serious felonies that result in arrest. Again, the staff failed to footnote or cite authority for its conclusions.[16]

An analysis of other pertinent findings of the Ohio Sentencing Commission report includes the following:

- Large counties typically have less available jail space (small counties have 42 percent more jail space per 100 crimes than large counties). This makes a sentence of incarceration in local jails a less viable option for urban counties. Thus, blacks are likely to be incarcerated in prison (rather than jail) at higher rates because blacks live in large counties with less available jail space.

- Conversely, because medium and small counties indict a higher proportion of whites and have more space available in local jails, a higher per-

centage of whites receive a split sentence (with a jail term as a condition of probation) rather than a prison term.

- The most important empirical reason that a greater proportion of those sent to prison are black is that a greater proportion of those arrested are black.

Again, the Sentencing Commission staff failed to footnote or cite any authority to support this finding. To blame the higher rates of black incarceration in prisons as opposed to local jails on the availability of jail space is not supportable. Actually, in 1993, jail space in most Ohio counties was lacking. Contrary to the Sentencing Commission staff conclusion, the Commission's random survey found it was the smaller counties which suffered more from overcrowded jail conditions as a result of not building new and larger jails than the larger counties. In other words, smaller county jails were grossly overcrowded in 1993, and many are currently experiencing overcrowded conditions.

The Sentencing Commission staff also failed to cite authority for the conclusion that a greater proportion of those arrested are black. Moreover, contrary to this conclusion, the vast majority of those arrested who could be sent to prison in Ohio during the time the Sentencing Commission report was issued were not blacks as the report states, but white citizens of Ohio. See 1990 Uniform Crime Reports for Ohio, provided to the Commission staff by the Governor's Office of Criminal Justice Services.

The statistics found in the Uniform Crime Reports for Ohio need to be explained because the Sentencing Commission staff cited them in their report as support for the percentages of blacks in certain crime categories without explaining its limitations. Its main limitation is that it does not cover the majority of police jurisdictions in Ohio, thus, any information derived from it is not complete.

The Uniform Crime Reports are compiled by the FBI from data voluntarily reported from Ohio police departments. Only 300 of the 900 or more police departments in Ohio volunteered the information to the FBI for compilation in the report. Therefore, the Uniform Crime Reports for Ohio are comprised of information from about one-third of the police departments in our state.

- The Bureau of Justice Assistance of the U.S. Department of Justice concluded that, "the overrepresentation of blacks among offenders admitted to state prisons occurs because blacks commit a disproportionate number of imprisonable crimes."

This claim (that blacks "commit" a disproportionate number of these crimes) has no legitimate factual basis that the Commission could discern and none was provided by the Sentencing Commission.

Additional conclusions of the Ohio Criminal Sentencing Commission's report regarding racial disparity in sentencing include:

- Racial imbalance exists in Ohio's justice system. Yet, for more serious offenses, it is not because of systematic discrimination by judges.

- For less serious offenses, the imbalance cannot be as easily explained by arrest, but can for the most part be explained by other factors generally viewed as legitimate to the justice system, such as criminal history and offense seriousness.

- Much of the imbalance in incarceration for drug offenses can be explained by greater involvement by blacks with drugs that are penalized more seriously (such as crack cocaine, as opposed to marijuana). Overall, drug offenders nationally do not ethnically mirror drug offenses in Ohio.

That racial imbalance exists in Ohio's justice system is beyond contradiction. However, after reviewing The Sentencing Commission's research, we do not think that it successfully made the case to exclude any causative factor for that imbalance.

During our study, some highly suspect sentencing outcomes were brought to our attention. A cursory review of such cases does not allow them to be easily dismissed by resort to factors other than race. By the same token, our own research, while uncovering these aberrant examples of the system gone awry, was unable to verify allegations put before us that the imbalance was the sole product of systemic discrimination in the handling of criminal sentencing in this state. The conclu-

sion that we reach, therefore, is that constant attention must be paid to this aspect of the criminal justice process. If Ohio's non-white populations are ever to feel confidence in the state's criminal justice system, that system must assure that the number of aberrations experienced is held to an absolute minimum. Those who are exposed to the system's aberrations need to have a rapid, credible and public methodology for the redress of legitimate complaints, beyond the current appellate process. The creation of an effective, permanent mechanism for closely monitoring and objectively reporting on the status of Ohio's efforts in this regard will fill this need.

In 1979, in spite of the existence of well-established law, the Ohio Department of Rehabilitation and Correction was sued and forced to racially desegregate Ohio's prison cells, Stewart v. Rhodes.[17]

Subsequently, in 1982 the Ohio Department of Rehabilitation and Correction was successfully sued again because they maintained "racially segregated dining facilities" at the Lebanon Correctional Institution which resulted in a black inmate being brutally beaten by prison guards for entering the all-white prisoner dining room. Hendrix v. Dallman.[18] As late as 1992, prisoners were forced to sue to desegregate cells in the Ohio prison system. White v. Morris.[19] The Ohio Attorney's General office represented the state in these prison segregation cases. Each time they put forth arguments claiming that racial segregation was for "security reasons" or for other reasons. (See Stewart v. Rhodes)

In the prison segregation cases, the advocates for the prison officials attempted to give legitimate or justifiable reasons for the racial segregation at issue, in the same manner that other governmental entities argue the existence of justifiable reasons for racially disparate criminal sentences.

Juvenile Justice

There is a direct correlation between the way adults of color and juveniles of color are sentenced for the commission of criminal violations in Ohio. The variables mentioned earlier in this report affect both sentencing patterns.

The Department of Youth Services ("DYS") provided the Commission with statistical data for fiscal years 1996 and 1997 regarding race distribution of felony commitments, along with other data regarding commitments to DYS.

In fiscal year 1996, 49.9 percent of the DYS population was represented by blacks. Hispanics represented 2.6 percent, and other (minority groups) represented 2.2 percent of the DYS population. The white population was at 45.2 percent for 1996. The total minority population confined in DYS was 54.7 percent. The numbers for fiscal year 1997 essentially remain the same. Blacks represented 48.7 percent, Hispanics 2.6 percent, and others (minority groups) were at 1.9 percent. The total white population confined at DYS for fiscal year 1997 was 46.9 percent, while 53.2 percent of the population at DYS was represented by minorities. This is a curious proposition considering that Ohio's total minority youth population is 14.3 percent. Clearly, Ohio's minority youths are being incarcerated at a much higher rate than non-minorities.

Black males are the group of youths who are incarcerated at the highest rate. DYS provided the Commission with statistical data of their population. The statistics provided a breakdown of the numbers of males and females confined and a breakdown based on race. Black females represented 48.89 percent; white females represented 50.37 percent. Other minority groups represent 0.74 percent of DYS's population as of November 13, 1997. Black males represented 50.21 percent, white males 45.15 percent, Hispanic males 2.68 percent, Asian males, 0.15 percent and other minority groups represented 1.81 percent of the population. The number of minority males exceeded the number of minority females.

There were 67 minority females incarcerated at DYS during this period versus 1,063 minority males housed in DYS facilities. The number of white males housed in DYS facilities during the same period was 875. The trend of incarcerating young black and minority males at higher rates than non-minority males mirrors the Commission's findings for the state's adult population.

In 1993, Bowling Green State University (BGSU), prepared and published a report titled: Race and Juvenile Justice in Ohio: the Overrepresentation and Disproportionate Confinement of African-American and Hispanic Youth. The report details and focuses on Ohio data and statistics regarding minority youths in the criminal justice system. The report concludes with policy issues and recommendations in an effort to identify and eliminate the disparate effects of sentencing as it relates to Ohio's minority youth population.

The report gives a statistical analysis of nationwide trends. Between 1926 and 1986, the numbers of persons incarcerated increased dramatically, and black males comprised an increasingly disproportionate share of those persons incarcerated. The annual number of admissions to state prisons had risen 333 percent, from 38,318 in 1926 to 167,474 in 1986.[20]

The BGSU study and report supports the perceptions of the general public that minority youths are being incarcerated at an alarming rate. It concludes that, based on relevant Ohio and national data, differences in delinquent behavior are insufficient to account for disparities between minority and white youth in detention and confinement.[21] The data and statistical information available from the BGSU study and other studies suggest that it is not possible to claim that minority youth commit more crime or are referred to juvenile court for more serious offenses than white youth.[22]

The BGSU study concludes that minority youth are referred to juvenile court nearly twice the proportion as their prevalence in the population suggests they should be. Minority youth are detained more frequently than white youth, their cases dismissed more frequently, and they are confined in DYS institutions more frequently. At none of these points of decision are their offenses more serious on average than those of white youth nor, is their prior record of referrals to court lengthier. In fact, the average number of prior court referrals for minority males sent to DYS is about three; for white males, about five.[23]

DYS statistics for 1989 for male detained cases serving to DYS confinement, by race of offenders shows: Out of 100 percent of cases referred, 27 percent of those detained were white males, 39 percent were minority males; 24 percent adjudicated were white males and 32 percent adjudicated were minority males. As a result of being adjudicated, only eight percent white males were confined, and 11 percent minority males were confined. The percentage of those confined in DYS facilities for minority males was eight percent, while DYS confinement for white males was only five percent.[24]

The same statistical data from DYS regarding males not detained reveals that out of the 100 percent referrals, 73 percent of white males were not detained and 61 percent of minority males were not detained. Of those adjudicated, 58

percent white males were adjudicated, while only 45 percent minority males were adjudicated; six percent of the white males were confined and five percent of the minority males were confined. The same percentage of white and minority males, three percent, were confined to DYS.[25]

The 1989 data is consistent with the DYS statistical data regarding its commitments for fiscal year 1996 and 1997. The trend continues to date. Minorities are being incarcerated at a much higher rate than their white counterparts. Disparate sentencing is not only affecting the adult minority population but also the juvenile minority population as supported by existing statistics and data in Ohio and the nation.

