A PLAN FOR

FELONY SENTENCING IN OHIO

144644

A Formal Report of the

Ohio Criminal Sentencing Commission

July 1, 1993

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Other key contributors include: **Jill Stone** of the State Public Defender's office; **Tim Benedict** and his colleagues at the Pharmacy Board; victims' advocates **Mark Zemba** of the Attorney General's office, **Gayle Smith** of the Prosecuting Attorneys Association, **David Voth**, and **Julie George**; **Sandy Ortega** and the staff of Oriana House; former Commission members **Robert Hickey**, **Charles Rush**, and **Sandra Rogers**; former Parole Board chair **Ray Capots**; DRC administrators **Tom Stickrath**, **Jill Goldhart**, and **Phil Parker**; wardens **Arthur Tate** and **William Dahlman**; Lt. Col. **Richard Curtis** and others at the Highway Patrol; inmate advocates **Patricia Richie** and **Martha Kilbane**; interns **Shelton Beasley**, **Susan Anitas**, and **Mark Nesbit**; judges, inmates, law enforcement officers, victims advocates, academicians, defense and prosecuting attorneys, DRC staff, and others who provided expertise to the Commission; and those who monitored the Commission's work for legislators and others.

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CONTENTS

*The Report also includes an **Appendix**, which is printed separately. The Appendix contains: (1) A list of felonies as reclassified by the Commission; (2) A list of drug offenses as reclassified by the Commission; (3) Tables summarizing the Commission's plan for LSD, heroin, and hashish trafficking; (4) Tables comparing the Commission's plan for crack cocaine, powder cocaine, and marijuana sentencing with current law; (5) Notes on prison population forecasting; (6) An important tracking study that provides baseline data on offenders in 18 targeted counties; and (7) A report that profiles non-prison sanctions and offenders in them in the 18 counties.*

INTRODUCTION

This is the first formal report of the Ohio Criminal Sentencing Commission. It contains a felony sentencing structure for adult offenders. It also contains draft language for legislative consideration and the Commission's research on offenders, sentencing, costs, and the impact of these proposals on prisons and other correctional resources.

The Commission has initiated research, heard testimony, and debated numerous sentencing issues. It has met from one to four full days monthly since February, 1991, and has held many additional informal committee meetings. The Commission serves without compensation.

This plan fosters public safety and victims' rights, yet eases prison crowding. It guards judicial discretion, yet provides greater certainty and less disparity. It strives for fairness and simplicity.

The plan should not be read selectively. It is a balanced package that is supported by the judges, prosecuting and defense attorneys, law enforcement officers, and crime victim on the Commission. *There is no minority report.*

The Commission's recommendations promise immediate relief for the State's beleaguered prison system, without jeopardizing public safety. The plan also could reduce growth in the prison population by 10%, freeing $40 million each year in operating costs alone. The Commission supports generating more revenue by expanding financial sanctions and making them more collectible.

However, to make this workable, it is important that State-funded punishments are available locally. These sanctions allow for proportionate and fair sentencing that does not overburden State prisons or local budgets.

What Is The Sentencing Commission?

The Ohio Criminal Sentencing Commission is a 17-member body created in statute to study the State's sentencing laws and correctional resources, to recommend comprehensive sentencing plans to the General Assembly, to monitor any plans enacted, and to advise the General Assembly. The Commission is a permanent body.

The Commission is chaired by the Chief Justice of the Ohio Supreme Court. The Chief Justice appoints five members including one appellate, one municipal, and three common pleas judges. The Governor appoints five members including a prosecuting attorney, defense attorney, sheriff, municipal or township law enforcement officer, and a crime victim. Four members of the General Assembly are on the Commission, one from each caucus. Ex officio members

include the State Public Defender and the Superintendent of the Highway Patrol.

What Is The Criminal Sentencing Advisory Committee?

The Criminal Sentencing Advisory Committee, also created by statute, assists the Commission. By law, it consists of the Director of Rehabilitation and Correction, the Chair of the Parole Board, and the Director of the Legislature's Correctional Institutions Inspection Committee. The Commission invited others to participate, including representatives from the County Commissioners Association, the Halfway House Association, the Chief Probation Officers Association, the NAACP, and academia. The Advisory Committee meets with the Commission and participates freely.

What Is Next For the Commission?

The Commission will work with the General Assembly on refining the enclosed felony plan. If the plan is adopted, the Commission will work to train practitioners, develop more cost-effective and safe sentencing options, monitor the plan and its costs, and assess the impact of legislation that would affect the plan.

Soon, the Commission will begin work on its misdemeanor sentencing plan. The Commission is likely to ask the General Assembly to broaden its membership to represent county commissioners and others familiar with local corrections and costs.

The Commission's staff will continue to: study sentencing patterns and correctional resources; track and profile offenders; conduct cost-benefit analyses of various sentencing options; work to develop uniform measures of program success, costs, and recidivism; and monitor sentencing trends in other states.

HOW THE COMMISSION IS FULFILLING ITS DUTIES

Public Safety And Punishment

In creating the Sentencing Commission, the General Assembly listed several sentencing goals, including punishment. And the General Assembly instructed the Commission to develop a sentencing policy and recommend a plan that enhances public safety. (R.C. §§ 181.23(A)(6) & (B) and 181.24(A).)

In response, the Commission recommends:

* Making public protection and punishing offenders the overriding purposes of criminal sentencing;

* Creating a new mandatory prison term of up to 20 years for repeat violent offenders;

* Preserving mandatory sentences for homicides, rapes, repeated first and second degree felonies, and many drug offenses;

* Expanding mandatory terms for firearms to almost every felony;

* Presuming that prison is the appropriate sanction for other high-level felons;

* Urging judges to consider the need for incapacitation of offenders and to sentence considering the seriousness of the offender's conduct and its impact on the victim;

* Removing limits on consecutive sentences;

* Elevating the seriousness of intimidation, perjury, bribery, and ethics violations;

* Increasing the fines that may be imposed on felons, including authorizing a $20,000 fine for first degree felons;

* Making all offenders released from prison eligible for post-release control and imposing prison terms on violators;

* Authorizing "bad time" extensions to prison sentences for serious misconduct in prison;

* Allowing judges to veto furloughs; and

* Creating a range of penalties for offenders who violate conditions of non-prison sanctions or post-release control.

Prison Crowding And Resource Management

The General Assembly also instructed the Commission to learn more about correctional resources--from prison to probation--and to profile offenders using them. The Commission was told to help manage current resources and to identify new ones that may be needed. (§181.23(A)(4)-(7).)

Further, the Commission was told to develop a sentencing policy that achieves a reasonable use of correctional resources (§181.23(B)). The Commission's plan must assist in the management of prison crowding (§181.24(A)) by matching criminal penalties with available resources and by promoting a full range of sentencing options (§181.24(B)(4) & (5)).

In response, the Commission recommends:

* Authorizing a continuum of sanctions covering a full range of options other than prison, including new sanctions such as day reporting, monitored time, victim-offender mediation, and day fines;

* Presuming that most low-level felons can be punished in facilities or programs other than prison and that the State should provide funding to develop more local options;

* Broadening the eligibility for most sanctions to all offenders not required to serve mandatory prison terms;

* Reducing the levels of certain theft and drug offenses and eliminating prison sentences for misdemeanants;

* Instructing judges that the sentence should not impose an unnecessary burden on State and local resources;

* Encouraging local residential facilities also to provide non-residential sanctions, such as day reporting programs;

* Creating new, inexpensive options (e.g., monitored time);

* Preserving and increasing resources by encouraging financial sanctions as the sole penalty for offenders who are not prison-bound;

* Promoting victim restitution and reimbursement of supervision or confinement costs by offenders who have an ability to pay, and promoting community service for those who do not;

* Expanding the time an offender can be ordered to perform community service work;

* Increasing the amount of fines that may be imposed on many felons;

* Allowing judges to reward offenders who succeed under non-prison sanctions by reducing the term or by imposing less restrictive sanctions;

* Placing non-prison sanctions on an equal footing with prison terms by authorizing judges to sentence directly to them, rather than suspending sentences first;

* Encouraging judges to impose the minimum sentence on a prison-bound offender who has not served a prior prison term;

* Limiting maximum sentences to the most serious forms of offenses and to offenders most likely to repeat their crimes;

* Narrowing the range of prison terms available for most offenses, particularly where no violence is involved;

* Creating more intense prisons similar to "boot camps" in which offenders receive shorter prison terms if they succeed in education, training, treatment, community service, and conservation work, and broadening eligibility for them;

* Awarding limited credits to inmates who meaningfully participate in school, training, Prison Industries, sex offender, and substance abuse programs;

* Easing the burden on counties by limiting local jail sentences for felons to a maximum of four months;

* Increasing judges' ability to grant early releases from prison and authorizing Parole Board review of extended terms;

* Giving defendants the right to appeal sentences, including when the judge imposes prison maximum terms or any prison terms on low-level felons; and

* Encouraging the Parole Board to consider limited retroactive application of the Commission's plan.

Certainty and Judicial Discretion

The sentencing policy and plan developed by the Commission must be designed to increase certainty in sentencing (§§181.23(B) and 181.24(A)). However, the Commission also was instructed to retain judicial discretion consistent with the goals of the overall plan and allow discretion for reasonable judicial departures from the general plan (§181.24(B)(3) and (6)). These goals sometimes compete. The Commission worked to harmonize them.

Regarding **certainty**, the Commission recommends:

* Fostering truth in sentencing by generally having the sentence imposed by the judge equal the time actually served;

* Retaining mandatory prison terms for homicides, rapes, repeat violent offenses, and many drug offenses;

* Making almost every felony committed with a firearm subject to mandatory imprisonment.

* Eliminating indeterminate sentences, most parole releases, and unearned "good time" reductions;

* Narrowing the ranges of prison terms available for each level of offense;

* Giving judges a veto over placing offenders in "boot camp" prisons or on furlough; and

* Authorizing limited appellate review of criminal sentences.

Regarding **judicial discretion**, the Commission recommends:

* Not adopting the type of rigid sentencing matrix favored by the United States Sentencing Commission;

* Fostering a continuum of sanctions to give judges more sentencing options;

* Giving judges more latitude by making most felons eligible for a full range of sanctions;

* Encouraging new sentencing options such as day reporting and monitored time, and formally recognizing other sanctions;

* Recognizing the sentencing judge should have discretion to determine the best way to achieve the purposes and principles of sentencing;

* Removing the caps that place limits on consecutive sentences and limiting the situations in which consecutive terms are required;

* Allowing judges to impose more restrictive sanctions on violators of non-prison sanctions and to reward offenders who succeed;

* Giving judges authority to select the appropriate prison term from the basic ranges when mandatory prison terms are required for drug offenders and for most repeat first and

second degree felons;

* Expanding the authority of judges to release offenders from prison, giving judges a veto power over "boot camp" placements and furloughs, and giving great weight to judges' sentiments when extended sentences are reviewed; and

* Authorizing limited bases for sentencing appeals.

Deterrence

The Commission's sentencing policy must be designed to deter crime (§181.23(B)).

In response, the Commission recommends:

* Making protecting the public from future crime an overriding purpose of sentencing and urging the judge to consider deterrence, not only of the offender, but of others;

* Requiring judges to consider the likelihood of recidivism before imposing a sentence;

* Retaining most mandatory terms and adding new mandatory sentences for repeat violent offenders;

* Making almost all felonies subject to mandatory time if committed with a firearm;

* Suggesting that the maximum prison term should be imposed on persons most likely to repeat their crimes;

* Making offenders who commit infractions in prison that are tantamount to crimes subject to "bad time" additions to their prison terms;

* Making all offenders released from prison eligible for post-release supervision, with penalties for violations;

* Requiring able offenders to repay the costs of supervision incurred in their cases;

* Imposing clear penalties on offenders who fail to meet the terms of non-prison sanctions; and

* Promoting truth in sentencing so that offenders understand the sanctions they face.

Proportionality, Uniformity, and Fairness

The Commission was told to review criminal statutes to assure that punishments are proportionate to offenses and to emphasize

sentencing fairness (§181.23(A)). The review should produce a plan that attempts to assure proportionality, uniformity, and fairness (§181.24(A) and (B)(1) and (2)).

The Commission responded by reviewing nearly 1,900 offenses and degrees of offenses, both in and out of the Criminal Code. The Commission recommends:

* Prohibiting sentencing based on the offender's race, ethnicity, gender, or religion and treating crimes motivated by such prejudice more seriously;

* Directing that each sentence be fair and consistent with sentences for offenders in similar circumstances who have committed similar crimes;

* Creating a system of appellate review to allow review of certain sentences and to avoid disparity;

* Involving victims in every critical stage of the process and protecting victims from retaliation;

* Placing felons into five classifications based on their potential harm to victims;

* Narrowing the ranges of prison sentences available;

* Guiding judges in deciding which offenders are best suited for prison and for non-prison sanctions;

* Guiding judges as to who should get the minimum and maximum prison sentences;

* Lengthening the gun mandatory for those who use or brandish firearms and shortening it for others;

* Fostering a full range of sentencing options that should allow judges to better tailor sanctions to offenders;

* Giving offenders the opportunity to demonstrate that less-restrictive sanctions are appropriate;

* Eliminating the enhanced penalties when offenders repeat low-level drug crimes;

* Making drug offenses more uniform statewide by using standard weights rather than "bulk amounts" and by eliminating the use of "unit doses" in crack cocaine cases;

* Giving judges discretion to choose the prison term, rather than require preset terms, when mandatory terms are required in drug cases;

* Ending the felony enhancement for repeat petty thefts and raising the felony threshold to $500 for theft offenses;

* Ending prison sentences for misdemeanants;

* Requiring the Parole Board to adopt guidelines to govern its handing of violations;

* Fostering the use of day fines that are tailored to the means of offenders, thereby improving collection rates and punishing rich and poor offenders proportionately;

* Promoting retroactive application of the Commission's plan for some prison inmates;

* Eliminating or modifying obsolete, overbroad, and duplicate offenses; and

* Instructing the Sentencing Commission to continue to monitor sentencing patterns and make ongoing recommendations.

Rehabilitation and Treatment

The Commission was instructed to coordinate its plan with sentencing goals that include rehabilitation and treatment (§181.23(A)(6)).

In response, the Commission recommends:

* Encouraging judges always to consider the need for rehabilitation in sentencing;

* Presuming that non-prison programs are best for low-level offenders and drug abusers;

* Broadening the types of sanctions available and making more offenders eligible for them;

* Providing incentives for offenders placed in non-prison programs to earn their way to less restrictive sanctions and providing similar incentives for offenders released from prison to shorten the period of post-release control;

* Allowing prison inmates to receive small sentence reductions for meaningful participation in school, work, training, substance abuse, and other programs;

* Encouraging the development of intense school, training, work, and treatment prisons, similar to the existing "boot camp" prison, and rewarding offenders who successfully complete them with shorter prison stays; and

* Authorizing judges to shorten prison terms for inmates who take advantage of rehabilitative and treatment opportunities, and requiring wardens to report on inmates' progress in certain situations.