These findings illustrate that the disparity in sentencing experienced by whites and non-whites is a fact and not a mere "feeling" or a perception that the public holds without justification or merit.

Conclusion

The Commission concludes that many people of color in this state, and in this nation, view the entire criminal justice system as discriminatory toward them, solely because of their color. This perception of discrimination encompasses every phase of the criminal justice process and many of the personnel responsible for its operation. The final reports of commissions similar to ours in other states throughout the nation confirm what we found in Ohio - that is, that these perceptions are firmly entrenched and for some take on the character of irrefutable, universal truths.[26]

It must be said again that, like it or not, evidence does exist that, more frequently than we want to admit, race plays a role in too many of the decisions made in Ohio's criminal justice system. The only way that the situation can be corrected is to acknowledge that a problem exists. While the Commission recognizes that race does not account for <u>all</u> of the differences in treatment that whites and people of color report experiencing in their treatment at the hands of the criminal justice system, we are comfortable in concluding that the system does not always operate in a race-neutral fashion. Based on our review, we find that a factual basis does appear to exist for a significant percentage of the negative perceptions of the system reported to us.

Let us reiterate: Regardless of accuracy, a person's perceptions <u>are</u> that person's reality. Therefore, if Ohio's criminal

justice system is ever to appear fair in the eyes of all of its residents, all of those responsible for its construction, operation, implementation and maintenance must be viewed as making every reasonable effort to eradicate every factual basis for perceptions of unfairness brought to their attention.

To that end, several of the Commission's major recommendations in this area are geared toward the mandated gathering of statistical data concerning the effect of race on the various stages of the criminal justice process. Gathering this information, in and of itself, of course, will not determine the existence of, or the extent of, race-based mistreatment. The collection, maintenance and availability of such information, however, will provide those concerned with such issues the ability to conduct objective research and objective evaluations of the validity and extent of any future claims of race-based disparate treatment. Where problems are found, this information will assist in the construction of effective corrective remedies to eliminate them. The additional benefit of assembling this information is that those who might contemplate routinely engaging in inappropriate behavior will know that their behavior is subject to scrutiny.

The Commission makes no recommendations as to the treatment of individuals under the jurisdiction of the Ohio Department of Corrections. After much thought and study we conclude that any such recommendations are beyond the mandate of this Commission.

Recommendations

The Commission recommends the following:

1. **All groups and organizations involved in the criminal justice system - e.g., police, prosecutors, defense counsel, pre-trial release personnel, probation personnel, judges - engage in a continuing process of study and discussion with the objective of identifying and eradicating race based attitudes and practices.**

2. **Statistical data as to race be collected as to pre-trial bond decisions.** This information will address the perception of some people of color that bond decisions are not always race neutral, although CrimR. 46 is itself race neutral. The Supreme Court would create the vehicle for

collection of this information by the clerk of courts, who would, in turn, transmit the information to the Supreme Court to be maintained by the Supreme Court.

3. **Statistical data as to race be maintained in connection with sentences, including community based sentences, in all criminal cases, including misdemeanor, juvenile and traffic cases**. Senate Bill 2 requires this information as to felony sentences. The Supreme Court would create the vehicle for collection of this information by the clerk of courts, who would, in turn, transmit the information to the Supreme Court to be maintained by the Supreme Court.

4. Law enforcement agencies maintain statistical data as to race in connection with all arrests. The public hearings conducted by the Commission reveal a widespread perception by people of color that the law enforcement officer's discretion as to whether to arrest an individual is not always exercised in race neutral fashion. These statistics should be regarded as public records in the jurisdiction where they are collected, and should be transmitted on a regular basis to the head of the law enforcement agency, certain elected officials of the jurisdiction and the chief executive officer of the jurisdiction.

5. Implementation of the recommendations of the Ohio Commission on African American Males, as stated at pp. 12-13 of its Executive Summary. (See Appendix I for recomendations)

6. All attorneys who wish to do criminal defense work receive formal training in the basics of criminal defense, and only be permitted to do so upon obtaining certification as to proficiency. The General Division of the Montgomery County Common Pleas Court and the Dayton Bar Association conduct an annual one day Criminal Law Certification Seminar. Training and certification would better assure all indigent defendants, regardless of color, of a minimum level of proficiency in their counsel.

7. The Bowling Green State University study be reviewed and that its recommendations be implemented. (See Appendix II for the recommendations)

8. The Supreme Court should require that Common Pleas Courts adopt a form for purposes of com-

plying with the requirements of S.B. 2 section 2953.21(A)(5) of the Revised Code.

9. The Supreme Court should enforce the mandate of S.B. 2 that the Ohio Criminal Sentencing Commission monitor the effects of S.B. 2 with regard to R.C. §2953.21(A)(5) as outlined in R.C. §181.25, Sentencing Commission Duties as amended by S.B. 2.

10. The Supreme Court should engage a person or entity with the necessary skill and experience to design meaningful methodologies for the collection and compilation of relevant data as to race at all relevant stages of the criminal justice system, and to monitor the collection and compilation of the data.

11. The Supreme Court should establish the responsibility for implementing the recommendations contained in this section in the Office of the Court Administrator for the Supreme Court and require an annual report to the public on the progress obtained.

Please note: This is only an excerpt of the larger report of the Commission on Racial Fairness. For the full report, please visit :

https://www.supremecourt.ohio.gov/Publications/fairness/fairness.pdf

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX M
Recommended Revision of Superintendence Rule 37.02

RULE 37. Statistical Reports and Information.

(A) Submission of reports in hard-copy format

Except as provided division (B) of this rule, the judges of the courts of appeals, courts of common pleas, municipal courts, and county courts shall submit to the Case Management Section of the Supreme Court in hard-copy format report forms as required by Sup.R. 37.01 through 37.03. The report forms shall be as prescribed by the Manager of Case Management Programs and submitted no later than the fifteenth day after the close of the reporting period.

(B) Submission of reports in electronic format

(1) Upon receipt of written notification to a court of appeals, court of common pleas, municipal court, or county court from the manager indicating the section is prepared to receive reports from the court in electronic format, the judges of the court shall submit to the section in electronic format via the Supreme Court website reports as required by Sup.R. 37.01 through 37.03. The reports shall be as prescribed by the manager and submitted no later than the fifteenth day after the close of the reporting period.

(2) The presiding or administrative judge of each court of appeals, court of common pleas, municipal court, or county court to which division (B)(1) of this rule applies shall take steps necessary to ensure the security of the Supreme Court website login credentials.

RULE 37.01. Courts of Appeals Reports.

(A) Presiding judge reports

The presiding or administrative judge of a court of appeals shall prepare and submit quarterly a completed "Presiding Judge Report," which shall be a report of the status of all pending cases in the court. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the presiding or administrative judge and the preparer, if other than the presiding or administrative judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the presiding or administrative judge shall be deemed to have attested to the accuracy of the report.

(B) Judge reports

Each judge of a court of appeals shall prepare and submit quarterly a completed "Appellate Judge Report," which shall be a report of the judge's work. The report shall be submitted through the presiding or administrative judge of the court. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the reporting judge, the presiding or administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the reporting judge and presiding or administrative judge shall be deemed to have attested to the accuracy of the report.

RULE 37.02. Courts of Common Pleas Reports.

(A) Judge reports

Each judge of a general, domestic relations, or juvenile division of a court of common pleas shall prepare and submit monthly a completed report of the judge's work in that division. Each judge of a probate division of a court of common pleas shall prepare and submit quarterly a completed report of the judge's work in that division. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the reporting judge and administrative judge shall be deemed to have attested to the accuracy of the report.

(B) Assigned judge reports

Each judge temporarily assigned to a court of common pleas by the Chief Justice of the Supreme Court and each judge of a court of common pleas temporarily assigned to another division of the court by the presiding judge of the court shall prepare and submit monthly a completed report of the judge's work in the division to which the judge has been assigned. The reports shall be submitted to the judge for whom the assigned judge is sitting and included in that judge's report to the Case Management Section of the Supreme Court submitted by the administrative judge of the division pursuant to division (A) of this rule. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the reporting judge and administrative judge shall be deemed to have attested to the accuracy of the report.

(C) Sentencing entry reports

Each judge of a general division of a court of common pleas shall prepare and submit sentencing entry data containing the data elements provided in the Uniform Sentencing Entry (see: Appendix X) for each individual sentenced in the previous month. The report shall be submitted in electronic format as prescribed by the Ohio Criminal Sentencing Commission and the reporting judge and administrative judge shall be deemed to have attested to the accuracy of the report.

Staff Notes

If a sentence is later modified, no action is necessary for purposes of reporting to the Ohio Criminal Sentencing Commission.

(A) Administrative judge reports

Each administrative judge of a municipal or county court shall prepare and submit monthly a completed "Administrative Judge Report," which shall be a report of all cases not individually assigned. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the administrative judge and the preparer, if other than the administrative judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the administrative judge shall be deemed to have attested to the accuracy of the report.

(B) Individual judge reports

Each judge of a municipal or county court shall prepare and submit monthly a completed "Individual Judge Report," which shall be a report of all cases assigned to the individual judge. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the reporting judge and administrative judge shall be deemed to have attested to the accuracy of the report.

(C) Assigned judge reports

Each judge temporarily assigned to a municipal or county court by the Chief Justice of the Supreme Court and each judge of a municipal or county court temporarily assigned to another division of the court by the presiding judge of the court shall prepare and submit monthly a completed report of the judge's work in the division to which the judge has been assigned. The report shall be submitted to the judge for whom the assigned judge is sitting and included in that judge's report to the Case Management Section of the Supreme Court submitted by the administrative judge of the division pursuant to division (B) of this rule. If submitted in hard-copy format pursuant to Sup.R. 37(A), the report form shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report. If submitted in electronic format pursuant to Sup.R. 37(B)(1), the reporting judge and administrative judge shall be deemed to have attested to the accuracy of the report.

Staff Notes

Reports to administrative judge

Under Sup.R. 4(B)(3), the administrative judge may require reports from each judge as are necessary to discharge the overall responsibility for the administration, docket, and calendar of the court. Sup.R. 38 sets out the duties of the administrative judge with respect to the preparation of reports.

Municipal and county court reports

The Administrative Judge Report pertains to cases pending on the docket of the court which have not been individually assigned pursuant to Sup.R. 36. The preparation of this report and the review of cases required by Sup.R. 40 are the principal tools that the administrative judge uses to discharge the responsibilities under Sup.R. 4.

The timely and accurate preparation of the Individual Judge Report and the review of cases required by Sup.R. 40 provide the information necessary for the individual judge to discharge the judge's duties.

For purposes of this reporting requirement, an assigned judge may be an active or retired judge. Additionally, assigned judges, as well as acting judges, report their work in accordance with the instructions regarding the Visiting Judge column.

Uniform Sentencing Entry Ad Hoc Committee

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APPENDIX N
SB2 Uncodified Section

tenance, training, or inventory control. "Source reduction" does not include any practice that alters the physical, chemical, or biological characteristics or the volume of an industrial waste or other wastes through a process or activity that is not integral to and necessary for the production of a product or the providing of a service.

(5) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any industrial waste or other wastes; to neutralize the waste; to recover energy or material resources from the waste; to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, or amenable for recovery, storage, further treatment, or disposal; or to reduce the volume of the waste.

(6) "Waste minimization" means any effort to reduce or recycle the quantity of waste generated and, when feasible, to roduce or eliminate toxicity. "Waste minimization" does not include treatment unless the treatment is part of the recycling process.

SECTION 2. That existing sections 1.05, 109.42, 109.572, 109.71, 109.77, 109.78, 169.13, 177.01, 181.25, 301.27, 305.99, 306.35, 307.93, 309.08, 311.01, 311.281, 311.99, 321.44, 341.14, 341.19, 341.21, 341.23, 503.50, 505.64, 505.99, 731.99, 753.02, 753.04, 753.16, 913.09, 918.99, 921.99, 926.11, 926.99, 941.99, 943.99, 947.99, 959.99, 1123.14, 1125.99, 1129.99, 1151.49, 1153.07, 1153.99, 1155.16, 1311.01, 1311.011, 1321.99, 1322.99, 1331.16, 1331.99, 1333.99, 1334.99, 1506.99, 1513.17, 1513.181, 1513.99, 1531.99, 1533.99, 1545.072, 1547.99, 1548.99, 1707.99, 1716.99, 1739.99, 1777.01, 2108.99, 2151.011, 2151.26, 2151.27, 2151.355, 2151.358, 2151.86, 2301.51, 2301.52, 2301.55, 2301.56, 2307.50, 2313.29, 2313.99, 2329.66, 2739.03, 2739.15, 2739.16, 2739.99, 2901.01, 2901.02, 2901.30, 2903.03, 2903.04, 2903.06, 2903.07, 2903.08, 2903.11, 2903.13, 2903.16, 2903.211, 2903.33, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.22, 2907.02, 2907.03, 2907.04, 2907.06, 2907.09, 2907.12, 2907.21, 2907.22, 2907.31, 2907.32, 2907.322, 2907.323, 2907.34, 2909.02, 2909.03, 2909.04, 2909.05, 2909.06, 2909.07, 2909.08, 2909.11, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.01, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.51, 2913.61, 2913.71, 2915.01, 2915.02, 2915.03, 2915.05, 2915.07, 2915.09, 2915.10, 2915.12, 2917.01, 2917.02, 2917.11, 2917.21, 2917.41, 2919.12, 2919.21, 2919.22, 2919.23, 2919.25, 2919.251, 2919.27, 2919.271, 2921.01, 2921.13, 2921.32, 2921.321, 2921.33, 2921.34, 2921.35, 2921.36, 2921.41, 2921.51, 2923.01, 2923.02, 2923.11, 2923.12, 2923.121, 2923.122, 2923.13, 2923.161, 2923.17, 2923.20, 2923.24, 2923.31, 2923.32, 2925.01, 2925.02, 2925.08, 2925.11, 2925.12, 2923.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, 2925.37, 2923.38, 2925.42, 2927.01, 2927.03, 2927.13, 2927.24, 2929.03, 2929.06, 2929.15, 2929.17, 2929.22, 2929.221, 2929.23, 2929.31, 2929.41, 2929.51, 2930.01, 2930.02, 2930.03, 2930.04, 2930.05, 2930.06, 2930.07, 2930.08, 2930.09, 2930.10, 2930.11, 2930.12, 2930.13, 2930.14, 2930.15, 2930.16, 2930.17, 2930.18, 2930.19, 2933.51, 2933.52, 2935.01, 2935.03, 2935.33, 2935.36, 2937.06, 2937.23, 2941.141, 2941.144, 2945.42, 2945.67, 2947.051,

2947.06, 2947.19, 2947.21, 2949.111, 2949.12, 2950.99, 2951.02, 2951.021, 2951.03, 2951.04, 2951.041, 2951.07, 2951.09, 2951.13, 2953.07, 2953.11, 2953.21, 2963.11, 2967.01, 2967.02, 2967.03, 2967.12, 2967.121, 2967.13, 2967.14, 2967.15, 2967.16, 2967.17, 2967.18, 2967.191, 2967.193, 2967.21, 2967.22, 2967.23, 2967.26, 2967.27, 3111.99, 3113.99, 3301.32, 3301.541, 3313.65, 3313.662, 3313.99, 3319.20, 3319.31, 3319.311, 3319.39, 3319.52, 3321.38, 3321.99, 3504.06, 3599.11, 3599.14, 3599.15, 3599.24, 3599.26, 3599.27, 3599.28, 3599.29, 3599.33, 3599.34, 3701.881, 3719.01, 3719.09, 3719.12, 3719.121, 3719.141, 3719.21, 3719.70, 3719.99, 3731.99, 3734.44, 3737.99, 3741.12, 3741.99, 3743.07, 3743.20, 3743.44, 3743.45, 3743.63, 3743.65, 3743.99, 3750.09, 3751.03, 3751.04, 3751.07, 3751.10, 3751.99, 3761.16, 3761.99, 3793.99, 3901.99, 3999.99, 4109.99, 4112.02, 4163.99, 4301.252, 4301.637, 4301.99, 4303.36, 4399.11, 4399.12, 4399.15, 4399.99, 4503.37, 4503.41, 4503.44, 4505.101, 4505.99, 4506.01, 4507.16, 4507.169, 4507.99, 4509.99, 4511.191, 4511.83, 4511.99, 4549.99, 4561.01, 4561.05, 4561.07, 4561.08, 4561.11, 4561.13, 4561.15, 4561.99, 4705.99, 4712.99, 4715.99, 4727.99, 4728.99, 4729.61, 4729.99, 4731.223, 4731.99, 4734.99, 4735.99, 4749.99, 4773.99, 4903.99, 4905.13, 4905.40, 4905.401, 4905.99, 4907.99, 4909.99, 4931.99, 4933.18, 4933.19, 4933.28, 4933.86, 4933.99, 4951.99, 5104.012, 5104.013, 5104.09, 5119.01, 5120.031, 5120.071, 5120.073, 5120.074, 5120.103, 5120.11, 5120.13, 5120.16, 5120.161, 5120.17, 5120.331, 5120.53, 5123.04, 5126.28, 5139.20, 5145.01, 5147.12, 5147.30, 5149.01, 5149.09, 5149.10, 5149.18, 5149.31, 5153.111, 5589.99, 5703.99, 5715.99, 5728.99, 5747.99, 5749.99, 5753.99, 6101.25, 6101.99, and 6111.045 and sections 305.37, 305.40, 715.55, 715.56, 715.57, 715.58, 731.39, 1129.02, 1129.03, 1153.01, 1155.99, 1311.012, 1333.51, 1777.99, 2313.27, 2313.28, 2313.31, 2315.25, 2315.99, 2739.17, 2903.214, 2903.215, 2905.04, 2913.81, 2915.06, 2929.01, 2929.11, 2929.12, 2929.13, 2929.14, 2929.16, 2929.71, 2929.72, 2941.142, 2941.143, 2945.68, 2947.05, 2947.061, 2947.062, 2967.19, 2967.192, 2967.25, 2967.31, 3313.86, 3731.17, 3731.18, 3737.821, 3741.11, 3741.15, 3769.11, 3769.15, 3769.16, 3769.19, 3769.99, 3999.17, 3999.22, 4301.61, 4509.75, 4561.16, 4705.08, 4715.31, 4905.44, 4931.32, 4931.33, 4951.57, 5145.02, 5145.11, 5155.29, 5155.99, 5505.24, 5505.99, 5589.04, and 5715.47 of the Revised Code are hereby repealed.

SECTION 3. The Department of Rehabilitation and Correction shall adopt the rules required by sections 2967.11, 2967.193, and 2967.28 of the Revised Code, as amended or enacted by this act, within ninety days of the effective date of this act.