Simplification and Understandability

Another charge to the Commission was to develop a sentencing plan that simplifies the State's sentencing structure and results in sentencing laws that are readily understandable (§181.24(A)).

In response, the Commission recommends:

* Fostering truth in sentencing by generally making the time imposed by the judge equal the time served;

* Stating the purposes of sentencing in clear terms;

* Involving victims in all stages of the process;

* Reducing the 12 variations on felony classes to five;

* Restructuring burglary, robbery, and a few other offenses to better link penalties with the potential harm to victims;

* Replacing "bulk amount" with standard weights, treating most drug offenses at the same felony level alike, and simplifying the trafficking law;

* Streamlining the drug trafficking law by treating cultivation as possession and delivery as sale;

* Redefining "offense of violence" to add other violent offenses and to delete offenses that are not usually violent;

* Eliminating distinctions between "indeterminate" and "determinate" sentences, and avoiding "aggravated" sentencing, "actual incarceration", unearned "good time", and other confusing terms; and

* Modifying or eliminating obsolete, overbroad, and duplicate offenses.

Studies

The Commission is required to study the State's criminal laws, patterns, and resources (§181.23(A)). It must evaluate existing sentencing laws, review criminal statutes for proportionality, review State and local correctional resources, profile offenders, and identify needed resources (§181.23(B)).

In response, the Commission:

* Cataloged the 360 classified felonies and degrees of felonies throughout the Revised Code and reviewed each for proportionality;

* Identified 76 duplicate or obsolete offenses for repeal and recommended changes to several other offenses to eliminate inconsistencies;

* Cataloged over 1,000 classified misdemeanors and degrees of misdemeanors;

* Cataloged over 500 unclassified offenses throughout the Revised Code;

* Developed a computer model capable of predicting prison population trends and the impact of changes in the law;

* Described and inventoried 34 presentencing, sentencing, and release options, surveyed the use of these options, and profiled offenders in the options (see the Appendix, printed separately);

* Tracked hundreds of cases from the initial filing of charges through disposition; profiled offenders by race, gender, offense, county, employment, education, criminal history, and many other factors; studied plea bargaining and victimization; provided the first in-depth review of sentencing statewide to help the Commission monitor any recommendations adopted by the General Assembly (see the Appendix, printed separately);

* Worked with the Department of Rehabilitation and Correction (DRC) on data collection and analysis;

* Undertook the first statewide analysis of the costs of sentencing options;

* Surveyed common pleas judges on the severity of offenses, equivalencies of sanctions, aggravating and mitigating circumstances, and sentencing generally; and

* Reviewed the work of sentencing commissions in other states and studied laws covering drugs, victims rights, "good time", and appellate review of sentencing in several states.

Soliciting Input

The Commission is required to seek comments from selected judges, prosecuting and defense attorneys, law enforcement and corrections officials, bar associations, and other experts (§181.24(E)).

In addition to holding open meetings in which the Chairman encouraged comment from non-members (victims advocates, corrections officials, academicians, judges, inmates, inmate advocates, prison wardens, and others), the Commission:

* Appeared before various groups of judges, prosecutors, defense attorneys, police chiefs, community corrections officials, county commissioners, academicians, religious leaders, and others, both formally and informally;

* Mailed summaries of the Commission's emerging plan and solicited input from nearly 1,400 prominent Ohioans including: all appellate, common pleas, municipal, and county court judges; all county prosecuting attorneys; all county and many municipal bar associations; many members of associations of defense attorneys; all sheriffs; many police chiefs; various victims' groups; all wardens for distribution to inmate libraries; many community corrections professionals; religious groups; and other interested citizens;

* Mailed detailed drafts to scores of judges and others who requested them; and

* Modified recommendations in light of comments received.

THE COMMISSION'S RECOMMENDATIONS

THE DISCRETION AND DUTIES OF JUDGES

Judicial discretion is important. It allows judges to mete out punishments that fit offenders and their crimes. But, it can lead to inconsistent sentencing. The United States Sentencing Commission and the commissions in several states imposed matrix sentencing guidelines. Sentences are determined by looking at two key factors on a grid: the offender's criminal history and the level of the crime. Such guidelines limit judicial discretion in the interest of predictability. Critics chide matrix guidelines as "software sentencing" that shifts discretion away from judges.

Ohio's Commission rejected the matrix approach. But, it was left with a key question. How to give judges discretion to be wise without giving discretion to be capricious? The answers: state clear purposes, use sentencing presumptions to guide judges, and monitor sentences through appellate review.

Many of the Commission's proposals appear in legislative draft form, beginning on page 77. The Commission and its staff will provide testimony, research, and other assistance to the General Assembly as it considers the package.

Judicial Discretion

Generally, the sentence stated in court should be the sentence served. The judge should have discretion to determine the best sentence. Discretion should be guided by clearly-stated sentencing purposes and presumptions.

A full range of sanctions should be available. Unless a specific sanction is required or precluded by law, the sentencing judge could impose any sanction or combination of sanctions on an offender. The sentence should not impose an unnecessary burden on State or local resources.

The Sentencing Commission should monitor sentencing patterns on an ongoing basis and aid in training judges.

Sentencing Purposes and Principles

There are two things generally accomplished by criminal sanctions. By limiting the offender's freedom, they (1) help protect the public and (2) punish the offender. To keep the focus on the harm caused to the victim or society, the Commission decided that these should be clearly stated in law as the simple, tangible purposes to govern criminal sentencing.

There is no guarantee that other purposes can be achieved. However, members maintained that rehabilitation, victim restitution, and other goals deserve emphasis.

Thus, the Commission recommends that the law should state that the overriding purposes of criminal sentencing should be to protect the public and to punish offenders. To achieve these purposes, the sentencing judge should select an appropriate sanction by considering the need for incapacitation, rehabilitation, deterrence, and restitution.

Judges should consider two other key principles. The sentence should relate to the seriousness of the offender's conduct and its impact on the victim. And it should be consistent with sentences for offenders in similar situations.

Prohibited Bases

Unlawful prejudice should not be tolerated. The statute should state that a judge cannot base a sentence on the race, ethnicity, gender, or religion of an offender. Sentences based on these factors should be subject to automatic appellate review.

Factors Regarding Seriousness And Recidivism

After considering the overriding purposes and principles, the judge should weigh statutory factors concerning the seriousness of the offense and the likelihood that the offender will return to crime.

Factors increasing the seriousness of the offense should include taking advantage of a vulnerable victim, causing serious harm, betraying a public trust, acting for hire, and targeting the victim by race, ethnicity, gender, sexual orientation, or religion.

Factors decreasing seriousness should include when the victim induced the offense, when there was other strong provocation, when the offender did not expect to cause harm, and when there are other grounds to mitigate the conduct.

Statutory factors indicating recidivism is more likely should include when the offense was committed while the offender was on bail or under a community sanction, and when the offender has a history of prior offenses, has not responded well to prior sanctions, denies a pattern of alcohol or other drug abuse, or shows no remorse.

Factors indicating recidivism is less likely should include when the offender has no history of prior offenses, has lead a law-abiding life for a significant period, shows genuine remorse, or when the crime was under circumstances unlikely to recur.

Presumptions to Guide Sentencing

As noted, the Commission opposes rigid sentencing guidelines. Instead, it favors using rebuttable presumptions to guide judges. This section describes how the presumptions should apply in non-drug cases. As for drug cases, see Drug Offenses, below.

Presumption Against A Prison Term. For most fourth or fifth degree felonies (see The Five Tiers Of Felony, below), it would be presumed that a prison term is not needed to achieve the overriding purposes of sentencing. Such offenders should be placed in local facilities or programs, with additional State funding provided.

The presumption could be rebutted by showing that the offender previously served a prison term, caused physical harm to a person, used a weapon, betrayed a position of public trust, acted for hire, committed an offense involving sexual activity, violated conditions of a community control sanction and is not amenable to other sanctions, or committed another crime while under the sanction.

Presumption In Favor of a Prison Term. For a first or second degree felony, it should be presumed that a prison term is needed to achieve the purposes of sentencing. However, the presumption could be rebutted by showing that a sanction other than prison should adequately punish the offender, protect the public, and not demean the offense.

No Presumption. There would be no presumption for or against prison for third degree felonies, and for fourth and fifth degree felonies in which the presumption against prison is overridden.

THE CONTINUUM OF SANCTIONS

Sanctions vary from county to county. Some counties have a long menu of sanctions to serve offenders, ranging from basic probation to secure community-based correctional facilities. In other counties, the judge must choose between prison and probation, with little in between. *(The Appendix, printed separately, contains an 18 county sentencing study that profiles offenders by race, gender, criminal history, education, income, victimization, and many other factors. It also contains a report on sentencing options in the 18 counties and the offenders sentenced to them.)*

In the Revised Code, non-prison sanctions bear little stated relationship to one another. Some are not clearly authorized in statute (e.g., day reporting programs), discouraging use. When authorized, eligibility for the options varies, reflecting their piecemeal enactment. And State funding for them is sporadic.

The General Assembly should authorize a continuum of sanctions and

state the purposes of each sanction. Why? Because non-prison sanctions assure adequate prison space for predatory offenders. And they give meaning to judicial discretion and the presumption against prison.

The continuum should include secure residential confinement, non-residential options that vary widely in restrictiveness and costs, and financial sanctions with changes in the law to foster collections. New options should be added to the law. State funding should be available to implement the continuum.

The sanctions should be nonexclusive. Judges should be able to impose them alone or in tandem with other penalties. Based on offenders' performances under the sanctions, the judge should be allowed to ratchet offenders up to more restrictive punishments or down to less onerous sanctions.

Direct Sentencing And Duration

Non-prison sanctions should not be stepchildren. The judge should not have to suspend a prison sentence before imposing a non-prison term. The judge should sentence the offender directly to the sanction. Rather than use the term "probation", the offender would be placed under "community control". To deter misdeeds, and in fairness to offenders, the judge could enforce the non-prison term by instructing offenders that violations could include a range of more restrictive sanctions, including a specific prison term.

The maximum term of felony community control should be five years.

Expanded Eligibility

The General Assembly should broaden eligibility for non-prison sanctions ("community control"). Generally, all those not mandated to serve prison terms should be eligible for a range of options from unsupervised monitoring to "boot camp" prisons. The options should hold offenders accountable while encouraging rehabilitation.

Rewarding Success and Penalizing Violators

If an offender meets the conditions of community control in an exemplary manner, the judge could shorten the time under the sanction or shift to a less restrictive sanction. Conversely, if conditions are violated, the judge could impose a longer term, more conditions, or a more restrictive sanction, including prison. The judge could credit violators with the time successfully spent under community control before the violation occurred.

Drug Violators Presumption. It should be presumed that a prison term is unnecessary for a violation of community control, and that the offender should be placed in drug treatment for the violation, if all of the following are true: the offender was

convicted of a drug offense and there was a presumption against prison; the offender was placed under community control, either in lieu of prison or under post-release control; the offender violated the control solely by possessing or using a controlled substance; and the offender did not previously fail to meet the conditions of a drug treatment program. Treatment programs would include Narcotics Anonymous or similar programs, other non-residential treatment, or residential drug treatment.

Residential Sanctions

A non-prison sanction does not mean the offender gets off easy. It means the offender should be held accountable in various ways. It could include incarceration in local facilities such as State-funded community-based correctional facilities (CBCFs).

In addition to CBCFs, local residential sanctions should continue to include jails, halfway houses, and treatment facilities. Intermittent confinement and work release should be permitted, as at present, but expanded to allow an authorized offender to seek or maintain work, training, education, or treatment.

To ease the burden on local jails, the maximum time a felon could be kept should be decreased from six to four months. First and second degree felons should remain ineligible for local jail terms. Also, felons should not be placed in the minimum security misdemeanant jails (MSMJs) that have or will be opened around the State. MSMJs should continue to help local governments deal with nonviolent misdemeanants such as drunken drivers.

The law governing CBCFs, MSMJs, halfway houses and other options should specifically authorize the facilities also to administer non-residential sanctions, such as day reporting programs.

A residential alternative to conventional prison at the State level is the "boot camp" prison. Because boot camp-type programs punish non-violent offenders in relatively short prison terms, eligibility should be expanded. All third, fourth, and fifth degree felons who are neither violent nor sex offenders, and who have not been convicted of betraying the public trust should be eligible, if the sentencing judge agrees with the placement. Moreover, other similar intense program prisons should be developed to encourage education, work, and substance abuse treatment for hundreds of offenders. (See Intense Program Prisons, below).

Non-Residential Sanctions

An expansion of less expensive non-residential sanctions should occur, with State assistance. These sanctions should be imposed as stand-alone penalties or in combination with other sanctions. As noted above, eligibility should be broadened for these sanctions to all offenders who are not mandated to serve prison terms.

The Commission recommends creating or expanding non-residential sanctions. The law should specifically authorize each of the following and state its primary purposes:

- **Day reporting**, a sanction not presently authorized under Ohio law. An offender would have to report to a place or program daily for work, school, treatment, or other services. The offender would leave the program for the night, subject to a curfew and, perhaps, electronic monitoring. The program would limit an offender's freedom without incurring the costs of overnight stays. To be even more cost-effective, day reporting could be operated out of existing facilities, such as CBCFs.

- **House arrest**, which currently exists, but is restricted. Eligibility should be broader and house arrest should not always require the additional expense of electronic monitoring.

- **Community service**, which was formally expanded to felons in 1990. In addition to broadening eligibility, the General Assembly should add flexibility to community service. For example, the limits on community service work should be raised from 200 to 500 hours. And community service should be encouraged when an offender is unable to pay a financial sanction such as restitution.

- **Outpatient programs**, should be formally authorized as sentencing options. More importantly, new types of outpatient programs should be recognized and encouraged.

- **Intensive supervision**, which gained popularity in the Eighties, also should be formally authorized in the Revised Code. The option involves greater contact between probation officers and offenders. Consequently, more supervision occurs.

- **Basic supervision** (currently basic "probation").

- **Monitored time**, a new sanction. It is designed to provide an inexpensive paper trail for offenders who do not need much supervision. Essentially, the offender would be told to remain free of crime. If the offender violates the condition, a more restrictive sanction would follow.

- **Alcohol and other drug testing** and **alcohol and other drug abstinence**, also new as possible stand-alone penalties.

- **Electronic monitoring**, which should have broader applications than currently allowed.

- **Victim-offender mediation**, another sanction new to Ohio law. If the victim consents, the judge could order the offender to participate in a reconciliation program that allows the victim and offender to discuss the offense and, when appropriate, helps establish restitution and other sanctions.