SECTION 4. The General Assembly hereby requests the Supreme Court to adopt rules to specify procedures for and to expedite the appeals of sentences authorized under section 2953.08 of the Revised Cede, including a rule that permits a court of appeals to rule on an appeal of sentence without a hearing, without addressing issues raised by the appellant that do not have merit, and without a written opinion.

The General Assembly hereby requests the Supreme Court to adopt a rule that requires a court of common pleas to maintain, in a court file that is accessible to the public, the following information in regard to each case in

which an offender is convicted of or pleads guilty to a felony: the case number, the name of the judge, and the race, ethnic background, gender, and religion of the defendant.

SECTION 5. The provisions of the Revised Code in existence prior te July 1, 1996, shall apply to a porson upon whom a court imposod a term of imprisonment prior to that date and to a porson upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposed a term of imprisonment for an offense that was committed prior to that date.

The provisions of the Revised Code in existence on and after July 1, 1996, apply to a person who commits an offense on or after that date.

SECTION 6. Sections 1 and 2 of this act shall take effect on July 1, 1996.

SECTION 7. Section 1547.99 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 317 and Sub. H.B. 522 of the 118th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2901.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 77 and Am. Sub. S.B. 144 of the 119th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2903.13 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. S.B. 116 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2903.33 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 152 and Am. Sub. S.B. 21 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2907.31 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 51 and Am. Sub. H.B. 790 of the 117th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2915.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. H.B. 104 and Am. H.B. 336 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2921.13 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 107 and Am. Sub. H.B. 152 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2935.01 of the Revised Code is presented in this act as a composite of the section as amended by beth Sub. H.B. 77 and Am. Sub. S.B. 144 of the 119th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2951.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. H.B. 687 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2951.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. S.B. 186 of the 120th General Assembly, with the new language of

neither of the acts shown in capital letters. Section 2967.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. S.B. 186 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 2967.17 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Sub. S.B. 242 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Sections 2967.26 and 2967.27 of the Revised Code are presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. S.B. 186 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 3719.01 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 88 and Sub H.B. 391 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 3719.141 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 588 and Am. Sub. S.B. 258 of the 118th General Assembly, with the new language of neither of the acts shown in capital letters. Section 4511.191 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 236 and Am. Sub. H.B. 687 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 4511.99 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 247, Am. Sub. H.B. 381, and Am. Sub. S.B. 82, all of the 120th General Assembly, with the new language of none of the acts shown in capital letters. Section 4729.99 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 88 and Sub. H.B. 391 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 5120.031 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 314 and Am. Sub. H.B. 571 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. Section 5120.073 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 571 and Am. Sub. S.B. 186 of the 120th General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

SECTION 8. Pursuant to uncodified law contained in Am. Sub. H.B. 117 of the 121st General Assembly, the main appropriations act of the 121st General Assembly, all of the following shall take place:

(A) The Director of the Office of Budget and Management, no later than September 30, 1996, shall transfer either $1,600,000, or the total amount available, whichever is less, from the unobligated and unreserved General Revenue Fund appropriations to the Department of Rehabilitation and Correction for fiscal year 1996 to General Revenue Fund appropri-

ation line item 501-407, Community Nonresidential Programs, in fiscal year 1997.

(B) The amount so transferred under division (A) of this section shall be set aside by the Department of Rehabilitation and Correction for the purpose of making additional grants to local governments, with the eligibility for, and the amount of, an additional grant to be determined pursuant to uncodified law contained in Am. Sub. H.B. 117 of the 121st General Assembly that addresses comprehensive sentencing reform legislation and the creation of contingency funding to implement that sentencing reform.

John Davidson

Speaker _____ *of the House of Representatives.*

Stanley J. Aronoff

President _____ *of the Senate.*

Passed June 29, 1995

Approved August 10, 1995 1:00 P.M.

George V. Voinovich

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Robert M. Shapiro

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 10th day of August, A. D. 19 95.

Bob Taft

Secretary of State.

File No. 50 Effective Date November 9, 1995

certain Sections effective other than November 9, 1995

Sections 109.71, 1513.17, 1513.181, and 4112.02 of the Revised Code are amended by this act (effective July 1, 1996) and also by Am. Sub. S.B. 162 of the 121st General Assembly. Sections 307.93, 3301.541, 3313.65, 4399.11, 4511.191, and 5149.31 of the Revised Code are amended by this act (effective July 1, 1996) and also by Am. Sub. H.B. 117 of the 121st General Assembly. Section 2913.71 of the Revised Code is amended by this act and also by Sub. H.B. 4 of the 121st General Assembly. Section 2917.41 of the Revised Code is amended by this act (effective July 1, 1996) and also by Am. H.B. 61 of the 121st General Assembly. Sections 2929.03, 2929.06, and 2953.07 of the Revised Code are amended by this act (effective July 1, 1996) and also by Am. Sub. S.B. 4 of the 121st General Assembly. Sections 3111.99, 3113.99, and 3319.31 of the Revised Code are amended by this act (effective July 1, 1996) and also by Sub. H.B. 167 of the 121st General Assembly (November 15, 1996). Section 3313.662 of the Revised Code is amended by this act (effective July 1, 1996) and also by Sub. H.B. 64 of the 121st General Assembly. Sections 4301.637 and 4399.12 of the Revised Code are amended by this act (effective July 1, 1996) and also by Am. Sub. S.B. 162 of the 121st General Assembly (effective July 1, 1997). Section 4303.36 of the Revised Code is amended by this act (effective July 1, 1996) and also by Sub. H.B. 239 of the 121st General Assembly. Section 5139.20 of the Revised Code is amended by this act (effective July 1, 1996) and also by Am. Sub. H.B. 1 of the 121st General Assembly (effective January 1, 1996). Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable so that they are required by that section to be harmonized to give effect to each amendment.

Robert W. Shapiro
Director, Legislative Service Commission

Uniform Sentencing Entry Ad Hoc Committee

Report & Recommendations

OHIO
CRIMINAL SENTENCING COMMSSION

APPENDIX O
Ohio Appellate Rule 5

RULES OF APPELLATE PROCEDURE

Effective July 1, 1971

Including amendments received through July 15, 1998

Research Note

Consult Whiteside, Ohio Appellate Practice, *for commentary and analysis, statues, rules, case annotations, a timetable, and forms concerning Ohio appellate practice.*

Use WESTLAW® *to find cases citing or applying specific rules.* WESTLAW *may also be used to search for specific terms in court rules or to update court rules. See the OH-RULES and OH-ORDERS Scope Screens for detailed descriptive information and search tips.*

Amendments to these rules are published, as received, in the advance sheets for Ohio Official Reports, North Eastern Reporter 2d *and* Ohio Cases, *and in* Baldwin's Ohio Legislative Service Annotated.

Publisher's Note: The Supreme Court Rules Advisory Committee prepared Staff Notes for each of the substantive rule amendments. The Staff Note follows the applicable rule. Although the Supreme Court used the Staff Notes as background for its deliberations, the Staff Notes are not adopted by the Court and are not a part of the rule. Where they interpret the law, describe present conditions, or predict future practices, the Staff Notes represent the views of the Rules Advisory Committee and not necessarily the views of the Supreme Court. Each staff note should be read in light of the language of the rule at the time of the enactment or amendment.

Table of Rules

when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

(4) Appeal by prosecution. In an appeal by the prosecution under Crim.R. 12(J) or Juv.R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

(5) Partial final judgment or order. If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ.R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ.R. 54(B).

(C) Premature notice of appeal

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

(D) Definition of "entry" or "entered"

As used in this rule, "entry" or "entered" means when a judgment or order is entered under Civ.R. 58(A) or Crim.R. 32(B).

[Adopted eff. 7-1-71; amended eff. 7-1-72, 7-1-85, 7-1-89, 7-1-92, 7-1-96]

COMMENTARY

Staff Notes

1996: The 1996 amendment to division (B)(2) was to harmonize the rule with amendments to Civ. R. 53 and Juv. R. 40 that were effective July 1, 1995. The 1995 amendments changed "referee" to "magistrate" and also restructured both rules, which necessitated revision of the cross-references in App. R. 4.

App R 5. APPEALS BY LEAVE OF COURT IN CRIMINAL CASES

(A) Motion by defendant for delayed appeal

After the expiration of the thirty day period provided by App. R. 4(A) for the filing of a notice of appeal as of right in criminal cases, an appeal may be taken only by leave of the court to which the appeal is taken. A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

(B) Motion by prosecution for leave to appeal

When leave is sought by the prosecution from the court of appeals to appeal a judgment or order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

(C)(1) Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C)

When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the judgment and order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

(C)(2) Leave to appeal consecutive sentences incorporated into appeal as of right

When a criminal defendant has filed a notice of appeal pursuant to App. R. 4, the defendant may elect to incorporate in defendant's initial appellate brief an assignment of error pursuant to R.C. 2953.08(C), and this assignment of error shall be deemed to constitute a timely motion for leave to appeal pursuant to R.C. 2953.08(C).

(D) Determination of the motion

Except when required by the court the motion shall be determined by the court of appeals on the documents filed without formal hearing or oral argument.

(E) Order and procedure following determination

Upon determination of the motion, the court shall journalize its order and the order shall be filed with the

clerk of the court of appeals, who shall certify a copy of the order and mail or otherwise forward the copy to the clerk of the trial court. If the motion for leave to appeal is overruled, except as to motions for leave to appeal filed by the prosecution, the clerk of the trial court shall collect the costs pertaining to the motion, in both the court of appeals and the trial court, from the movant. If the motion is sustained and leave to appeal is granted, the further procedure shall be the same as for appeals as of right in criminal cases, except as otherwise specifically provided in these rules.

[Adopted eff. 7-1-71; amended eff. 7-1-88, 7-1-92, 7-1-94, 7-1-96]

COMMENTARY

Staff Notes

1996: R.C. 2953.08(C), effective on July 1, 1996, provides for a motion for leave to appeal consecutive sentences on the basis that the sentencing judge has imposed consecutive sentences and that the consecutive sentences exceed the maximum prison term allowed for the most serious offense of which the defendant was convicted. The 1996 amendment added a new division (C) to provide procedures for that motion. The court of appeals retains the same discretion to grant or to deny the motion for leave to appeal, whether the motion is filed separately pursuant to division (C)(1) or whether it is incorporated into appellant's brief pursuant to division (C)(2). Also, previous division (A) was divided into new divisions (A) and (B), division (A) was renamed, and previous divisions (B) and (C) were redesignated as (D) and (E), respectively.

1994:

Rule 5(A) Motion and notice of appeals

The 1994 amendment deletes a requirement that persons seeking leave to file a delayed appeal in criminal cases must set forth the errors claimed to have occurred and the evidence relied upon to show the probability that the errors claimed did in fact occur.

Although there was also concern about the fairness of requiring usually indigent, and frequently unrepresented, criminal defendants to demonstrate (often without the benefit of a transcript) the probability of error, the primary reason for this amendment is judicial economy. Denial of leave to file a delayed appeal for failure to demonstrate the probability of error usually leads to subsequent litigation of the issue by direct appeals to the Ohio and United States Supreme Courts, petitions to vacate sentence under R.C. 2953.21 et seq., and appeals thereon, and/or federal habeas corpus petitions and appeals. Review of the merits by the courts of appeals upon the initial direct (albeit delayed) appeal would thus avoid the presentation of the probability of error issue to as many as nine subsequent tribunals. The amendment leaves intact the requirement that the would-be appellant set forth reasons for having failed to perfect a timely appeal. The current standard for waiver of the right to appeal is set forth in *State v. Sims* (1971), 27 Ohio St. 2d 79.

App R 6. CONCURRENT JURISDICTION IN CRIMINAL ACTIONS

(A) Whenever a trial court and an appellate court are exercising concurrent jurisdiction to review a judgment of conviction, and the trial court files a written determination that grounds exist for granting a petition for post-conviction relief, the trial court shall notify the parties and the appellate court of that determination. On such notification, or pursuant to a party's motion in the court of appeals, the appellate court may remand the case to the trial court.

(B) When an appellate court reverses, vacates, or modifies a judgment of conviction on direct appeal, the trial court may dismiss a petition for post-conviction relief to the extent that it is moot. The petition shall be reinstated pursuant to motion if the appellate court's judgment on direct appeal is reversed, vacated, or modified in such a manner that the petition is no longer moot.

(C) Whenever a trial court's grant of post-conviction relief is reversed, vacated, or modified in such a manner that the direct appeal is no longer moot, the direct appeal shall be reinstated pursuant to statute. Upon knowledge that a statutory reinstatement of the appeal has occurred, the court of appeals shall enter an order journalizing the reinstatement and providing for resumption of the appellate process.

(D) Whenever a direct appeal is pending concurrently with a petition for post-conviction relief or a review of the petition in any court, each party shall include, in any brief, memorandum, or motion filed, a list of case numbers of all actions and appeals, and the court in which they are pending, regarding the same judgment of conviction.

[Reserved eff. 7-1-71; amended eff. 7-1-97]

COMMENTARY

Staff Notes

1997: The purpose of this rule is to implement the provisions in section 2953.21 of the Revised Code, as amended effective September 21, 1995, that establish concurrent jurisdiction in criminal cases when a direct appeal and a petition for post-conviction relief are proceeding concurrently. Orderly exercise of that jurisdiction is facilitated by providing for remand to the trial court when the trial court has determined that post-conviction relief should be granted. Further, appellate review in the direct appeal and appellate review of the post-conviction ruling are coordinated to preserve efficient use of judicial resources. Under R.C. 2953.21 an appeal remanded for a trial court's consideration of post-conviction relief is automatically reinstated if the trial court's favorable consideration is reversed, vacated, or modified. This rule provides a mechanism for entering this automatic reinstatement in the record.

App R 7. STAY OR INJUNCTION PENDING APPEAL—CIVIL AND JUVENILE ACTIONS

(A) Stay must ordinarily be sought in the first instance in trial court; motion for stay in court of appeals.

Application for a stay of the judgment or order of a trial court pending appeal, or for the determination of the amount of and the approval of a supersedeas bond, must ordinarily be made in the first instance in the trial court. A motion for such relief or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal may be made to the court of appeals or to a judge thereof, but, except in cases of injunction pending appeal, the motion shall show that application to the trial court for the relief sought is not practicable, or that

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APPENDIX P
Data Emphasis 2015-2020

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Year	Title	Finding	Link
2015	2015 Annual Report	"The Data Collection and Sharing Committee's primary goals are to develop, coordinate, and identify ways to collect and promote methods for sharing appropriate data and information with justice system partners… Additionally, among the larger issues the committee is tackling is an Ohio-specific data primer report identifying statewide data collection, its use, and accessibility."(p. 7)	http://www.supremecourt.ohio.gov/Publications/criminalSentencing/2015CSCAR.pdf
2016	Ad Hoc Committee on Rights Restoration and Record Sealing: Report and Recommendations	"In addition to recommending that the full Commission endorse this proposed redraft for publication and promulgation, the Ad Hoc Committee recommends that the Ohio Criminal Sentencing Commission, or perhaps another separate body within the Ohio court system seek to institute and promulgate standard data-recording and data-transmission processes for all courts statewide that receive and act on sealing and expungement applications. **As noted above, there is currently no statewide data on the operation of existing statutes and no entities committed to seeking to collect and assess how these statutes are functioning.**" (p. 12)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/rightsRestoration.pdf

2017	Addendum to the June 2017 Ad Hoc Committee on Bail and Pretrial Services Final Report & Recommendations	"Criminal justice data in Ohio is disparate, mismatched and complex. Local and state agency data systems lack connectivity and sharing agreements are underutilized. Currently, in Ohio, each court operates independently resulting in varying levels of data collection and submission… Thus, the recommendations in the Ad Hoc Committee report are designed to promote consistent and uniform practices that realize fundamental fairness and promote public safety among counties and courts within counties… Despite an increase in initial costs to begin data collection, whether through new systems or updates to case management systems, collecting data is the only true measure of the effectiveness of bail practices and pretrial services. **The General Assembly must work with the Supreme Court of Ohio to determine cost for updates to all local case management systems or for development of a statewide collection capability**." (p. 7)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/bailPretrialSvcsAdd.pdf
2017	Ad Hoc Committee on Bail and Pretrial Services: Final Report & Recommendations	"Additionally, the Ad Hoc Committee specifically recommends that data be collected regarding diversion programs and funding sources and data regarding diversion outcomes to measure the effectiveness of diversion programs. **There is currently no existing clearinghouse of information on funding sources and information on diversion. Knowing success and failure rates of any diversion program is paramount in determining if the diversion programs are effective and if any risk assessment screening for diversion is effective**." (p. 22)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/bailPretrialSvcs.pdf
2017	HB365 Interested Party Testimony, House Criminal Justice Committee	"Reoccurring themes include prison crowding, the complexity of the laws surrounding sentencing, increased funding for and targeted use of community punishments, responding to drug scourges and the preservation of prison beds for the most violent offenders. **The reality is that we are suffering from the cumulative**	file:///C:/Users/ivest/Downloads/HB365AndrewsSentencingOverview.pdf

		effect of tinkering with sentencing structure on limited data sources and a crime-by-crime basis. Continuing to advance criminal justice policy and legislation on narrow circumstances and data does not contribute to public safety or advance the administration of justice." (p.6)	
2017	Sentencing in the Heartland: A Perspective from Ohio	"As an acknowledgement of the dearth of data about the criminal justice world outside of state prisons, much of the upcoming work of the Commission—despite the multifarious challenges—is a collaborative, careful, calculated, and exceptional effort to collect, analyze, and tell the story of case disposition data with explicit focus on what happens before prison, otherwise known as the system's ''front end,'' where many decisions are made that impact both future judicial and corrections practices." (p. 99)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/activities/FSRSentencingHeartland.pdf
2018	Impact of House Bill 86 & Sentencing-Related Legislation on the Incarcerated Population in Ohio	"For the adult-criminal-justice system, further data collection is necessary to link arrest data, court records, and ODRC data. These data linkages can help us to further understand the impact that legislation has had on sentencing for specific types of crimes and offenders. Further, data on the community-sanctions population should be linked to court records and ODRC data to understand what programs work and for whom." (p. 2) "The next step for JRI efforts in Ohio should be to improve data collection and data linkage standards throughout the system… Data collection targeted to answer specific questions around sentencing ultimately can help provide intelligence around the effectiveness of policies, by helping to target the most appropriate population to reduce the incarcerated population while preventing recidivism." (p. 43)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/monitorRpts/HB86report.pdf