- **Professional license reports**, which would include reporting convictions to regulatory boards, resulting in possible suspension or revocation of a State license or permit.

- Other tools, such as **curfews**, **employment**, **education**.

Financial Sanctions

Commission research indicates that, while the vast majority of offenders are not rich, some counties and programs successfully collect financial sanctions from offenders. Many rehabilitation programs (such as Oriana House in Akron) have fostered social responsibility and generate revenue by collecting fees.

Jurisdictions and programs with high collection rates do not have wealthier offenders. Instead, one or more of the following factors is present. (1) There is a willingness to collection financial sanctions and someone is assigned to collect them. Inexpensive collection techniques as simple as calling offenders to remind them of their debts or sending bills have been successful. (2) Those collecting the money get to keep all or part of it for legitimate purposes. (3) The amount due is based on the offender's true ability to pay. Small fees can be meaningful. All but the poorest offenders have some limited disposable "income".

When an offender is eligible for community control sanctions, the judge should consider the appropriateness of a financial sanction (or community service) as the sole sanction for the offense. The plan tells judges that the sentence should not impose an unnecessary burden on State or local resources.

If an offender does not have the current or likely future ability to reasonably pay a financial sanction, the court should consider imposing a term of community service.

Expanded Restitution. Restitution to victims should be encouraged in more cases. Restitution should be expanded to repay not only the victim's property loss, but also economic loss (lost wages, hospital costs, etc.). Restitution also could include reimbursement to third parties for amounts paid to the victim as a result of the offense. If reimbursement is made, it would be made first to any governmental entity, then to any private entity. Restitution payment would be credited against any recovery in a civil action brought by the victim against the offender.

Expanded Fines. Conventional fines would be increased and a new "day fine" concept would be authorized. The existing fine schedule should be amended to raise the maximum for first degree felons from $10,000 to $20,000. Other maximums for felonies would be $15,000 for second degree, $10,000 for third degree, $5,000 for fourth degree, and $2,500 for fifth degree.

Many mandatory fines in drug cases should be retained, but within the ranges just described. The judge would impose a mandatory fine of at least half the maximum for each first, second, and third degree drug offense. It could not exceed the maximum available for that level. Fines would not be mandatory for low-level drug offenders. Proceeds from all drug fines, whether mandatory or discretionary, would be paid to law enforcement agencies.

Day fines would be authorized for the first time. They provide a formula for courts to tailor a fine to an offender's means, resulting in fines that are equally punitive on rich and poor offenders and in the collection of more fines from more people. Day fines are based on a standard percentage of the offender's daily income over a time period determined by the seriousness of the offense.

Expanded Reimbursements. Able offenders should have to pay the costs of any community control or financial sanctions' collection incurred in their cases. They also could be required to reimburse the costs of confinement in a jail (as now) or CBCF or prison, up to the greater of $10,000 or the assets of the offender.

Revenue from reimbursements should be credited to the agency responsible for implementing the sanction.

Improving Collections. A financial sanction could be imposed on any offender whose present income or assets (factoring for assets likely to be subject to forfeiture) or likely future income or assets, indicate an ability to pay the sanction. A financial sanction also would be a civil judgment against the offender, expanding collection mechanisms.

During any period of community control imposed by the sentencing court or the Parole Board, financial sanctions could be collected through the enforcement powers of the court or, when appropriate, by the Board. To collect the money, the court could designate an employee, a city or county attorney, or enter a contract with a private entity. The Parole Board also could designate an employee to collect the money.

Payments could be withheld from wages, bank accounts, worker's compensation payments, retirement benefits, insurance proceeds, lottery awards, trust income, disability benefits, unemployment compensation, social security benefits, public assistance other than Aid to Dependent Children, and any other income or assets.

If a court finds that an offender has satisfactorily completed all other sanctions imposed, and that restitution has been paid as ordered, the court could suspend any financial sanctions that have not been paid. No financial sanction could preclude a civil action brought by a victim against the offender.

PRISON SENTENCES

Prison should remain the sanction of choice for violent and high-level felons, and for lower-level felons who cause harm to persons, use weapons, betray the public's trust, act for hire, commit certain sex offenses, or are not amenable to community control.

Ranges Of Prison Terms: Honest Sentencing

Presently, indeterminate sentences, sentence reductions for faithfully observing prison rules ("good time"), and parole releases lead to confusion regarding the time actually to be served by a prison-bound offender. For example, an offender receives a six to 25 year sentence for an aggravated burglary. Like almost all inmates, the offender receives good time credit while incarcerated (up to one-third of the sentence). The offender becomes eligible for parole after serving four years. Even if not released at that time, the offender is likely to be released before reaching six years. In short, there is nothing certain about a 6 to 25 year sentence. It often results in a four year prison term. This undermines public trust in the system.

The Commission instead favors honest sentencing (sometimes called "truth in sentencing"). The time served in prison generally should be the term imposed by the judge in open court, in front of the defendant, prosecutor, victim, witnesses, media, and public. The fictions inherent in the current system of indeterminate sentences and good time reductions should end. Unearned good time reductions and parole releases should be eliminated (see Restructuring Parole, below).

To get honest sentencing, we need honesty in resources. Because good time results in a virtually automatic 30% reduction in each prisoner's term, the Commission proposes narrowing sentence ranges to offset its elimination. The Commission looked to average sentences actually served today. Based on this, the Commission proposed new sentence ranges.

In imposing a prison term, the judge should select a precise term from the following ranges: (1) For a first degree felony, 3 to 10 years; (2) For a second degree felony, 2 to 8 years; (3) For a third degree felony, 1 to 5 years; (4) For a fourth degree felony, 6 to 18 months; (5) For a fifth degree felony, 3 to 12 months.

The ranges appear to reduce prison terms from current levels. In fact, they do not, for the most part. Rather than sentence the aggravated burglar of four paragraphs ago to six to 25 years, only to have the offender serve four years, the Commission's plan would sentence the burglar to four years, and the burglar would serve four years. The law would reflect reality.

Similarly, the three to 12 month sentences for fifth degree felons

may surprise the reader. However, according to the DRC's 1992 Intake Study, about 56% of the offenders sentenced to prison in Ohio actually serve one year or less. The imposed sentence may exceed a year, but good time reductions, shock probation, and shock parole bring the time to less than one year. In fact, many offenders remain in prison for less than six months. Fifth degree felons under the Commission's plan are nonviolent fourth degree felons today. The minimum now authorized is six months. With good time, these offenders leave prison in about four months (or less if any jail time credit is applied). In setting the fifth degree range at three to 12 months, the Commission is reflecting reality, minus one month at the low end to help ease prison crowding.

Minimum On First Prison Term

To help ease crowding and encourage rehabilitation when a prison term is warranted for an offender who has not been sentenced to prison before, the minimum prison term should be imposed. A longer sentence could be imposed only if the judge finds that the minimum will demean the seriousness of the offender's conduct or not adequately protect the public.

Maximum For The Most Serious Offenders

The judge should impose the maximum prison term only for the most serious forms of the offense, for offenders who pose the greatest likelihood of committing future crimes, for major drug offenders, and for certain repeat violent offenders (see Mandatory Prison Terms, below).

Terms Between The Minimum And Maximum

When a term between the minimum and maximum is contemplated, the judge should select a term that fits the seriousness of the offense and that adequately protects the public from future crime.

Mandatory Prison Terms

Mandatory prison terms add certainty to the law, punish offenders, and protect the public. The Commission favors keeping most current mandatories. Mandatories would be retained for murder, rape, repeated first and second degree felonies, many drug offenses of the third degree or higher, and certain vehicular homicides. However, in most cases, the judge should have broader discretion to choose the amount of time from the basic ranges of prison terms. This broadens judicial discretion, particularly regarding drug offenses. "Aggravated" sentencing, "actual incarceration", and other confusing terms should be eliminated.

Firearm Terms. The additional three and six year terms for committing certain felonies with firearms should be kept. However, they should be expanded to cover all felonies (except carrying

concealed weapons and some circumstances involving having weapons under disability). If the gun is not brandished, used to facilitate the offense, or possession is not indicated, the mandatory prison term should instead be one year.

Repeat Violent Offender Term. The toughest mandatory prison terms today for classified felons punish offenders based on their status rather than the actual harm caused or threatened. Thus, a repeat aggravated burglar must receive a 10, 11, 12, 13, 14, or 15 year minimum sentence (which may be reduced by good time), irrespective of whether the offender caused or threatened harm.

The Commission proposes reserving such harsh mandatories to high level offenders who cause or threaten harm. As noted earlier, any repeat first or second degree felon would receive a mandatory prison term, but the judge could choose the term from the basic ranges. Moreover, repeat violent offenders (RVOs) also could receive up to 10 more years. This would give judges more flexibility to tailor the sentence to the harm caused, rather than automatically impose long mandatories. Yet, safety would be served because a true 20 year term could be imposed on an RVO without the reductions available now.

A RVO would be a person who is convicted of a first or second degree felony that resulted in actual or attempted serious physical harm to a person, who previously served at least one prison term for such an offense that resulted in actual physical harm to a person, and who committed the current offense less than five years since the end of the maximum period of post-release control authorized for the prior felony.

Major Drug Offender Term. Because of the widespread harm that they cause, major drug offenders should receive mandatory 10-year prison terms. An additional term of one to 10 years should be available. A "major drug dealer" would sell or possess more than a kilo of cocaine powder, more than 100 grams of crack, or comparable amounts of many other substances.

Other Additional Terms. Offenders who attempt to forcibly rape children or commit certain racketeering violations would also receive a mandatory 10 year term, plus an optional one to 10 years. The current life term for forcible child rape would continue.

Consecutive Prison Terms

Presently, the law caps the consecutive prison terms that can be imposed on offenders by making multiple offenders eligible for parole at some point (typically after 15 years, minus good time), irrespective of the number of terms imposed consecutively. These caps should be removed (see Caps Removal, below). Conversely, the law now allows judges to impose consecutive terms on any multiple offender. This, too, should change.

The Commission recommends that the judge should consider consecutive terms when the offender committed crimes while on bail or under community control, when no single term adequately reflects the harm caused, or when the offender's history demonstrates that consecutive sentences are needed to protect the public.

There are some current situations in which the judge must impose consecutive terms. The list is inconsistent. For instance, consecutive terms must be imposed for pandering obscenity involving a minor, but not for rape. The list should be narrowed, especially since the caps on consecutive terms would be removed. Under the Commission's plan, the judge would have to impose consecutive terms when the one, three, or six year firearms term is mandated, when aggravated riot, riot, escape, or aiding escape is committed by an inmate, and when a new felony is committed by or after an escape from a residential sanction.

Post-Release Control

In addition to any prison term, there should be a period of post-release control for many offenders (see Post-Release Control, below). The control period should range from five years for a first degree felony to one year for a fourth or fifth degree felony. The period could be shortened by the Parole Board.

Prison Terms Summary

The table recaps the proposals for prison-bound offenders.

Felony Level	Basic Prison Terms	Incre-ments	Max. Post-Release Control	Repeat Violent Enhancement
1st Degree	3 to 10 Yrs	1 Yr	5 Yrs	1 to 10 Yrs
2nd Degree	2 to 8 Yrs	1 Yr	4 Yrs	1 to 10 Yrs
3rd Degree	1 to 5 Yrs	1 Yr	1-3 Yrs	None
4th Degree	6 to 18 Mos	1 Mo	1 Yr	None
5th Degree	3 to 12 Mos	1 Mo	1 Yr	None

Limited Retroactivity

The Commission's plan should be applied retroactively to some offenders. Where it does not result in a harsher sentence, it should apply to everyone who committed a crime, but was not sentenced on the effective date of the plan.

The Parole Board should take the Commission's proposals into

account in reviewing the parole eligibility of current inmates. Moreover, the Board also should review the sentences of all current inmates who are serving determinate sentences and consider whether release would be consistent with the Commission's plan.

And all offenders imprisoned solely for theft of $500 or less (see Non-Neutral Conversions, below), who have served at least six months for each such conviction, should be released. If the offender is serving multiple sentences, he or she should receive a sentence reduction.

THE FIVE TIERS OF FELONIES

Since 1974, Ohio has had four basic levels of felonies, with indeterminate sentences at each level. For instance, a first degree felony bears a prison term of 4, 5, 6, 7 years (in the judge's discretion) to 25 years (in the Parole Board's discretion). In the late Seventies, "actual incarceration" terms were added to the law. Certain drug offenders had to serve mandatory prison time that could not be reduced by shock probation, shock parole, furlough, or parole.

The law became more complicated in 1983 with the addition of three levels of violent criminals called "aggravated" felons. They *could* be sentenced to actual incarceration. Another three levels of repeat aggravated felons were added. They *must* be sentenced to actual incarceration. And two classes of determinate felons were created who, unlike all other classes of felons, are not subject to review by the Parole Board (F-3s and F-4s that do not involve violence, committed by offenders with no history of violence).

In short, there are four basic felony classes, but at least 12 variations on them.

Confusing terminology complicates matters. Some historic aggravated felonies, such as aggravated assault, are not "aggravated" felonies for sentencing purposes. Other historic crimes that do not have "aggravated" in their name (such as felonious assault) are "aggravated" for sentencing purposes. And most offenders sentenced to actual terms of incarceration are not serving terms of "actual incarceration".

A subcommittee of prosecution and defense representatives reviewed over 350 classified felonies and degrees of felonies throughout the Revised Code for proportionality. (The committee also reviewed over 1,500 misdemeanors, which will be covered in future Commission reports.)

As the tables above and below illustrate, the Commission proposes simplifying the Criminal Code by placing all felonies within five classes (other than aggravated murder and murder, which are not

addressed in this report). The terms "determinate", "indeterminate", and "aggravated" sentencing and "actual incarceration" should be eliminated. The specification of violence or prior violence would be eliminated from low-level felonies. Evidence of violence instead could be introduced to override the presumption against prison or in favor of the minimum term.

Neutral Conversions

Generally, the current seriousness ranking of crimes would be maintained in converting to five categories. Prison terms for each level were adjusted for the elimination of good time. For example, the proposed fifth degree felonies would bear prison terms roughly equal to those actually served at present by nonviolent fourth degree felons. Thus, a "neutral" conversion for most fourth degree felons would mean placement in the new fifth degree class.

The Commission sought to pigeonhole offenses as follows. The F-1 and F-2 categories were reserved for the most violent crimes or those involving the highest level drug dealers. The new F-3 category reflects the broadest range of crimes. (Thus, no presumption for or against prison was proposed for this class.) The F-4 and F-5 classes generally include property offenses and the least violent of the felonies against persons.

Here are the general rules for "neutral" conversion. Nonviolent offenses should be converted to the next lower degree (i.e., those offenses that are nonviolent on their faces or rarely involve violence or a weapon). Generally, these receive lesser, determinate sentences today. Violent offenses, those in which weapons are often involved, and felonies currently falling in the "aggravated" ranges generally should remain at current levels. The table below shows how most current offenses would be converted into the five tiers proposed.

See the Appendix, printed separately, for a complete list of felonies and their proposed penalty levels.

Neutral Conversion Table

CURRENT FELONY LEVELS	PROPOSED
Aggravated F-1s	F-1
Aggravated F-2s, Regular F-1s	F-2
Aggravated F-3s, Other Violent F-3s, Regular F-2s	F-3
Violent F-4s, Nonviolent F-3s	F-4
Nonviolent F-4s	F-5

Some offenses were difficult to categorize, since there are violent and nonviolent ways of committing them. Thus, the Commission recommends redefining some offenses to help this simplification process (again, see the Appendix).

Repeat Offender Enhancements

Currently, the Revised Code raises the level of certain offenses when the offender has a prior conviction. Generally, the Commission recommends retaining the repeat offender enhancement in crimes against persons and removing it from crimes against property and drug offenses. The Commission felt the enhancements artificially increase the seriousness of certain offenses.

In the interest of proportionality and assuring adequate prison space for higher-level offenders, the Commission recommends that most property offenses, when repeated, should not be elevated to a higher crime level. Repeat offender enhancements from one felony level to the next should be eliminated in theft and Title 29 drug cases. And the misdemeanor-to-felony enhancement for repeated thefts of less than $500 (which, according to the DRC, accounts for about 25% of the thieves who enter prison), and for regulatory offenses outside Title 29, should be eliminated. (For more on thefts, see Changing The Felony Theft Threshold, below.)

This does not mean that repeated thefts and drug abuses should be treated as first offenses. Rather, the change should encourage a progression of sanctions within the same felony class, without artificially making the individual offense more serious.

For example, a person convicted of selling a small amount of marijuana currently is a fourth degree felon. If the person has a prior felony drug offense conviction, the same act makes the offender a third degree felon. The Commission would eliminate this enhancement (unless the crime is committed near a school or child). The judge has the full range of sanctions available for the offense level. If, on first conviction, the judge ordered drug treatment, the judge may wish to consider house arrest on second conviction. If a prison term was imposed, the judge may wish to impose a longer term from the same range on the recidivist.

Presently, multiple misdemeanants can be sentenced to prison. The Commission recommends reserving prison space for felons and improving local corrections to provide more options for low-level offenders. Misdemeanants should be ineligible for prison.

Changing The Felony Theft Threshold

Gradual inflation has eroded the $300 cutoff between misdemeanor and felony thefts. The felony threshold for theft, fraud, receiving stolen property, vandalism, and related crimes should be raised to $500. Similarly, the F-5 theft range should be $500 to

$5,000, the F-4 range should be $5,000 to $100,000, and the F-3 range should be over $100,000. These should be made consistent throughout the Revised Code. Currently, the highest level theft is an F-2. Under the Commission's plan, no theft (other than a burglary or robbery) could reach the F-2 level.

Again, the enhancement for repeating offenses at any of these levels should be repealed. If the amount fits into a certain category, then the punishment should be from the range available for that category, not for a higher level crime. As noted, repeated thefts involving less than $500 would remain misdemeanors.

These changes would not be limited to the Criminal Code. They should be made throughout the Revised Code, bringing greater conformity and proportionality to the law.

Non-Neutral Conversions

Penalties Increased. Some crimes should be elevated to higher categories, particularly when they involve public corruption or impeding the administration of justice. For instance, as now, theft in office should bear higher penalties than other thefts, regardless of the amount actually stolen. Others not neutrally converted would be bribery, perjury, intimidation, tampering with evidence, and unlawful interest in a public contract. Parts of other crimes should be elevated, including knowing obstruction of justice and when an employee conveys drugs into a detention facility. Also, higher level drug offenses should bear tougher penalties, including a possible 20 year term for some dealers.

Penalties Decreased. To help ease prison crowding and make sentencing more proportionate and fair, the severity of some offenses should be decreased. As noted above, thefts and certain other property crimes involving less than $500 would be misdemeanors.

Some lower-level drug offenses should be reduced, with a few mandatories eliminated. For instance, presently, a prison term must be imposed for sale of 600 grams of marijuana. To assure adequate prison space for offenders dealing in more dangerous drugs, the Commission proposes raising the mandatory threshold for marijuana to 20,000 grams.

Possession of criminal tools would be a misdemeanor, unless there is proof of intent to commit a specified felony. Escape would be a misdemeanor when the underlying offense is a misdemeanor and the offender's "escape" was failing to report to a specified place at a specified time.

Offenses Redefined. Still other offenses were broken into several felony levels depending on violence, weapons, and other elements. Foremost are burglary and robbery.

Burglary should be split into five tiers. First degree burglaries would be those directly involving a weapon or when physical harm to a person occurs or is threatened. F-2s would be when the victim is otherwise present. F-3s would be when the victim is likely to be present. F-4s would be like F-3s, but not in a traditional residence. F-5s would be breaking and entering.

Robbery should be split into three tiers. F-1 robberies would be those in which a weapon is brandished or used or serious physical harm occurs or is threatened. F-2s would be when a weapon is present or harm is threatened. F-3s would be when there is no weapon but force is threatened or used.

Aggravated arson should be redefined to be tougher on offenders who create a risk of harm to persons. The Appendix illustrates the changes just described and others. Offenses involving children receive particular attention.

Non-Criminal Code Offenses. The Commission's proposal brings harmony to the thefts, falsifications, and other crimes outside the Criminal Code (Title 29). After all, falsifying an application to a State board is still falsification as defined in Title 29. If comity with various interests precludes repeal of these duplicate offenses, their penalties should be consistently tied by reference to the penalty structure in the Criminal Code.

Most other felonies outside Title 29 tend to be regulatory in nature. The Commission did not "neutrally" convert these offenses. Instead, in the interest of proportionality, these offenses should be slotted into the new fourth and fifth degree classes.

Similarly, most regulatory offenses outside Title 29 are misdemeanors. Some have felony enhancements for repeat offenders. These enhancements should be eliminated, consistent with the Commission's position against enhancing the felony level of repeat offenses (see Repeat Offense Enhancements, above), with a few exceptions (see the Appendix).

"Offense Of Violence"

The Revised Code uses the shorthand "offense of violence" to succinctly state which offenses are violent for various purposes. The Commission recognizes the utility of the definition, which is used more than 70 times throughout the Revised Code, but found it to be both over-inclusive and under-inclusive.

The list should be expanded to include other violent offenses: gross sexual imposition, discharging weapons into homes or schools, and intimidation of crime victims and witnesses. Offenses that are not routinely violent should be deleted: vandalism, disrupting public services, aiding escape, carrying concealed weapons, and having weapons under a disability.

Duplicate, Overbroad, And Obsolete Offenses

After review of nearly 1,900 offenses throughout the Revised Code, the Commission concluded that certain duplicate and obsolete offenses should be repealed. As noted, many theft, fraud, and falsification offenses outside Title 29 are redundant or conflicting. They should be repealed or harmonized with the Criminal Code. *See the Appendix, printed separately, for a list of these offenses identified to date.*

In a subsequent report, the Commission will focus on misdemeanors. Nevertheless, the Appendix indicates some misdemeanors that the Commission identified as having overly broad sentence ranges, inviting disparity. Their penalties should be more specific. For example, violations of the income tax law "for which there is no specific penalty" currently carry a fine of $100 to $5,000.

Certain antiquated offenses should be repealed or amended. For example, the statute that prohibits transporting indigent persons into Ohio should be repealed. For others, see the Appendix.

DRUG OFFENSES

A subcommittee was assigned to place drug offenses within the five proposed tiers, to simplify the law, and to move from "bulk amounts" to conventional weights in determining degrees of drug offenses. The Committee was assisted by the Narcotics Division of the Columbus Police Department and the Ohio Board of Pharmacy.

Simplifying The Drug Laws

Ohio's drug laws are complex and will remain so, even if the Commission's recommendations were adopted. However, the Commission's proposals should help to simplify the law.

Ohio is the only state to use "bulk amounts" in enforcing its drug laws. That is, a certain amount of each drug is designated as a "bulk", triggering certain penalties. Possession or sale of three, 10, or 100 times bulk spawns other levels of penalties. While the concept can simplify matters for non-experts, many practitioners argue that bulk amounts do not reflect the way drugs are packaged and sold on the streets. Moreover, bulk amounts force translations to actual weights to determine appropriate penalties. The Commission recommends replacing bulk amounts with standard weights.

Another complexity involves the numerous acts that constitute trafficking under current law. Although "trafficking" implies the sale of drugs, the offense under Ohio law also includes possession, possession for sale, manufacture, cultivation, transporting, and other acts. Penalties for the different acts vary, yet the amount of drugs involved and the criminal intent may be the same.

The Commission found that some of the distinctions in trafficking penalties make sense, while others should be eliminated. Delivery, transportation, distribution, and possession for sale offenses should be repealed. They should be covered by the underlying acts of possession or sale. Cultivation should be limited to marijuana and punished, based on weight, as possession.

At the lowest level of offenses, possession implies personal use or limited dealing, but usually no profit. The distinction between possession and sale remains meaningful. At higher levels, however, the Commission would eliminate the distinctions. It also would repeal the felony possession offense (§2925.11(C)(1)), since the possession offenses in the trafficking law (§2925.03) would cover it.

In slotting trafficking offenses within the five felony classes, the Commission looked individually at the common street drugs crack cocaine, powder cocaine, marijuana, hashish, LSD, and heroin. The drugs were distinguished by their perceived harm and their street value (see Drug Sentencing Summary, below).

Tables for most other drugs were developed with the aid of narcotics experts. As a rule, a threshold amount was established based on the current "bulk". Higher penalties would arise when five times the amount is present. A major drug offender category would be created for Schedule I and II drugs, except marijuana, with a possible 20 year prison term (see Mandatory Prison Terms, above). Schedules I and II cover most street drugs and some pharmaceuticals. Second degree felony would be the highest level offense for Schedule III, IV, and V drugs. These schedules cover stimulants, depressants, steroids, and other prescription drugs.

See the Appendix, printed separately, for a complete list of drug felonies and their proposed penalty levels.

Fostering Fairness

Some prosecutors, law enforcement officers, and judges favor mandatory penalties in drug cases because they deter crime and help build cases against higher-level offenders. Some defense attorneys and judges oppose mandatories because they limit judges' discretion and can result in unduly harsh terms. The Commission's compromise keeps most existing mandatories, but gives judges discretion to select sentences from the basic ranges, rather than impose three, five, or seven year terms without discretion. Only the highest level dealers would get mandatory terms of more than 10 years.

Many low-level drug law violators are chronic offenders. The drug laws often elevate them to higher level felonies when they commit a subsequent offense, even though the amount involved and criminal intent is the same. For proportionality and rehabilitation, and to ease prison crowding, the Commission's plan eliminates this

enhancement from Criminal Code offenses. But, the enhancements for drug sales near schools and children should remain.

"Unit doses" are a useful concept in the drug laws, especially regarding prescription medicines which are packaged in standard, regulated doses. But, application of the concept to crack cocaine and some other street drugs can be unfair. To foster fairness and uniformity, the Commission recommends eliminating "unit doses" for drugs other than pharmaceuticals and LSD. Thus, the penalty for crack cocaine would turn on the actual weight of the crack, not on how many "rocks" of varying sizes are possessed.

Also in the interest of fairness and proportionality, the Commission recommends changing the law regarding drugs in original containers. Many people carry prescription medicines in containers other than the original bottle. This is illegal today. The law should be amended to exempt persons who carry drugs in non-original containers, provided the medicine was obtained under a valid prescription.

Mandatories And Presumptions In Drug Cases

Persons who possess or sell large amounts of drugs should receive mandatory prison terms. Generally, in the Criminal Code, third degree or higher level drug offenses involving Schedule I or II drugs would bear mandatory terms. Second degree offenses involving Schedule III, IV, or V drugs would carry mandatories. Unlike the current preset terms, the judge would select the mandatory term from the range of prison terms for the appropriate felony level. A couple low-level mandatories should be eliminated. Mandatory fines in drug cases would be retained, but placed within the ranges for felonies, generally (see Financial Sanctions, above).

The maximum term in the basic range, plus one to 10 years should be available for those who sell or possess very large amounts of common street drugs (e.g., more than a kilo of cocaine or more than 100 grams of crack), other than marijuana.

There should be a presumption against a prison term for persons who possess small amounts (e.g., less than 5 grams of cocaine powder or less than one gram of crack). There should be no presumption for or against prison for those who sell drugs at the F-5 level. F-4 and higher level possession or sale offenses, other than for marijuana, would generally carry a presumption in favor of a prison term or a mandatory term.

Drug Sentencing Summary

Weights and divisions between felony levels are based on expert testimony. The divisions distinguish between users (F-5), users who sell to support habits (F-4), basic traffickers (F-3), middle-level traffickers (F-2), and major dealers (F-1).

These concepts are summarized in the tables below for powder and crack cocaine and marijuana, by far the drugs of choice of prison-bound offenders.

Cocaine Powder

Amount in Grams	Felony Level	Act	Prison Presumption or Mandatory Term? *
Up to 5	F-5	Sale	No Presumption
Up to 5	F-5	Possession	Against Prison
> 5 to 10	F-4	Sale	For Prison
> 5 to 25	F-4	Possession	For Prison
> 10 to 100	F-3	Sale	Mandatory from Range
> 25 to 100	F-3	Possession	Mandatory from Range
> 100 to 500	F-2	Either	Mandatory from Range
> 500 to 1000	F-1	Either	Mandatory from Range
> 1000	F-1	Either	Mandatory Maximum in Range + 1 to 10 Yrs.

* *The judge would select the mandatory time from the basic range. For the highest offenders, the judge would have to impose the maximum and would be authorized to add one to 10 years.*

Crack Cocaine

Amount in Grams	Felony Level	Act	Prison Presumption or Mandatory Term? *
Up to 1	F-5	Sale	No Presumption
Up to 1	F-5	Possession	Against Prison
> 1 to 5	F-4	Either	For Prison
> 5 to 10	F-3	Sale	Mandatory from Range
> 5 to 10	F-3	Possession	For Prison
> 10 to 25	F-2	Either	Mandatory from Range
> 25 to 100	F-1	Either	Mandatory from Range
> 100	F-1	Either	Mandatory from Range

Powder Versus Crack Cocaine

For criminal sentencing purposes, powder cocaine and crack cocaine are different drugs. Here is why: (1) Crack is cheaper and faster acting than powder--experts say it is more addictive; (2) Crack is linked to much more violence; (3) Crack is more often the subject of complaints to law enforcement; and (4) Crack is doing grave harm to inner-city communities and expert testimony before the Commission indicates that it is spreading.