2019	The Data Disconnect: Adult Criminal Justice Data in Ohio	"Policy makers and criminal justice agencies must have relevant and complete information available to maximize public safety and develop sound, well-reasoned policy. The establishment of a shared criminal justice repository not only is an investment in an evidence-informed public policy decision-making process, it is an investment in a safer, fairer, and more cost-efficient criminal justice system" (p. 11)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/dataBrief.pdf
2019	Criminal Justice and Drug Sentencing Reform in Ohio after Issue 1	"How can Ohio break out of the infinite loop of underachieving or failed reform? The answer is movement toward a data-informed environment, and only the Commission can harness that data and lead the way. It is essential for future success, fundamental for true reform and consequential for every Ohioan. **Aggregating data in Ohio and across agencies can provide an unprecedented level of information for criminal justice system practitioners and policy makers.** That kind of information can be used to develop and implement new law enforcement interventions and policing strategies, refine extant criminal justice policies, leverage resources and programming to improve outcomes for the criminal justice involved population, and help inform judicial decision making. In other words, 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." (p. 171)	http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/activities/FSRFeb2019.pdf
2019	Justice Reinvestment 2.0 in Ohio	Criminal justice data in Ohio are disconnected and spread across agencies and all levels of government, from district and municipal courts to local probation departments to state prisons**. As a result, Ohio lacks the necessary information to measure outcomes and determine whether policies and programs are working**. For example, locally-run probation departments supervise about a quarter of a million	http://www.supremecourt.ohio.gov/Boards/Sentencing/committees/justiceReinvest/twoPageSummaryDraft.pdf

		people, but the state lacks basic information about those people, including how many of them are on felony versus misdemeanor probation, their needs, and supervision violation information. (p. 1)	
2019	OJACC Spring Newsletter 2019 – "Connecting Adult Criminal Justice Data: Does it matter?"	"For criminal justice agencies and practitioners, there is no single centralized criminal justice data repository in Ohio. As a result, individuals are often searching multiple databases or systems- and sometimes having to do more than that- just to pull together needed information. We recently asked a group, during a presentation, to raise their hands if they had to search multiple databases or systems to find information about a person. Almost everyone in the room raised their hands. We then asked how many people had to additionally use the phone to call other jurisdictions to make sure they had the most recent information on that same offender, and almost half raised their hands… As the Commission moves forward in its work to enhance justice and ensure fair sentencing in Ohio, we believe that an aggregated criminal justice repository will allow all criminal justice partners to do the work they need to do - without having to make phone calls to piece together critical information." (p. 4)	http://ojacc.org/wp-content/uploads/2019/07/OJACC-Spring-2019-Newsletter-E.pdf
2020	Justice Donnelly & Judge Headen Op Ed	".....justice in Ohio would become more fair and sentences more consistent if the Ohio General Assembly would enact legislation to build and fund a data base and repository giving judges the tools and information needed to do their jobs in accord with the purposes and principles of felony sentencing already enacted into Ohio law."	https://www.cleveland.com/opinion/2020/01/create-centralized-criminal-sentencing-database-to-reduce-mass-incarceration-in-ohio-michael-p-donnelly-and-ray-headen.html Op-Ed

2020	Cleveland Plain Dealer Editorial Board	*"Ohio needs a centralized criminal sentencing database to bring fairness and uniformity to judicial system"*	https://www.cleveland.com/opinion/2020/01/ohio-needs-a-centralized-criminal-sentencing-database-to-bring-fairness-uniformity-to-judicial-system.html PD Editorial
	Judge Calabrese Letter to the Editor	*"More information will help bring fairness to sentencing"*	https://www.cleveland.com/letters/2020/01/more-information-will-help-bring-fairness-to-sentencing.html Judge Phil Calabrese Letter to the Editor
	Judge John Russo Letter to the Editor	*"Centralized criminal sentencing database is a great idea….."*	https://www.cleveland.com/letters/2020/01/centralized-criminal-sentencing-database-is-a-great-idea-could-blockchain-help-make-it-happen.html Judge John J. Russo Letter to the Editor

2020	Cleveland Bar Association Hot Talk		https://www.facebook.com/CleMetroBar/videos/475452980070988/?t=0 Cleveland Bar Association Hot Talk.
	Sara Andrews Letter to the Editor	*"Creating a centralized criminal sentencing database in Ohio is fundamental to fairness and justice"*	https://www.cleveland.com/letters/2020/02/creating-a-centralized-criminal-sentencing-database-in-ohio-is-fundamental-to-fairness-and-justice.html
	Sound Of Ideas	*"Judges make case for data driven approach to sentencing……"*	https://www.ideastream.org/programs/sound-of-ideas/judges-make-case-for-data-driven-approach-to-sentencing-manufacturing-jobs-reports

2020	Justices Call for Statewide Sentencing Database	*"statewide sentencing database…….the keystone to criminal justice reform and racial fairness."*	http://www.courtnewsohio.gov/bench/2020/CJReform_071520.asp#.X0f00chKh_Y
	Supreme Court Justice Calls for Plea Agreement Reform	*"Truth or Consequences: Making the Case for Transparency and Reform in the Plea Negotiation Process."*	http://www.courtnewsohio.gov/bench/2020/donnellyArticle_070220.asp#.X0f3OchKh_Y
	Editorial Board cleveland.com and The Plain Dealer	*"Ohio Supreme Court justices are right to make statewide sentencing database a priority"*	https://www.cleveland.com/opinion/2020/08/ohio-supreme-court-justices-are-right-to-make-statewide-sentencing-database-a-priority.html

2020	Creating a Felony Sentencing Database: Moving Ohio Forward	*"The Ohio Criminal Sentencing Commission is embarking on an effort to create a felony sentencing database…..to inform judicial decision-making, and contribute to a safer, fairer, and more cost-efficient criminal justice system."*	https://osu.zoom.us/rec/share/xu9UE4HhyUNJHoXS4UruQfQ5Fa7HX6a80CMcqfoLzEb6C4BWMRzvW4YE8jnd0GdP
	…….Sentencing database	*"As repairs to vandalized Ohio Supreme Court are completed, Chief Justice Maureen O'Connor pushes for reforms"*	https://www.cleveland.com/open/2020/08/as-repairs-to-vandalized-ohio-supreme-court-are-completed-chief-justice-maureen-oconnor-pushes-for-reforms.html

Uniform Sentencing Entry Ad Hoc Committee

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APPENDIX Q
Commission Modernization Document

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COMPARATIVE ANALYSIS

Current Ohio Criminal Sentencing Commission & Proposed Criminal Justice Commission

	Ohio Criminal Sentencing Commission	**Ohio Criminal Justice Commission (Proposed)**
Membership	31	29
Composition	2 Senators (1 majority, 1 minority) 2 Representatives (1 majority, 1 minority) Superintendent, OSHP Director, DRC Director, DYS State Public Defender 10 Judges (Appointed by Chief Justice) – specifies (1) COA; (3) CP – Gen'l; (3) Juv; (3) Municipal/County[ii] Appointees by Governor 1 Sheriff 2 County Prosecutors 2 Peace Officers 1 Victim of Crime 1 Criminal Defense Attorney 1 OSBA Member 1 Juvenile Attorney 1 City Prosecutor 1 County Commissioner 1 Mayor, City Manager	2 Senators (1 majority, 1 minority) 2 Representatives (1 majority, 1 minority) Attorney General Director, DRC Director, DYS State Public Defender Director, OMHAS Director, DPS County Prosecutor[i] 11 judges (Appointed by Chief Justice) (2) COA; (3) CP – Gen'l; (3) Juv; (3) Municipal/County[iii] Appointees by Governor[iv] 1 Sheriff 1 County Prosecuting Attorney 1 Peace Officer of Municipal Corporation or Township 1 Victim of Crime 1 City Prosecutor 1 County Commissioner

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	Ohio Criminal Sentencing Commission	Ohio Criminal Justice Commission (Proposed)
Chair	Chief Justice Vice-Chair chosen by Chief Justice	Chief Justice Vice-Chair chosen by Commission
Terms of Office	4 years or until no longer hold elected, appointed office or position	If Chair appointed, serves at pleasure of Chief Justice Any elected or appointed official is a member for as long as they hold office Appointees of Chief Justice, Governor and Ohio Prosecuting Attorneys Association – 4 years
Meetings	As necessary At call of at least 8 members	As necessary At call of majority of members
Compensation	Actual & necessary expenses	Actual & necessary expenses
Subcommittees	Juvenile [RC 181.21(D)]	As needed Non commission members may participate fully State/Local Correctional employees Adult/Youth Parole Authorities Correctional Institution Inspection Committee Law enforcement task forces Crime laboratories Municipal Court representatives City Managers, Mayors Social service providers Clerks of court Court administrators Victim advocate organizations

	Ohio Criminal Sentencing Commission	Ohio Criminal Justice Commission (Proposed)
Subcommittees, continued		Offender advocates Ohio State Highway Patrol Bureau of Motor Vehicles
Advisory Committee	R.C. 181.22 Parole Board Chair CIIC Juvenile Detention facility operator Juvenile probation Juvenile parole DYS facility superintendent Juvenile community based provider Youth advocacy organization Juvenile victim of crime Community corrections	No provision
Staff	Project Director Any other necessary employees (research coordinator, professional staff, administrative assistants)	Executive Director Other staff appointed by Executive Director, subject to review of Commission
Duties	Study criminal statutes and laws of Ohio Study sentencing patterns Study available correctional resources Evaluate sentencing structure effectiveness	Clearinghouse for significant criminal justice proposals Recommend policy changes to the G.A. Development and maintenance of a state-wide sentencing database

	Ohio Criminal Sentencing Commission	Ohio Criminal Justice Commission (Proposed)
Duties, continued	Review proportionality Review sentencing guidelines Determine capacity/quality of correctional facilities Collect profile of inmate population Review legislation regarding criminal sentencing and make necessary recommendations Develop and monitor a comprehensive sentencing structure Identify additional correctional resources Coordinate resources with sentencing goals of state Review forfeiture statutes and make recommendations Review juvenile delinquency, unruly child, and juvenile traffic offender statutes and make recommendations on juvenile sentencing structure	Consider costs of proposals Ongoing discussion and coordination of state criminal justice policy Identify topics for comprehensive review Assist in implementation and monitoring of any proposals adopted Goals: enhance public safety, reduce crime and recidivism, foster adequate retribution, consistency, fairness and proportionality, use resources in a cost-effective manner, encourage scientific evaluations of policies and programs, produce easily understandable laws

[i] Appointed by Ohio Prosecuting Attorneys Association
[ii] No more than 6 of same political party
[iii] No more than 6 of same political party
[iv] Governor consult with appropriate state associations, no more than 3 of same political party

Uniform Sentencing Entry Ad Hoc Committee

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APPENDIX R
Ohio Sentencing Data Platform Road Map & Preproduction Scope of Work

Date: 8/6/2020

Project Title: Ohio Sentencing Data Platform - Prototype

Project Description:
This project is the first step in developing the Ohio Sentencing Data Platform (OSDP) and is aligned with the initiation phase of the roadmap shown in Figure 1 and detailed at the end of this attachment. This project is to develop a prototype, a component of the roadmap first phase - Initiate, in order to bring the vision of the stakeholders to reality and to contribute to the development of momentum and budget to fully implement the roadmap. Table 1 includes the tasks associated with the project. Table 2 includes a tentative project Gantt chart.

Project Duration: September 1, 2020 to April 30, 2021

Description
1. Project Set up and Kick off • Setup project development and staging environments. • Setup project management plan. • Gather and review project assets. • Setup software source control. • Define user acceptance criteria/testing.
2. User Analysis • Work with the stakeholders to analyze the context in which sentencing data are created, stored, transferred, and analyzed. • Identify potential user roles, permissions, and agencies that would have access to the various components of the system. • Design and develop application wireframes to confirm the stakeholders' vision. • Design and develop the database structure, business logic, and interface to manage users, roles, and agencies.
3. Data Design • Work with the stakeholders to analyze the data requirements to meet the needs of the state and the local jurisdictions and serve the overall roadmap of the OSDP. • Iterate through the design and development of the database structure and the associated business logic and interface to manage the data for the Uniformed Sentencing Platform.
4. System Architecture Analyze the system requirements, and Data Model to identify a suitable architecture. • Design, and develop the business logic (API), database structure, and interface to support distributed environment.
5. USE Proof of Concept • **Design and develop wireframes to map the Uniform Sentencing Entry form process flow.** • Design, and develop the business logic (API), database structure, and interface to support the Uniform Sentencing Entry form.
6. USE Integration and Architecture • Work with the stakeholders to identify a local jurisdiction to work closely to design the architecture and process to support integration of the OSDP.
7. Reports • Work with the stakeholders to identify key reports. • Design, and develop the business logic (API), database structure, and interface to display one report as part of the prototype
8. Plan Future Phases • Work with the stakeholders to plan the future phases of the roadmap including the remainder of the Initiate phase.

9. Project management, documentation, testing and deployment • Manage and document the different stages of the project development. • Design and execute unit and functional tests throughout the development process. • Conduct conference meetings to maintain alignment with the stakeholder's intent and vision. • Provide instructions on using the system.
10. Maintenance and Hosting • Host and maintain the staging version of the application database, API, and web application. This can be used for demonstration purposes and will not be in production. • Fix any errors or bugs with the application. • Valid during for 60 days after the completion of the project tasks or until June 30, 2021.

Table 1: Ohio Sentencing Data Platform – Prototype Project Tasks

Major Task	**9/1 – 11/30**	**12/1 – 1/30**	**2/1 – 4/30**	**5/1 – 6/30**
1. Project Setup & Kick off				
2. User Analysis				
3. Data Design				
4. System Architecture				
5. USE Proof of Concept				
6. USE Integration				
7. Reports				
8. Plan Future Phases				
9. Project Management				
10. Maintenance and Hosting				

Table 2: Tentative Gantt chart for the Initiation Phase

Ohio Sentencing Data Platform Roadmap

For reference, the University of Cincinnati proposed to the Ohio Sentencing Commission a roadmap of six phases to develop a data platform for sentencing data in Ohio as shown in Figure 1. Tentatively, the six phases are:

I. **Initiate**, understand the lifecycle of sentencing data in Ohio, develop the system infrastructure within the framework of the uniform sentencing entry (USE) form, plan phased roll out, pilot the platform among select agencies and plan the remaining phases.
II. **Launch**, expand the pilot to a second set of agencies, support and improve the platform, integrate the pre-entry form, examine business-to-business integration, develop and expand dashboards
III. **Engage**, the USE form is now rolled out to all agencies while pre-entry is in the second phase of roll out. New forms can be initiated, as needed, while expanding user training, reports and dashboards.
IV. **Enable**, the platform is in full production with operation support and scheduled improvements for both the USE and Pre-entry forms, new forms are following the roll out cycle, pilot business-to-business integration, enhance reports and improve dashboards.
V. **Empower**, expand the dashboard and static reports to aid in decision making while continuing form and system integration and full production support.
VI. **Optimize** the dashboard and data reporting as well as system performance metrics and business-to-business integration activities.

When the roadmap is fully completed, the OSDP will encapsulate the data elements of the Uniform Sentencing Entry and Method of Conviction entries and enable jurisdictions to enter the data into the system, upload their sentencing report to the system for extraction of necessary information, or send the needed data from their Case Management System directly to the system. In addition, various reports can be extracted from the system through exports or direct push to other data platforms in the state, such as the Ohio Courts Network. Furthermore, the system dashboard will provide insights to the various constituencies to aid in decision-making and give judges the tools and information needed to do their job in accord with the purposes and principles of felony sentencing.

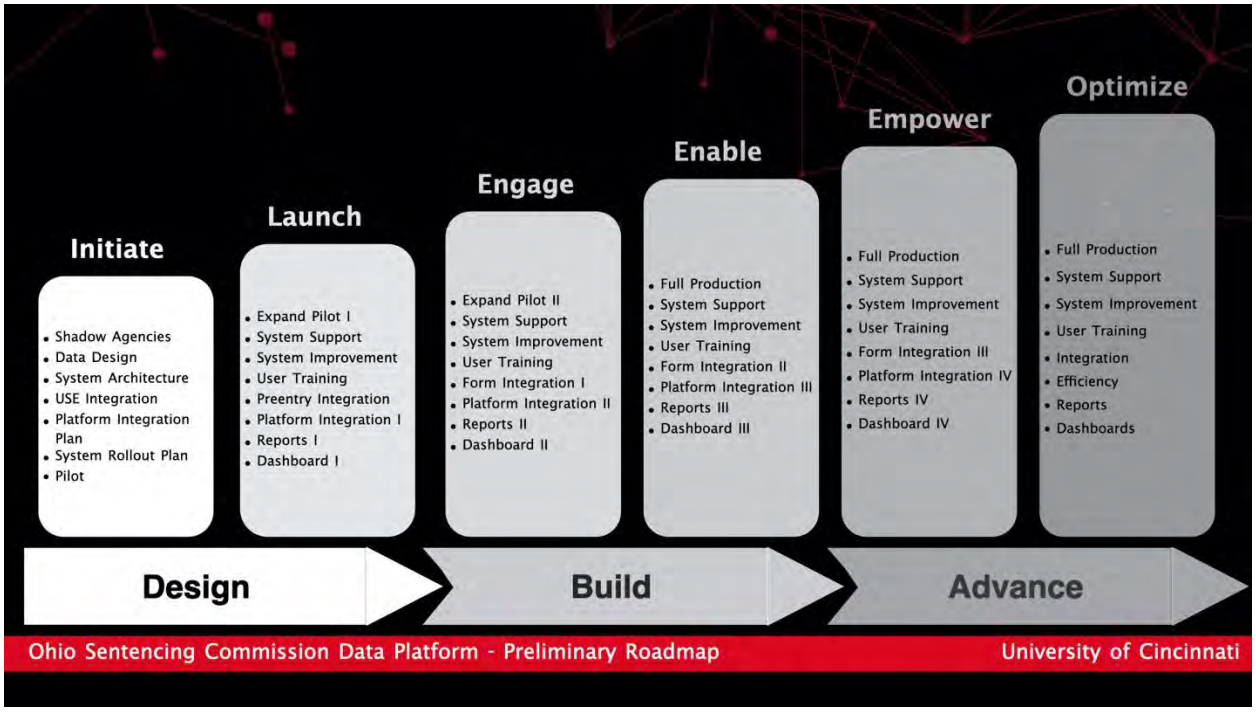

Figure 1: Roadmap for the Ohio Sentencing Data Platform.

Uniform Sentencing Entry Ad Hoc Committee

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APPENDIX S
Byrne/JAG Grant Submission Summary

2020 Edward Byrne Memorial Justice Assistance Grant

PURPOSE STATEMENT

Felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehendible sentences is of the utmost import for the administration of justice and promoting confidence in the system. Recently, Ohio Criminal Sentencing Commission staff and members collaborated with the various constituencies to create the Uniform Sentencing Entry (USE) form as a way to not only recognize the various independent agencies but also to establish standardized, common data essential for establishing relationships and trends common to all felony courts.

The development of the USE provides the foundation to create a timely, accurate, comprehensive and shared Ohio Sentencing Data Platform to help inform decision-making and give judges the tools and information needed to do their job in accordance with the purposes and principles of felony sentencing. Its development includes mapping of the case flow processes to demonstrate the potential of information sharing that already exists. It will achieve, through careful review, a data-sharing sentencing repository that ensures all points are appropriately and accurately identified and included. Copious examination to develop such a system and the details involved is nonnegotiable for success. In other words, the long-term goal is the development of a shared felony sentencing repository through a thoughtful, mindful, and intentional approach to ensure it benefits all users.