Marijuana

Amount in Grams	Felony Level	Act	Prison Presumption or Mandatory Term?
Up to 200	None	Possession	Misdemeanor
Up to 200	F-5	Sale	No Presumption
> 200 to 1,000	F-5	Possession	Against Prison
> 200 to 1,000	F-4	Sale	No Presumption
> 1,000 to 5,000	F-3	Either	No Presumption
> 5,000 to 20,000	F-3	Either	For Prison
> 20,000	F-2	Either	Mandatory Maximum in Range

See the Appendix, printed separately, for tables comparing current and proposed penalties for crack cocaine, powder cocaine, and marijuana. Also, see the Appendix for tables showing the Commission's plan for LSD, hashish, and heroin.

With the help of the Pharmacy Board, the Commission developed the following tables for other drugs, including most prescription medicines and some other street drugs. Felony levels for these drugs will be set with the aid of the Pharmacy Board using current "bulk" amounts.

In chapters outside the Criminal Code (Titles 37 and 47), drug offenses generally are regulatory in nature. The Commission recommends a neutral conversion of these offenses. The enhancement for prior offenses should be kept for regulatory purposes since it has little impact on crowding.

Schedule I and II Drugs
(Other than powder cocaine, crack cocaine, marijuana, hashish, LSD, and heroin)

Amount in Grams	Felony Level	Act	Prison Presumption or Mandatory Term? *
Up to "bulk"	F-5	Possession	Against Prison
Up to "bulk"	F-4	Sale	No Presumption
> 1 to 5 Xs	F-3	Possession	For Prison
> 1 to 5 Xs	F-3	Sale	Mandatory from Range
> 5 to 50 Xs	F-2	Possession	Mandatory from Range
> 5 to 50 Xs	F-2	Sale	Mandatory from Range
> 50 to 100 Xs	F-1	Either	Mandatory from Range
> 100 Xs	F-1	Either	Mandatory Maximum in Range + 1-10 Yrs.

Schedule III, IV, and V Drugs

Amount in Grams	Felony Level	Act	Prison Presumption or Mandatory Term?
Up to "bulk"	None	Possession	Misdemeanor
Up to "bulk"	F-5	Sale	No Presumption
> 1 to 5 Xs	F-4	Possession	No Presumption
> 1 to 5 Xs	F-4	Sale	For Prison
> 5 to 50 Xs	F-3	Possession	For Prison
> 5 to 50 Xs	F-3	Sale	For Prison
> 50 to 100 Xs	F-2	Either	Mandatory from Range

THE SENTENCING HEARING

Before imposing or modifying a sentence, the judge should hold a hearing. The sentencing hearing would not have to be overly formal or burdensome to the court.

At the hearing, the offender, offender's counsel, prosecuting attorney, victim or victim's representative, and, with the approval

of the judge, any other person could speak or present relevant information.

The Judge's Duties

The judge should consider the record and the testimony of any person presenting information at the hearing. If prepared in the case and available, the judge should consider the presentence investigation and victim's impact statement.

The judge would impose a sentence and orally state reasons for it on the record, including reasons for overriding the presumptions for or against a prison term. These may be simple statements.

If a prison sentence is imposed, the judge would specify a term from the appropriate range and any additional terms required or warranted. The judge would instruct the offender that any bad time (described below) accrued is part of the sentence. The judge would inform the offender of the possibility of post-release control, within a period set by statute (described below), which also would be part of the offender's prison sentence.

If a community control sanction is imposed, the judge would sentence the offender directly to the sanction. No suspension of sentence would be needed. The judge would notify the offender that a longer duration under the sanction or more restrictive sanctions, including a specific prison term, may be imposed if the conditions of control are violated.

SENTENCE MODIFICATIONS

The Commission maintains that offenders generally should serve the prison term imposed by the judge. It opposes the Parole Board's ability to release inmates, except after reviewing extended sentences. Also, placement in programs that shorten the prison stays originally imposed--such as boot camps and furloughs--should be subject to judicial veto.

Judicial Release

Popular "shock" and "super shock" probation should be renamed and expanded. Eligibility should be broadened to all inmates serving five years or less, except those serving mandatory terms.

Timing. An offender could file only one motion for release with the sentencing court within the time limits. As now, the offender sentenced to prison for a fourth or fifth degree felony would have to file the motion not earlier than 30 nor later than 90 days after arriving at prison. In a new provision, the offender would have to promptly send a copy of the motion to the prosecuting attorney of the county in which the offender was indicted.

The Commission recommends that an eligible offender sentenced to prison for an F-1, F-2, or F-3 would have to file the motion not earlier than 180 days after the offender is delivered to prison. On its face, this may seem more restrictive than the current super shock law, which only applies to aggravated felons who do not have prior aggravated felony convictions. But, as a practical matter, the Commission believes that this delayed eligibility will give some offenders (particularly third degree felons) a more realistic opportunity for release.

An offender on whom an additional firearm term is imposed could file within the time authorized for the level of the underlying felony committed. However, the time for filing would not begin to run until the one, three, or six year firearm term ends.

An offender sentenced to both a mandatory and a non-mandatory prison term would become eligible for a sentence reduction at the expiration of the mandatory term.

Procedure. On receipt of a timely motion, or on the court's own motion within the same time periods, the court could schedule a hearing. The court could deny the motion, but could not grant it, without a hearing. If a motion is denied without a hearing, the court could still consider release on its own motion within the specified time periods. The court could not hold more than one hearing for any offender.

A hearing would be held in open court within 60 days after filing. To give greater flexibility to judges, the court should be able to delay the hearing for up to 180 days. This would allow the judge to set aside a motion that the judge considers premature, to the benefit of the offender.

If the court schedules a hearing on the offender's motion, the offender would have to notify the prison warden. If the court schedules a hearing on its own motion, the court would notify the prosecutor and the warden. The prosecutor would notify the victim of the date of any judicial release hearing.

In another new provision, the warden would have to provide the court with a report on the offender's conduct. The report would cover the offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender.

Any sentence reduction could be perceived as contradicting truth in sentencing unless it is done in open court. Thus, at the hearing, the court should afford an opportunity to speak and present relevant oral or written information to the offender, offender's counsel, prosecutor, victim or victim's representative, and, with approval of the court, any other person likely to present additional relevant information.

Before ruling, the court would weigh any victim's impact statements made under current and proposed law, if available. The court would apprise the victim of the ruling.

Where there was a presumption of imprisonment, the court should give reasons for overriding the presumption in granting the release, subject to appeal by the prosecutor.

Conditions. If the offender is released, the court may place the offender under any community control sanction, provided the offender first serves any bad time imposed under section 2929.21 of the Revised Code.

Caps Removal And Extended Sentence Review

Presently, the law makes serious, multiple offenders eligible for parole (typically after 15 years, minus good time), irrespective of the aggregate terms imposed by the judge. Since the caps on consecutive sentences artificially shorten the terms of many of the worst offenders, they should be removed. But, to assure fairness and recognize that some long-term offenders change their ways, the Parole Board should have power to review long sentences and grant releases. This can help ease disparity between courts.

Offenders serving at least five years, but not more than 10, could request a review after five years. However, mandatory terms of less than 10 years could not be reduced. Offenders serving at least 10 years, but not more than 15, could request a hearing after 10 years. Those serving more than 15 years could request a review after 15 years and every five years thereafter. Those serving life terms could have one review after the 15, 20, or 30 year terms set by the judge (current law), with no good time reduction (new), and every five years thereafter.

Unlike present practice, extended sentence reviews would be open to the public. The victim, sentencing judge, and others would have an opportunity to speak. The Board would have to consider the judge's wishes and grant the release only if the offender's institutional record makes the release appropriate. Otherwise procedures and conditions are similar to those described for judicial release (above).

Earned Credits

As noted earlier, sentence reductions for good behavior in prison ("good time") would be eliminated. They are awarded almost automatically, have lost their intended meaning, and undermine the sentence imposed by the judge. Good behavior should be expected, not rewarded. However, inmates should be given small rewards for active participation in certain programs. But, the programs would be more restrictive than those under present law.

"Earned credits" should be limited to one day for each month in which the inmate meaningfully participates in school, technical training, work for Prison Industries, sex offender treatment, or substance abuse treatment. Thus, the maximum reduction that could be earned is 12 days each year. The reductions could be offset by misconduct in prison. The DRC would have to adopt rules to govern the awarding and denial of earned credits.

Earned credits could slightly reduce an offender's prison term. However, an inmate released days early due to the accrual of earned credits would remain under the control of prison authorities. The offender would be placed under electronic monitoring or similar restrictions until the stated prison term ends.

Intense Program Prisons ("Boot Camps")

The "boot camp" prison program allows volunteer inmates to serve short, intense prison stays in lieu of longer stays in conventional prisons. The program punishes offenders, fosters social responsibility, and eases crowding. The Commission recommends expansion of the current "boot camp" prison program. More offenders should be eligible (see Residential Sanctions above) and different types of programs should be developed by the DRC.

Within the next two years, the DRC should develop intense program prisons for male and female inmates that continually house at least 1,500 eligible inmates. The regimens should include paramilitary boot camps and prisons that focus on educational achievement, technical training, alcohol and other drug abuse treatment, community service and conservation work, and similar programs. Offenders should spend 90 days in the programs, followed by post-release control under conditions set by the Parole Board.

The DRC could select inmates for boot camps, but judges should be able to veto the placements.

Furloughs

The current limited furlough program should continue. Certain inmates who are within six months of release should continue to be eligible for release to a work or school regimen out of a halfway house. But, in keeping with the Commission's philosophy of judicial control of sentences, the DRC should give judges an opportunity to veto furloughs. Moreover, anyone placed on a furlough would also be placed on electronic monitoring or similar restrictions and would remain under a prison sentence.

IMPOSING BAD TIME

Inmates receive sentence reductions for faithfully observing prison rules. This "good time" can reduce a sentence by 30%. For years, good time was virtually automatic. Although the DRC has denied good time more often in recent years, almost every inmate still receives the 30% reduction.

The Commission favors honest sentences. Generally, the term imposed by the judge should be the term served. Good time is inconsistent with this philosophy. The Commission recognizes that prison officials need tools to deter misconduct. But, since good time is virtually automatic, it does little to curb misdeeds in prison. The Commission recommends a new approach.

Good behavior should be expected of all inmates. A prison term should be extended by the inmate's bad behavior that is tantamount to a crime ("bad time"). Consistent with the Commission's desire to have a range of sanctions available at each level, the DRC would be encouraged also to use existing tools to discipline inmates, running the gamut from prosecuting crimes, through putting offenders in isolation, to denying privileges. When warranted, bad time would be another tool.

The Commission reviewed practices in seven other states which have some form of bad time. A subcommittee weighed the prison population impact of the proposal and the procedural safeguards needed to make it constitutional. And the Commission sought input from wardens. The wardens generally approved the plan, especially if coupled with some positive incentives (see Earned Credits, above).

To make bad time workable without significant administrative costs and training, the Commission attempted to place it within DRC's existing practices and rules.

Duration

The Commission assumes most bad time offenses will be misdemeanors. Thus, it uses misdemeanor increments (30 days) in structuring penalties. When imposed, bad time should be authorized in increments from 30 to 90 days. The maximum bad time for multiple incidents should be 50% of the offender's prison term. (Remember, nothing would prevent the alternative of prosecuting the bad time offense, resulting in additional prison time, or imposing other prison discipline short of bad time.)

Holdover Period

A problem facing prison staff is that some offenders serving determinate sentences misbehave shortly before their release dates, with little recourse. The Commission addresses this by authorizing

post-release control for any offender (see Restructuring Parole, below) and by proposing a holdover period for bad time reviews. An offender who is accused of a bad time offense within 60 days before the end of the inmate's stated prison term could be held over for up to 10 days for processing the bad time accusation.

Procedural Safeguards

The judge would have to instruct each prison-bound offender that the sentence could be extended by bad behavior in prison. The inmate would have the right to testify, confront witnesses, and be represented by a counsel substitute at a hearing before the prison's rules infraction board (RIB). Existing administrative rules address the counsel substitute concept.

In short, the inmate would be afforded considerably more due process than in existing prison disciplinary and parole denial proceedings.

If the RIB finds evidence of the violation, it would report its finding to the warden. The warden would determine whether there is clear and convincing evidence of a violation. If so, the warden could report to the Parole Board or impose another sanction. If not, the matter would be dismissed.

Clear and convincing proof is a higher standard than currently used to impose prison discipline, such as isolation, or to justify denial of parole. However, it is the standard used in probation and parole revocation cases. A lower standard could be unfair to the offender, whose liberty is threatened. A higher standard, such as beyond a reasonable doubt, could impose an unnecessary and impractical burden on prison officials. Note, however, that the RIB's finding need not be by clear and convincing proof. Since RIB duty often rotates among prison staff, the Commission recommends that the RIB merely "indict" the offender. The warden and the Parole Board would use the higher standard.

The final assessment of bad time must be made by the Parole Board within 60 days from the RIB's initial finding of guilt. The Board's review would be limited to two questions: Is the finding based on clear and convincing evidence? How much, if any, bad time should be assessed? The Board would consider the inmate's conduct and any evidence relevant to maintaining order in the prison.

RESTRUCTURING PAROLE: POST-RELEASE CONTROL

The Parole Board generally could not release an offender from prison. But, the Board would retain important duties, in addition to assessing bad time and reviewing extended sentences. These involve determining the need for, and setting the conditions of, post-release control.

Parole Board Duties

Post-release control would be mandatory for all first and second degree felons, and for third degree felons who committed sex or other violent offenses. The Board also should have discretion to impose post-release control on other third degree felons and on fourth and fifth degree felons.

The Board would have to review each inmate's conduct. It would place conditions on the offender, selected from the continuum of sanctions. The conditions would be effective upon the offender's release from prison.

Offenders under post-release control would be supervised by the Adult Parole Authority. To save money, offenders could be placed under monitored time (see Non-Residential Sanctions, above) or the Board could reduce the period of control (see Duration, below). The Board should adopt post-release control rules, including rewards for successful releasees and penalties for violators.

Duration

The maximum term of post-release control should be set by statute. The Commission proposes a sliding scale from five years for first degree felons, four years for second degree felons, three years for violent and sex offender third degree felons, and one year for other third degree felons and for fourth and fifth degree felons. The duration could be shortened by the Board.

Violations

The Parole Board should have available the continuum of sanctions for those who violate conditions of post-release control. For most misdemeanor and technical violations, the Board could impose a stricter sanction or return the violator to prison. A special presumption should be created against prison for those whose only violation involved possession or use of a drug (see Drug Violators Presumption, above). If prison time is warranted, a term of one to three months could be imposed after each hearing. The maximum for all non-felony violations would be 50% of the prison term originally imposed.