The Ohio Sentencing Data Platform will provide the leverage for us to tell the comprehensive story and illustrate the deep intricacies of felony sentencing. It is a solid foundation for movement toward a data-informed environment that allows for the thorough understanding and analysis of the criminal justice system by its own actors and those making policy decisions. It improves analysis of sentencing patterns and trends -while realizing we are talking about case and people-specific fact patterns, weaving them together to inform and engage others in development of sound state policy, enhanced public safety, reduced recidivism, and equalized application of justice.

Uniform Sentencing Entry Ad Hoc Committee

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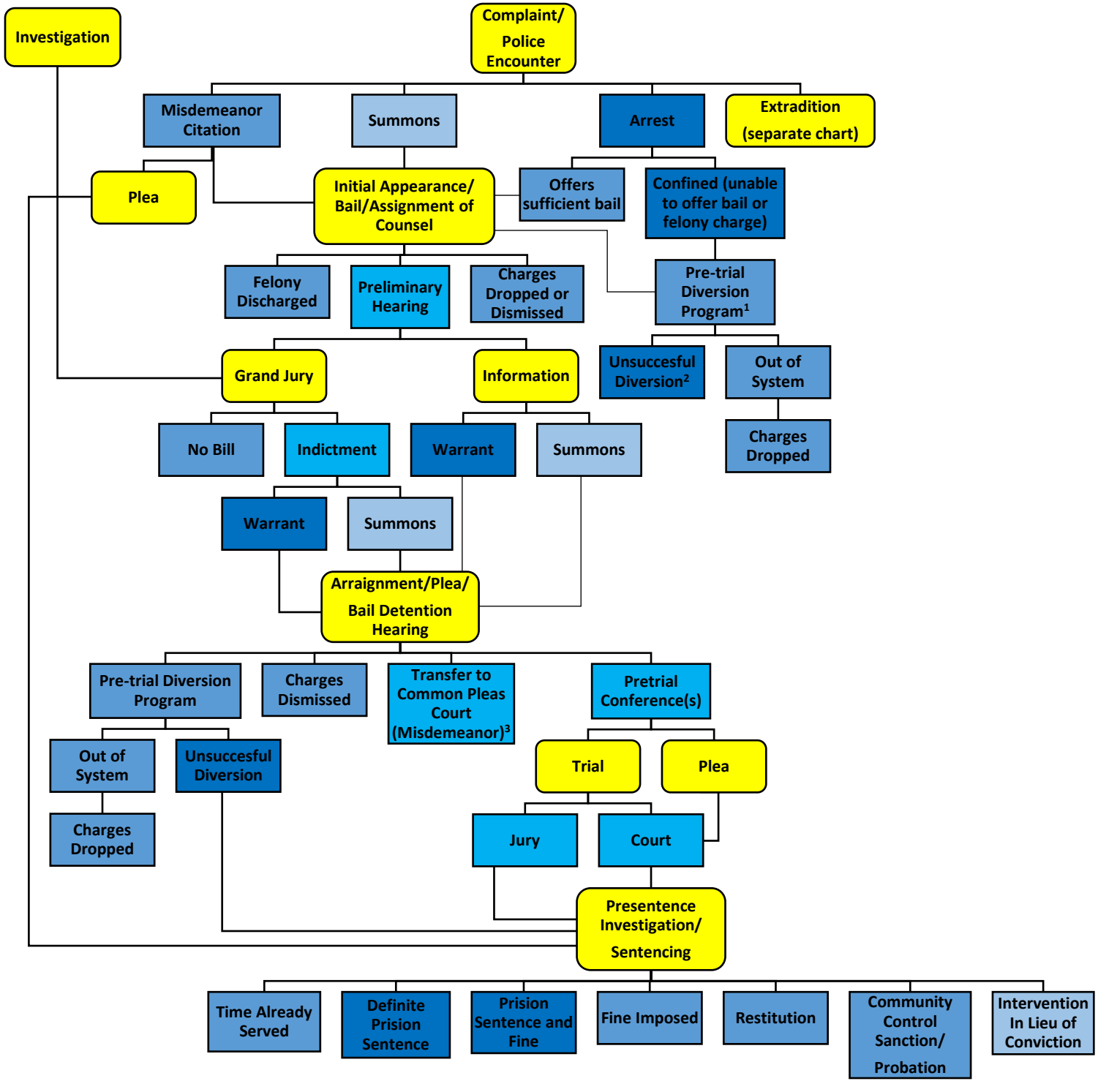
APPENDIX T
Ohio Adult Justice System Map

THE STATE OF OHIO JUSTICE SYSTEM MAP - ADULT



[Adapted from Ohio Court Rules – Ohio Rules of Criminal Procedure, the Ohio Revised Code, Anderson's Ohio Criminal Practice and Procedure, and "The State of Connecticut's Justice System Map – Calendar Year 2014."]

LEGEND

- Decision Point
- Diverted from Jail
- Court Appearance
- Detained
- Not Detained

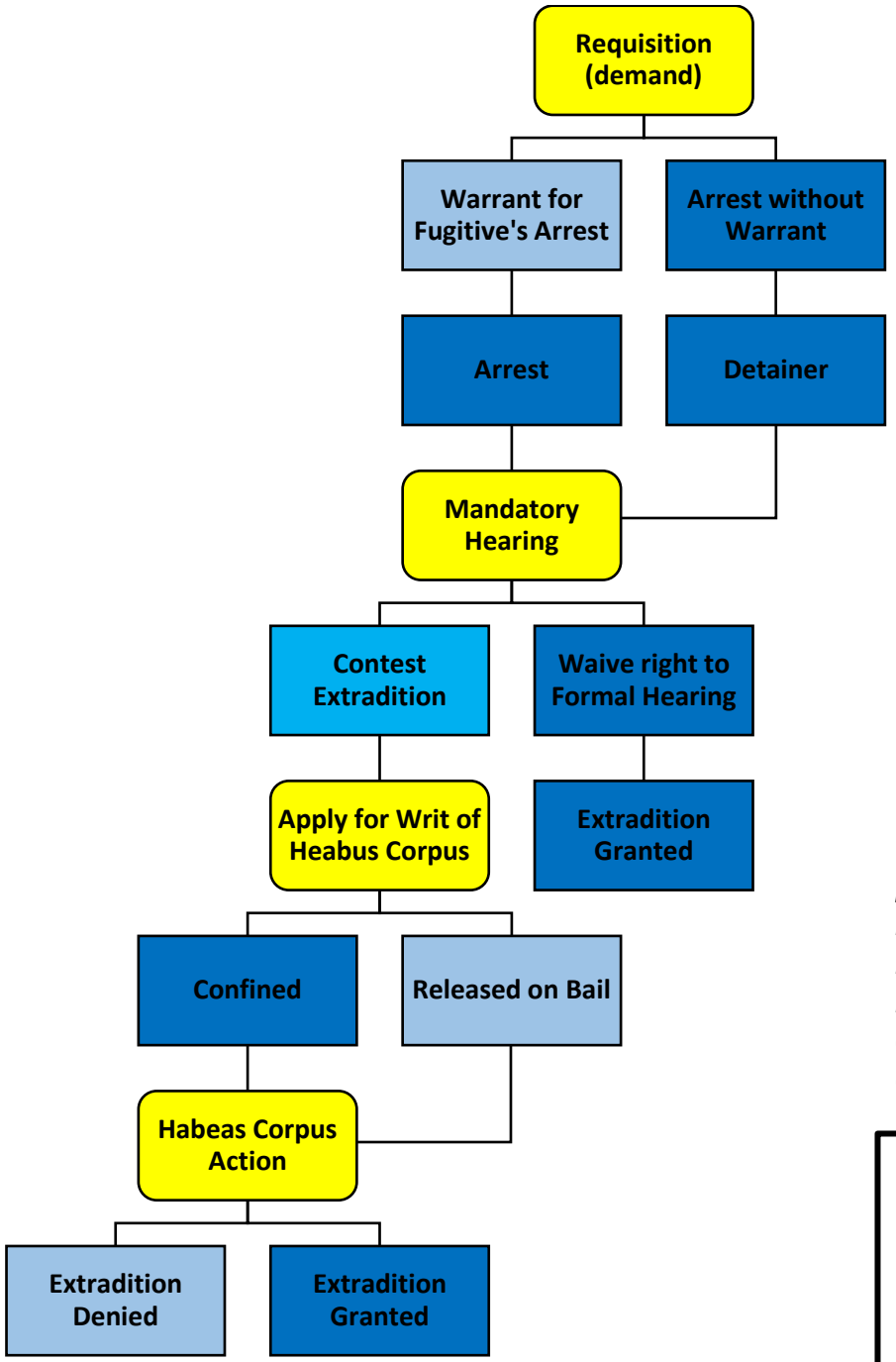
FOOTNOTES

[1]Some counties have Pre-Arrest and Pre-Indictment programs as well. Prosecutors elect to not to charge at all at that time.

[2]Unsuccessful diversions re-enter into the process at the Grand Jury phase.

[3]Some counties require these Rule 5 transfers to be screened by GJ.

STATE OF OHIO EXTRADITION PROCEDURE (OHIO REVISED CODE, TITLE 29, CHAPTER 2963)[1]



[Adapted from Ohio Court Rules – Ohio Rules of Criminal Procedure, the Ohio Revised Code, Anderson's Ohio Criminal Practice and Procedure, and "The State of Connecticut's Justice System Map – Calendar Year 2014."]

LEGEND

Decision Point	Court Appearance
Detained	Not Detained

[1]Extraditions occurring under the Interstate Compact are pursuant to ORC 5149.24 (Restricting Release on Bond or Final).