For new felonies, revocation should rest with the sentencing court. First, the offender should be prosecuted for the new felony. On conviction, the court could sentence for the new offense only or add a term for violating control. If added, the violation term should be served consecutively to the term for the new felony. The violation term could equal the time remaining on an earlier prison term, the maximum period of control available for the offenses minus any time already served in prison or under control, or 12 months, whichever is greater.

APPELLATE REVIEW OF SENTENCES

The Commission favors making certain sentences subject to appellate review that is designed to foster proportionality and certainty, while easing disparity. Limited appellate review should be available to both the defendant and the prosecutor.

Why Appellate Review?

Sentencing commissions at the Federal level and in other states have adopted matrix sentencing guidelines. Under these matrices, an offender's criminal history "score" forms one axis and the level of the offense forms the other. The judge looks to where the two lines meet to find the appropriate sentence.

The Commission directed staff to prepare a notebook on sentencing guidance from states with such sentencing grids (Minnesota, Oregon, and Pennsylvania) as well as states taking different approaches (e.g., California, with its strict determinate sentences and New Jersey, with appellate review of sentences). The notebook contained each State's sentencing statutes dealing with presentence guidance, sample appellate opinions interpreting the guiding statutes, and articles that critique the jurisdictions' approach to sentencing. The Commission also interviewed judges from New Jersey and Pennsylvania.

A key advantage in the states with sentencing grids is that the matrices lend greater predictability to sentencing (to the benefit of prison and corrections planners) and ease disparity. The General Assembly instructed the Commission to try to meet these same goals.

Nevertheless, the Commission concluded early in its discussions that sentencing guideline grids negate the expertise and discretion of judges. They can have the effect of giving more discretion to other actors in the system than to judges.

The Commission seeks to maintain judicial discretion. As discussed earlier, the plan would guide discretion through a series of presumptions, thereby fostering predictability and easing disparity. But, how was this to be policed in the absence of a sentencing matrix? The answer: limited appellate review of sentences.

The staff reviewed the laws of nine states which use true appellate review of sentencing. Three topics were targeted: the types of review, standards of review, and the authority of the reviewing court. After the materials were presented, Commission members were surveyed on appellate review. Members favored placing reasons for each sentence on the record, which can be made orally (see The Sentencing Hearing, above). They also favored review for proportionality, uniformity, predictability, greater certainty, and

fairness. Members proposed giving the appellate body authority to vacate and remand the sentence, modify it, or both.

Appeals Of Right

In states that allow appeals of the actual sentence imposed by the judge, the appeals generally have not inundated appeals courts, especially once a body of basic case law emerges. Nevertheless, the Commission is sensitive to appellate court workloads. Thus, the Commission's plan is narrower than that of most appellate review states.

A few matters should be appealable of right, including any sentence that is contrary to law. For the defense, appeals of right should include sentences in which the maximum prison term is imposed for an offense, or for the most serious offense arising out of a single incident, and those contrary to the presumption against prison.

For the prosecution, appeals of right should include sentences contrary to the presumption in favor of a prison term and the granting of judicial release to a first or second degree felon.

Appeals By Leave Of Court

Other matters should be appealable by leave of court, including sentences showing a consistent pattern of disparity by the sentencing judge as to race, ethnicity, gender, or religion and certain consecutive sentences.

The Appellate Court's Options

The appeals court could remand the sentence to the trial court or modify it if the sentence was clearly not supported by the record.

Nonappealable Sentences

A sentence imposed by the judge after a joint recommendation by the defendant and prosecution would not be reviewable.

Timing And Record

A sentence appeal would have to be filed within the time specified for other appeals. The record would include reports given to the court, the trial record, and statements made at sentencing.

VICTIMS' RIGHTS

Legal scholar Benjamin Cardozo once said that justice is due the accused, but it is also due the accuser. The Commission supports expanding the rights of victims and consolidating them in one place in the Revised Code.

The Commission reviewed victims' programs statewide. Input was obtained from the Attorney General's office, the Prosecuting Attorneys Association, the Crime Victims/Witness Association, individual victim/witness assistance programs, and others. The Commission reviewed the laws of Ohio and other states, including Michigan, Pennsylvania, and Wisconsin, and the Uniform Crime Victims' Rights Act. The Commission's plan borrows heavily from the work already done by the General Assembly, supplemented by Michigan law and the Uniform Act.

The Commission's proposals regarding victims appear in legislative draft form, beginning on page 103. The Commission and its staff will provide testimony, research, and other assistance to the General Assembly as it considers the package.

Broaden Application To All Felonies

Currently, the prosecutor, court, and parole authority have duties to notify victims of certain offenses. The lists of crimes are inconsistent. The Commission recommends extending victims' rights to all felonies. The plan should apply to the same misdemeanors as at present (domestic violence, simple assault, aggravated menacing, menacing, and intimidation of a victim or witness).

Notice And Opportunity To Be Heard

One goal of the Commission is to assure fair and adequate notice to victims at all critical stages of the criminal justice process. Victims should receive notice and have the opportunity to attend anytime the defendant is present.

Among new provisions, law enforcement officers should notify victims of an arrest and the possibility of bail. Prosecutors should confer with victims before trial or disposition of the case. The victim should have an opportunity to make a statement prior to sentencing as well as a statement before an inmate's early release. Prosecutors also should notify victims of appeals and related matters. Corrections officials should notify victims of an offender's release.

The notice requirements should not be burdensome. Generally, notice could be oral or written on standard forms. Many of the notices would be required only if the victim requests them. Representatives should be able to act on behalf of victims.

Protecting Victims

Minimizing Contact. The court should make reasonable efforts to minimize unwanted contact between the victim and defendant. If practical, the court should provide separate waiting areas.

Discouraging Retaliation. If a victim reasonably fears retaliation by the defendant, the prosecutor could make a motion that the victim not be compelled to identify his or her address, place of employment, or other personal identification without consent. A hearing on the motion would be private. If a victim is actually threatened by a defendant, the prosecutor could move that the defendant's pre-trial freedom be revoked.

The victim's address and telephone number should not be in the court's documents unless contained in the trial transcript or used to place the crime. Also, intimidation of victims would be made an "offense of violence" under the Code.

Generally, an employer could not discipline a victim for participating in a criminal justice proceeding. Any employer who knowingly violates this would be in contempt.

Speedy Trials

Since continuances are common and frustrating to victims, the prosecutor should tell the victim about any request for a continuance. In turn, the prosecutor should inform the court of the victim's position on the delay. The court should consider the victim's objections in deciding whether to grant the continuance.

Victims' Property

The investigating agency should promptly return the victim's property taken during the investigation. There should be exceptions for property needed as evidence and other situations.

Enforcing Compliance

When a victim's rights are denied, the prosecutor should seek compliance on behalf of the victim. However, failure to comply would not create a claim for damages. And failure to provide a right to a victim would not be grounds to set aside a conviction.

PRISON POPULATION PROJECTIONS

Background

Between July 1, 1974 (when the last comprehensive changes in the criminal code took effect) and May 1, 1993, Ohio's prison population increased nearly fivefold from 7,922 to 39,138. The annual percentage increase averaged 8.3%. During the same time, prison construction increased capacity from just over 9,000 slots to the present 21,738. As prison populations continue to grow, the ability to accurately make projections becomes more and more important.

The Commission's staff developed prison population projections that are independent of the Department of Rehabilitation and Correction. The staff and the DRC shared many assumptions and information. However, the staff's prison population estimates differed from those of the DRC. A consensus forecast was developed by the Commission which essentially split the difference between the two on assumptions and baseline projections.

Projections are not an exact science. These are made in an environment of great uncertainty. Small changes in assumptions can cause wide swings in the projections, especially as they extend several years into the future.

(The Appendix, printed separately, contains more discussion of prison population forecasting).

What Happens If We Do Nothing?

To gauge the impact of the Commission's proposals, the Commission first established a baseline showing what would happen if there were no change in sentencing policy.

The consensus baseline was derived by splitting the difference between DRC's official projection made in the fall of 1992 and the projection developed by the Commission's staff in early 1993. It shows the actual growth in the prison population since 1983 and the estimated growth that would occur if there are no changes in State policy.

The baseline does not consider the impact of increased funding for the intermediate sanctions proposed in the State's FY 94-95 budget (discussed below). However, it does consider the effect of new community-based correctional facilities (CBCFs) that will soon come on line.

Year	Baseline	Change
1983 Actual	18,030	-
1984 Actual	18,459	2.4%
1985 Actual	19,708	6.8%
1986 Actual	21,565	9.4%
1987 Actual	23,131	7.3%
1988 Actual	24,564	6.2%
1989 Actual	27,737	12.9%
1990 Actual	28,484	2.7%
1991 Actual	33,353	17.1%
1992 Actual	37,116	11.3%
1993 Act./Est.	39,423	6.2%
1994 Estimated	41,026	4.1%
1995 Estimated	42,689	4.1%
1996 Estimated	44,462	4.2%
1997 Estimated	46,136	3.8%
1998 Estimated	47,811	3.6%
1999 Estimated	49,508	3.5%
2000 Estimated	50,995	3.0%
2001 Estimated	52,315	2.6%
2002 Estimated	53,589	2.4%

Impact Of The Commission's Recommendations

To estimate the effect of the Commission's recommendations on the baseline, the staff studied how the offenders who actually entered prison in 1991 would have been sentenced if the Commission's proposals were applicable to them.

If the Commission's recommendations were in place in 1991, they would have reduced the time served by inmates sentenced that year by **10%**. Moreover, the Commission's plan promises immediate relief for the system by diverting repeat petty thieves and other low-level felons from prison. (Additional immediate relief could be found in the Commission's retroactivity proposals.)

Here is how the 10% reduction in the future prison population growth was calculated. Using a computer spreadsheet, the 1991 offenders were reclassified under the proposed five level structure proposed by the Commission. Then, critical assumptions were made.

Some of the assumptions (such as those for bad time, technical supervision violators, and repeat violent offenders) are based on the DRC's 1992 Intake Study, or other DRC research. Others (such as the decrease in intake due to presumptions against imprisonment, and where sentences will fall within the given ranges) are based on the expertise of Commission members and staff. As noted above, when the DRC and the Commission staff differed in assumptions, a consensus assumption was made by splitting the difference between the two.

The Commission's Assumptions

Any prison population analysis starts with two basic questions: How many criminals will be sent to prison? How long will they stay? Since no one can answer these questions with certainty, assumptions must be made. The next paragraphs provide a simplified view of the assumptions the Commission made to answer the basic questions.

Prison Intake. In estimating prison populations, it is important to assess how many offenders will end up in prison. The number of offenders coming into Ohio's prisons has grown at an average 7.7% per year since the enactment of Senate Bill 199 in 1983, which increased the number of mandatory terms. This growth rate includes the dramatic increase in drug cases associated with the arrival of crack cocaine and the subsequent war on drugs.

The Pool Of Offenders. In 1991, there were 550,560 index crimes reported in the FBI's Uniform Crime Reports for Ohio (murder and manslaughter, forcible rape, robbery, assault with weapon or serious injury, burglary, theft, motor vehicle theft, and arson). In that same year, 55,508 people (39,185 adults) were arrested for index crimes. Assuming that those 55,508 did not commit all 550,560 crimes, there are many more people who commit serious crimes and could go to prison, who are not apprehended by law enforcement.

Also, many more people abuse illicit drugs than are arrested for drug offenses. This means that the pool of unapprehended drug offenders is large. In 1985, the Ohio Department of Health estimated that 232,164 Ohioans aged 18 to 34 were cocaine users, and 638,950 were marijuana users. During 1991, there were only about 16,900 felony indictments for drug trafficking and abuse offenses.

Meanwhile, law enforcement continues to improve, and courts, prosecutors, and defense attorneys are implementing more efficient case management, so more offenders are coming through the system.

On the other side, more offenders are going into intermediate sanctions. For example, during the next 12 months, there will be seven new CBCFs opening in Ohio, with an estimated 691 new beds. These beds can be turned over several times, and therefore could lessen the increase in intake.

The baseline estimate therefore assumes that prison intake will increase, but at a rate less than that of the last 10 years (there is some national evidence that arrests for drug offenses are declining). The actual assumed figures for intake and time served are laid out in the appendix.

Sentence Ranges. The length of stay analysis begins with

the range of terms available for each level of felony. As noted earlier in the report, the Commission's plan contains the following sentence ranges: A flat term of from 3 to 10 years for first degree felonies (F-1s); 2 to 8 years for F-2s; 1 to 5 years for F-3s; 6 to 18 months for F-4s; and 3 to 12 months for F-5s.

Where Will Judges Fall In The Ranges? This is the critical assumption and the most difficult to make accurately. Considering the presumption against using the maximum sentence, the availability of appellate review of maximum sentences, and the presumption in favor of the minimum sentence for a first prison term, the Commission assumes that sentences would fall mostly toward the low end of each range. However, there will also be a considerable percentage at the high end of each sentence range for particularly serious forms of offenses and repeat offenders. Small changes in assumptions about where judges will fall in the ranges can result in a wide swing in the projected impact of the recommendations. If the Commission's plan were enacted by the General Assembly and judges had training and confidence in the plan, the 10% reduction in the prison population is conservative. Conversely, if the plan is not followed as intended, a smaller reduction could be expected. This analysis generally makes conservative estimates.

Theft Offenses. Based on the DRC's Intake Study, there would be a 45% drop off in prison intake for theft, bad check, credit card, and receiving stolen property offenses, because of the elimination of the felony enhancement of misdemeanor theft offenses and the proposed increase of the theft threshold from $300 to $500.

Presumption For Or Against Prison. The presumption against prison for F-4s and F-5s does not mean that none of the offenders in those categories would go to prison. Rather, its impact is likely to be more subtle. The Commission assumes there would be a 17.5% drop off in intake for F-4s and F-5s because of the presumption. This assumption takes into account additional funding in the State budget for local community-based punishments.

Because of the community sanctions funding proposed in the biennial budget and the full statutory continuum of sanctions recommended by the Commission, there would be a 5% drop in intake for F-3s, which typically have neither a presumption for or against imprisonment under the Commission's plan. The projections assume a 1% increase in F-2 and F-1 intake because of the presumption in favor of imprisonment for them.

Drug Offenses. The Commission's plan would ease penalties somewhat for low-level drug offenders, while staying tough with high-level violators. The Commission assumes the changes would not drop the intake of F-4s, but would reduce intake of F-5s by 10%.

The assessment of where drug offenders fall in the new sentencing

structure takes into account the new drug amount thresholds, plea bargaining, and the fact that drug offenders are generally sentenced more leniently than other offenders at the same level.

Mandatory Gun Sentences. There would be 2,890 inmate-years of gun time. This takes into account the proposed changes in the gun specification, making it apply to all felonies with guns and making the penalty one year if the firearm is possessed but not used. The estimate assumes that 713 offenders would come in with the 3 year term, and 751 offenders would come in with the one year term. The number of offenders with the 6 year term is insignificant to this analysis.

Repeat Violent Offender And Major Drug Offender Enhancements. Based on the DRC's Intake Study, offenders entering prison in 1991 would have qualified for 655 inmate-years of repeat violent offender (123 RVOs) and major drug offender time (8 F-1+ drug offenders, based on the fact that very few people are convicted under current Ohio law of the very serious drug offenses), assuming 5 years apiece.

Consecutive Sentences. An estimated 12.7% of the offenders would receive consecutive sentences, which would, on average, increase the amount of time served for those cases by 131% (the current average from the DRC Intake Study).

Jail Time Credit. Credit given for time spent in jail awaiting trial, sentencing, and transfer would remain unchanged at 67 days (the average from the DRC's Intake Study), since no Commission recommendation would directly affect this.

Judicial Release. This estimate assumes that 100% of the F-1s and F-2s who currently receive shock probation (there are very few) will receive it (renamed "judicial release") under the Commission's plan. However, because of the presumption against prison, the diversion of low-level thieves, and other factors, only an estimated 75% of the F-3s, 50% of F-4s and 25% of the F-5s who currently receive shock probation would receive it under the plan. The average length of a shock probationer's stay in prison is assumed to be 5% longer under the proposal than in 1991 because the offender pool would be tougher under the Commission's plan.

Extended Sentence Review. An estimated 30% of F-1s and F-2s who are serving at least five years in prison would have their sentences reduced by the review of extended sentences by the Parole Board. This is roughly based on current parole release rates for high level felons.

Bad Time. According to a study by the DRC, there were violations equivalent to 18.7% of the prison population that would be eligible for bad time. Because of the burden of proof required, and the institutional incentive to move people through the prison

system, this estimate assumes that 87.5% of those (16.7% overall) would actually receive bad time. The penalty range for bad time would be 30 to 90 days per incident.

Post Release Control. This estimate assumes that all F-1, F-2, and F-3 releasees and 10% of the F-4 and F-5 releasees would get post release supervision. 30% of the post release supervisees would violate and return to prison with an average incarceration time of 2 months.

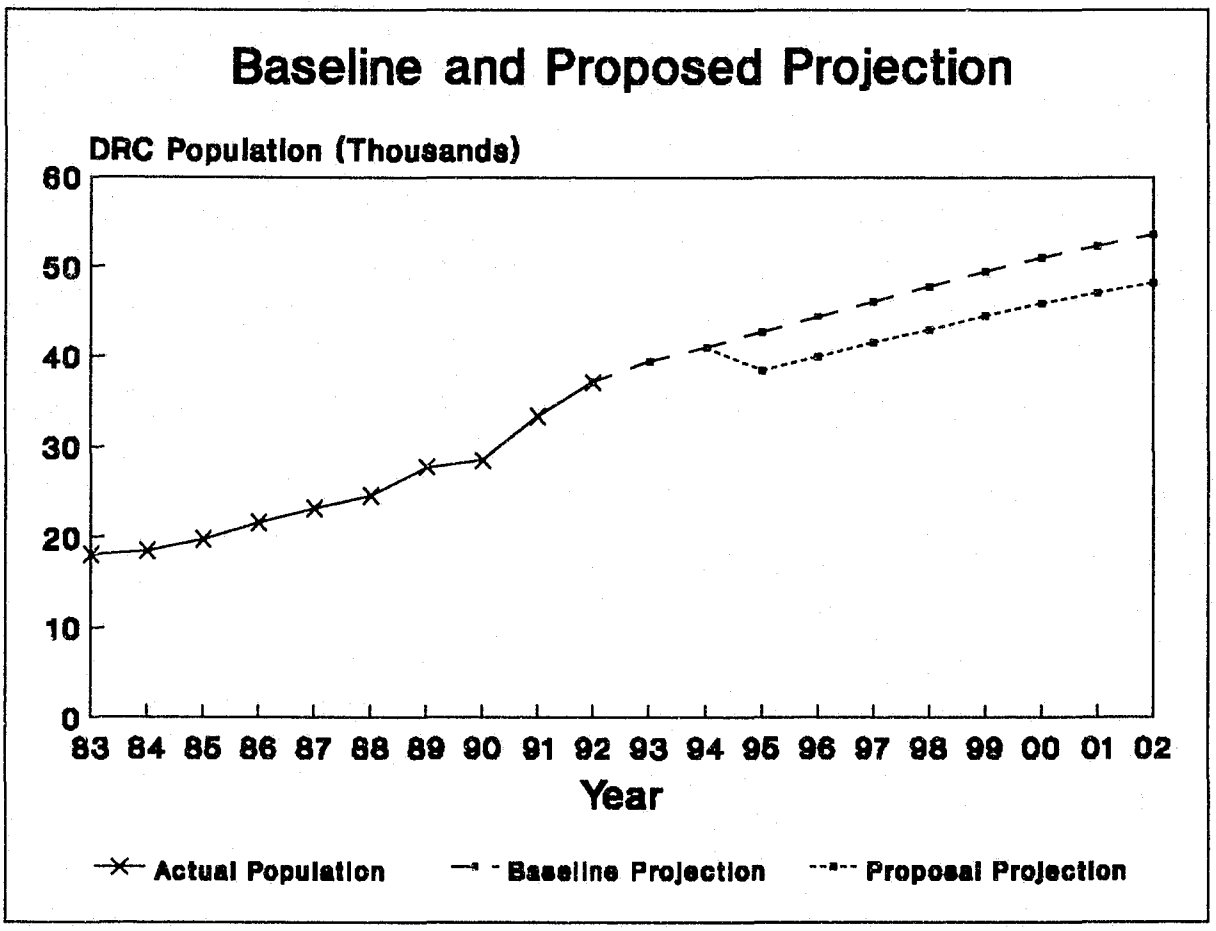
Intense Program Prisons. The estimate assumes 1,152 inmates with an average sentence of 8 months will have sentences shortened to 3 months through successful completion of the expanded shock incarceration ("boot camp") program. This assumption assumes a fairly aggressive implementation of the programs by the DRC.

Earned Credit. Inmates are eligible to receive one day per month of earned credit. The estimate assumes that an average inmate will earn half of the available earned credit.

The Upshot

The following table and graph show the estimated prison population if the Sentencing Commission's recommendations are adopted versus if no other major changes in policy occur.

Year	Baseline	Proposed	Difference
1983 Actual	18,030	18,030	0
1984 Actual	18,459	18,459	0
1985 Actual	19,708	19,708	0
1986 Actual	21,565	21,565	0
1987 Actual	23,131	23,131	0
1988 Actual	24,564	24,564	0
1989 Actual	27,737	27,737	0
1990 Actual	28,484	28,484	0
1991 Actual	33,353	33,353	0
1992 Actual	37,116	37,116	0
1993 Act./Est.	39,423	39,423	0
1994 Estimated	41,026	41,026	0
1995 Estimated	42,689	38,420	-4269
1996 Estimated	44,462	40,016	-4446
1997 Estimated	46,136	41,522	-4614
1998 Estimated	47,811	43,030	-4781
1999 Estimated	49,508	44,557	-4951
2000 Estimated	50,995	45,896	-5099
2001 Estimated	52,315	47,084	-5231
2002 Estimated	53,589	48,230	-5359



Retroactivity

The State prison system could receive immediate relief from the Commission's limited retroactivity provisions. Releasing, or reducing the sentences of, offenders who have served at least six months for repeat misdemeanor thefts or for stealing less than the new felony threshold ($500) could give an immediate break of 2% of the prison population. Albeit short term, the relief could buy time to convert facilities to intensive program prisons (like boot camps) and make other changes.

If the DRC and Parole Board work to review the sentences of other low-level felons who would have benefitted if the Commission's plan had existed when they were sentenced, more significant short-term relief could be found. Note: retroactivity is not factored into any of the projections made prior to this section.

See the Appendix, printed separately, for more on forecasting.

SAVINGS AND COSTS

Change seldom occurs without costs. However, rather than bake a larger funding pie for corrections, the Commission proposes slicing the existing pie differently. Because of the projected decrease in the growth of the prison population if the Commission's plan were adopted, money that would have been spent on prison space could instead be allocated to local governments for corrections. Also, the Commission has suggestions to improve the collection of money from offenders.

More detailed information is available from the Commission's staff. The staff will continue to work to assess the savings and costs inherent in the plan.

Expected Decrease In State Prison Costs

While the prison population will continue to rise, it will not rise nearly as quickly as it would if the Commission's proposals were not adopted. When applied to the 1991 intake, the proposal reduces the time served by an estimated 10% (3,493 inmate years). At $11,791 per year, the total operating cost to imprison those offenders would be $41,185,963. By the year 2002, the difference is estimated to be 5,359 prisoners, for a cost savings of $63,187,969. The debt service to build space for those offenders (assuming $3,011 per year in debt service) would be an additional $10,517,423 for each year that construction is delayed.

There would be some cost to develop the expanded "boot camps" under this proposal. But, the facilities would cost less than regular prisons to build. And, although more staff-intense, by running three or four "classes" of offenders through them each year, intense prisons would be cheaper per bed to operate.

Importance Of Shifting Funds To Local Government

A key aspect of the plan is the cost to local governments, especially counties. Of primary concern is paying to punish those low-level felons and newly-misdemeanant thieves who would be diverted from prison. If the diverted offenders would be equally divided among CBCFs (120 days at $60.45/day), halfway houses (90 days at $33.65/day), electronically-monitored house arrest (180 days at $10/per day), and intensive supervision (one year at $5.56/day), the estimated cost to local governments (primarily counties) would be about $14.5 million. Some relief may be found in the biennial budget bill.

The Biennial Budget Bill

Media reports indicate that the Senate-passed version of the biennial budget is the one likely to be submitted to the Governor

for signature by July 1. However, the bill had not received final approval when this report went to print (6/23/93).

The House-passed budget would have expanded funding for community sanctions by $10,453,944 in FY 1994 and $20,163,228 in FY 1995. This would have been enough to divert 2,856 felons during FY 1994 and 5,076 felons during FY 1995 from prison.

The Senate-passed budget is different from that of the House. If enacted, it would expand funding for residential programs, but would hold the budget's Non-Residential programs line item at FY 1993 levels. The total increase for community program line items would be $8,978,094 in FY 1994 and $19,986,816 in FY 1995.

The budget passed by the Senate would provide enough money to divert 1,822 felons during FY 1994 and 4,359 felons during FY 1995 from prison as follows:

	FY 1994	**FY 1995**
Intensive Supervision	-181	-354
Halfway Houses	1,256	3,480
CBCFs	747	1,233
TOTAL	1,822	4,359

This may be enough to handle the estimated 4,238 offenders that would be diverted from prison under the proposal. It does not include enough money to cover supervision after an offender has completed a stay in the halfway house, CBCF, or intensive supervision program. Also, it does not include enough to make the continuum of sanctions available to the Parole Board to use in placing more offenders under post-release control.

Victims

Another cost to local governments would be the victim notification requirements in the proposal. Currently, there are a number of victim notice requirements in statute that are not universally followed. The estimated **total** cost of victim notification in Ohio is $3,389,238, including notices currently required. The cost would be divided among Ohio's 285 law enforcement agencies, 88 county prosecutors' offices, 88 common pleas courts, 119 municipal courts, and 60 county courts. Costs should be covered by the decrease in prison costs under the Commission's plan.

Here is a rough breakdown. The pamphlet to be distributed by law enforcement agencies would cost about $1,378,578 statewide. The sheriffs' notice regarding bond or bail would cost about $322,100. Prosecutors' duties would cost $736,753. The DRC's notices would cost about $34,775. And misdemeanors would cost another $917,032 statewide.

Theft Cases

Another cost issue with local governments is the management of the repeat petty thieves and the impact of raising the felony theft level from $300 to $500. These changes would shift some of the costs of prosecution, defense, and adjudication from counties to municipalities.

The Commission estimates that 4,822 thieves (2,634 of them prison-bound) would be diverted from felonies to misdemeanors. While this would shift the cost of processing some of the cases from counties to municipalities, the total cost of handling these cases is likely to go down. This is because misdemeanor cases are much less expensive than felony cases.

A 1990 study by the Legislative Budget Office reports that the large metropolitan common pleas courts spent an average of $514.42 per case in 1989, while the large municipal courts spent $46.56 per case. While the shifted theft offenders would likely be more expensive than the average municipal case, and less expensive than the average common pleas case, the total cost to the justice system would almost certainly be less.

Appellate Review

There is concern about an increase in appellate courts' caseloads and in related costs. Estimating the costs of the appellate review provisions of the Commission's package is difficult because it is unclear where judges will fall within the sentencing ranges. This is important because the appeals are most likely to come from sentences at the top of the range. Costs should be covered by the decrease in prison costs under the Commission's plan.

In other states with appellate review of sentencing statutes, there are no clear patterns of how many appeals could be expected in Ohio. Unlike Ohio, many of those states have grid style matrixes for sentencing.

In those states, rates of sentence-based criminal appeals range from 1% (Minnesota) to 14% (Oregon). In three states (Washington, Alaska, and New Jersey, the only ones that reported figures this way), 32% to 38% of criminal appeals were based on sentencing.

According to the Ohio Supreme Court's 1991 Ohio Courts Summary, there were 2,087,277 criminal and traffic cases filed in Ohio's common pleas, municipal, and county courts. During that same period, there were 11,031 appeals filed, of which 3,585 were criminal, for a rate of .17% of criminal cases being appealed. Since most criminal appeals presumably come from common pleas courts (where there were 56,322 criminal cases filed in 1991), a more useful and comparable appeal rate would be 6.4% (3,585 divided by 56,322).

If there were additional sentencing appeals from common pleas courts such that they made up one-third of all criminal appeals, there would be an additional 1,782 appeals, for a total of 5,376. However, many of those additional appeals would likely be appealed on other grounds anyway. So, even if Ohio falls into line with the other states, this figure is likely to be high.

Courts of Appeals are paid jointly by counties (who pay for some salaries, office space, supplies, and most equipment) and the State General Revenue Fund (through the 005-321 Judiciary line item - paying primarily for salaries and travel reimbursement). In FY 1994, the State share is expected to be around $16,985,678. Assuming 11,031 cases, the average appeals case would cost the state GRF $1,540. Assuming 1,782 cases, at $1,540 apiece, the total additional cost to the state GRF for appellate review would be $2,744,280, or a 16.2% increase in costs. There would be some additional cost that would be borne by the counties.

This is probably the worst case scenario. Bases for appeal under the Commission's plan are much narrower than in other states with appellate review of sentencing. Thus, it probably is pessimistic to use the 32% to 38% figures from Washington, Alaska, and New Jersey. After all, Ohio judges generally could avoid appeals by prison-bound defendants under the Commission's plan merely by sentencing one level below the maximum prison term. Moreover, after the initial jump in appellate caseloads, a body of case law regarding sentencing will develop that should significantly reduce the number of appeals in the future.

New Revenue

The Commission recommends financial sanctions that get offenders to repay the costs incurred in their cases, without discouraging their rehabilitation and continued support for their families. Staff research indicates that some basic actions result in improved collections: assigning someone to collect; sending bills or reminding offenders of their debts by telephone; and letting the agency that collects the money keep part of it.

Texas authorized probation officers to collect probation fees from offenders. In 1980, before the change, Texas collected $11.5 million from offenders (about $128 per offender). In 1990, under the new plan, fees collected by probation officers from offenders netted $53.6 million (about $298 per offender). The key difference--under the new plan, probation offices could keep the fees collected.

Among other ideas, a day fines system should be authorized. Unlike the tariff fines popular in Ohio's misdemeanor courts, day fines are indexed to the offender's means. Even the poorest offender must pay something.

Day fines are a staple in Europe. The idea reached the United States recently. Here is a simplified example. A judge might sentence an offender to a fine equal to five days income. A person earning $1,000 per day would pay $5,000 and a person earning $10 per day would pay $50. The number of "days" that a person pays is based on the severity of the offense.

In the U.S. jurisdictions that impose day fines (e.g., Staten Island, New York, Maricopa County (Phoenix), Arizona, Milwaukee, Wisconsin), more money was gathered from more offenders, a higher percentage paid in full, a lower percentage paid nothing, and fewer hearings for non-payment were needed.

Making financial sanctions into civil judgments also should help, since victims and others could use garnishments, attachments, and other tools.

COSTS OF VARIOUS SANCTIONS

This section estimates the per diem cost for various sanctions, most of which involve some sort of residential confinement. The estimates come from a variety of sources, and cover a variety of recent time periods. The estimate for each sanction is explained in the text.

The Commission will continue to develop cost estimates as new information becomes available. Also the Commission's staff is working towards the development of uniform measures of cost and success for criminal sanctions.

Residential Sanctions Generally	**Cost/Day**
State Prison (Actual FY 1992 Operating)	$32.22
State Prison (Actual FY 1992 Operating + Debt Service)	$40.47
State Prison at 100% of Design Capacity (Operating)	$49.66
State Prison at 100% of Design Capacity (Operating + Debt Service)	$64.02
"Boot Camp Prison"	$62.00
County Jails (Operating)	$42.09
County Jails (Operating + Debt Service)	$52.52
Community-Based Correctional Facilities (Operating)	$67.89
Community-Based Correctional Facilities (Operating + Debt Service)	$78.24
Minimum Security Jails (Operating)	$26.69
Minimum Security Jails (Operating + Debt Service)	$35.52
Halfway House	$33.65
Halfway House (With Treatment)	$60.00

Non-Residential Sanctions Generally	**Cost/Day**
Day Reporting	$17.50
Electronic Monitoring	$10.00
Intensive Supervision	$5.56
Intensive Supervision (with cost of violations)	$19.84
Basic Probation Supervision	$3.00
Basic Parole Supervision	$5.00

Cost Of An Offender's Sentence

The best way to compare various sanctions is to compare the cost over the entire sentence. For example, the current shock incarceration program (boot camp prison) for two years would cost $10,824:

> Boot Camp Prison for 90 days X $62.00 per day ($5,580);
> Halfway House for 60 days X $33.65 per day ($2,019);
> Intensive Supervision for 580 days X $5.56 per day ($3,325).

Assuming that an inmate would have spent two years in prison, the total cost of incarceration would have been $23,521 (730 X $32.22). However, the diversion of the offender would only reduce direct prison costs by $6,336.40 (730 X $8.68 - See marginal cost below), unless capital costs are involved.

State Prisons

During FY 1992, the Department of Rehabilitation and Correction spent:

Institutional Operations	$392,094,937
Central Office	14,495,949
Training Academy	1,186,704
Prisoner Compensation	6,271,113
Federal Match	57,629
	$415,453,130

The average daily population was an estimated 35,234.5, for an average annual expenditure per inmate of $11,791.09 ($32.22/day).

This cost does not include the following other expenditures in the DRC budget:

- Expenditures for debt service ($57,812,246)
- Operating Costs of the Division of Parole and Community Services ($26,590,894)
- Subsidies to operate community corrections programs, community-based correctional facilities, and halfway houses ($23,697,268)
- Money spent to operate the new DRC facility in Trumbull County, which is not yet housing inmates ($1,346,798).

Capacity. On July 1, 1992, the DRC was housing 37,116 inmates in facilities designed for 21,236, which is 175% of design capacity.

Because of the economies of scale that come from putting more inmates into the same amount of space, the expenditure per inmate is much less than it would be if the prisons were operating at their design capacities. Pursuant to a lease agreement, the Dayton Correctional Institute (a medium/minimum security facility) operates at slightly less than its design capacity of 500. The cost of keeping an inmate at Dayton during FY 1992 was $18,177 ($49.66 per day).

Cost Savings. One of the issues involved with diverting inmates from State prisons into community sanctions is how much money would be saved. Savings for diverting inmates could come in two ways: reduced costs for additional prison construction and staff; and reduced marginal cost (the variable cost for one additional inmate). The DRC is unlikely to close prisons or reduce

staff, unless the prison population is reduced to design capacity.

In the future, by diverting inmates from State prisons, the General Assembly would be able to appropriate less money to the DRC than it otherwise would. While this would result in an overall savings to the State, the savings would be difficult to identify and the money would not be directly diverted into non-prison sanctions.

Marginal Costs. Under the State's accounting and appropriation system, the line item titled "200-Maintenance" includes operations spending on items other than personnel and equipment. "Maintenance" in a prison context includes expenditures on such categories as utilities, food, clothing, supplies, medicine, etc. This is roughly the variable cost of operating a prison. This cost varies directly with the number of inmates, as opposed to relatively fixed personnel and equipment costs. The FY 1992 per inmate maintenance spending by the DRC on institutions and their Central Office was $3,175 per year or $8.68 per day. This is the amount per day that could be saved by diverting one inmate. The savings are much higher if enough inmates are diverted to affect capital costs, staffing, etc.

Prison Construction. According to the DRC in 1992, the average construction cost of the new prisons that the Department has opened since 1986 is $53,417 per bed at design capacity. If the new prisons operate at 175% of capacity, the construction cost would be $30,524 per inmate. This one-time cost (which could be financed over time with bonds issued by the Ohio Building Authority (see Debt Service, below) would be in addition to the average cost of $32.22 per day to operate the facility.

Boot Camp Prison. In Ohio's pilot "boot camp" prison (Camp Reams), offenders go through 90 days of intensive prison, followed by 30 to 60 days in a halfway house, with the remainder of the sentence served under intensive supervision. The DRC reports that the boot camp itself (with its 100 beds) costs about $62 per day to operate.

County Jails

The Governor's Office of Criminal Justice Services recently completed a survey of Ohio's jails. The 63 full service county jails that provided financial information spent $120,248,160 in CY 1991 to house an average daily population of 8,236 inmates, for an average cost per year of $14,600, or $40 per day. The facilities were operating at 121% of the capacity recommended by the DRC's Bureau of Adult Detention.

Based on the same survey, the estimated construction cost for a new jail slot is $47,357. At 121% of capacity, the cost per inmate would be $39,138. For new jail construction, as much as half (60% for multi-county facilities) of the cost can, by law, be paid by

the State, with the rest coming from the counties. In practice, the State seldom reimburses more than 30% of the cost of building a single county jail. Local governments must pay all of the jail's operating costs.

A separate study of detailed expenditure reports from six county jails puts the average per diem operating cost at $42.09 per day with an additional capital cost of $10.42 per day.

Community-Based Correctional Facilities

During FY 1993, DRC will plans an operating subsidy of $8,688,529 for six institutions with a total bed space of 375 ($67.89 per day). Since CBCFs are not allowed to operate over capacity, there is no "savings" from overcrowding. The first six CBCFs averaged $38,525 per bed to construct.

Minimum Security Misdemeanant Jails

The cost of operating MSMJs can vary widely depending on the level of security, treatment, and population of the facility. For example, in Summit County, the MSMJ focuses primarily on DUI offenders, many of whom have jobs. Thus the facility is full on the weekends, but operates at well below capacity during the work week. This is partly due to the reluctance of judges to have employed offenders serve sentences during work hours. In Summit County, if the facility operated at full capacity, the cost per day would be an estimated $26.69 per day.

The construction cost for MSMJs varies considerably, depending on whether a suitable building is available for renovation. The Governor's Office of Criminal Justice Service's program has assisted in the financing of construction of 899 MSMJ beds with a total cost of $29,540,649 for an average of $32,859. Renovating existing buildings can reduce the cost to as low as $8,300 per bed. Renovation can cost as much as new construction when modifications (perhaps including asbestos abatement) are extensive.

Debt Service

Recent prison construction (along with the State share of construction of jails, CBCFs, and MSMJs) has been totally or partially financed with bonds issued by the Ohio Building Authority. The cost of debt service can vary depending on the interest rate and the length of the bonds. Assuming 20 year bonds issued at 7.5 percent, here is the cost for debt service for one inmate at the various facilities:

Facility	Construction Cost	Daily Cost
State Prison (100%)	$53,417	$14.36
State Prison (175%)		8.25
County Jail (100%)	47,357	12.73
County Jail (121%)		10.53
CBCF	38,525	10.35
MSMJ	32,859	8.83

Halfway Houses

During FY 1991, the Department of Rehabilitation and Correction had contracts with halfway houses for 636 beds and a total cost of $7,812,233 ($12,283.39 per year, $33.65 per day).

Halfway house stays (usually for furlough or parole), while more expensive per day than State prison, are usually for shorter periods of time, thus the cost of the sentence is less. If, for example, an inmate is diverted from one year in a State prison to six months in a halfway house, then the cost of that sentence is considerably less.

Since halfway houses are usually contracted on a fixed amount basis, there are not economies of scale to be gained for the State through crowding.

Treatment

Treatment components can be added to virtually any sanction. Treatment runs the gamut from relatively inexpensive Alcoholics Anonymous programs to extensive inpatient therapies. Estimates on the cost of residential treatment range from as low as $40 per day in some halfway houses to as high as $103.75 per day. According to the DRC, the estimated cost for a day of treatment at a halfway house is $60.

The treatment component (for DUI offenders) at the Minimum Security Misdemeanant Jail in Summit County adds about $14.63 per day to the cost of the program. Often, the offender pays some or all of the cost, along with subsidies from local Alcohol, Drug Addiction, and Mental Health Boards.

Outpatient treatments are often considerably less expensive, with estimates running between $6.73 and $26 per day. Again, some or all of the costs of outpatient programs can be picked up by the offender or local treatment agencies.

Treatment for sex offenders is more expensive, an estimated $85 per day for a halfway house program.

Day Reporting

According to DRC, the estimated cost for a day at a day reporting center for an offender is $17.50. The center in Summit County costs about $18 per day. They are less expensive than residential settings because they do not house offenders overnight and can limit the meals provided.

Electronic Monitoring

The DRC estimates the cost for a day of electronic monitoring for an offender is $10 per day. The program in Summit County costs $12.50 per day, plus an initial $50 fee to hook up the system through the offender's telephone. Electronic monitoring programs often require the offender to pay for some or all of the costs.

Intensive Supervision

During FY 1992, the DRC spent $4,129,662 to divert 2,036 offenders from State prison to intensive supervision programs (ISP) for an average duration of one year. This works out to an average cost of $5.56 per day. Since ISP programs limit the number of offenders an officer can supervise (to around 20 to 25 offenders per officer), and often have other components, such as electronic monitoring and drug testing, it is difficult to get further economies of scale with intensive probation, as is possible with basic supervision.

The per diem cost does not include the cost of incarcerating those who fail in the program. Because of the higher risk level of the typical offender and the greater amount of supervision, there are often more violators and absconders than with basic supervision. An ISP study by the RAND Corporation estimated the costs to be $19.84 per day when the cost of incarcerating violators is added to the cost of supervision.

Basic Supervision

Basic supervision can range from unsupervised (where an offender is only required to be law-abiding for the probation period) to fairly strict supervision coupled with drug testing, restitution payment, outpatient treatment, and the like. Basic supervision is most often used as a condition of probation or parole supervision.

The DRC provides basic probation supervision services and presentence investigation (PSI) preparation to several counties, as well as parole supervision for their own parolees. The Department classifies its supervisees, on both probation and parole, in terms of work units, with higher risk offenders having more work units. The average probation offender is about 3 work units, while the average parolee is 5 work units. Each officer supervises offenders whose total work units add up to between 210 and 220. The system is designed so that each work unit represents about 33 minutes of

contact per month by the officer.

During FY 1991, the DRC averaged about 63,060 work units per day for probationers and parolees. That year, the DRC's Division of Parole and Community Services spent $22,995,508. This works out to $364.66 per year, or about $1 per day, per work unit. The average probationer therefore costs about $3 per day, while the average parolee costs about $5 per day. This includes most administrative overhead, and the cost of preparing PSIs.

NOTES ON DISPARITY

The subject of racial disparity in the justice system has been debated considerably. There have been numerous efforts to address the issue by sentencing commissions around the country. A discussion of these efforts can be found in the University of Colorado Law Review (Volume 64/Issue 3/1993).

The Commission's Plan

There is potential for bias in the criminal justice system any time discretion is exercised. There can be unfair decisions made at arrest, charging, indictment, plea negotiation, trial, sentencing, and parole decisions, to name some. Thus, sentencing is only one stage.

The plan addresses disparity in several ways. It would expressly prohibit sentencing based on an offender's race, ethnicity, gender, or religion. Judges would be instructed to choose sentences that treat similar offenders similarly. The plan would police these provisions by requiring appeals courts to review sentences that are contrary to law and by authorizing those courts to hear cases that allege that an individual judge's sentences show such a bias.

The plan also would require judges to consider a crime to be more serious if motivated by prejudice as to race, ethnicity, gender, sexual orientation, or religion.

The Commission's concerns about disparity went beyond such obvious criteria as race and gender. For example, there was concern about consistency in the application of drug laws throughout the State, particularly regarding crack cocaine. Those possessing crack could be charged by "unit doses", with each rock, regardless of size, equalling a dose. Thus, small fragments could be considered "rocks", leading to stiff penalties. The Commission recommends elimination of the unit dose's application in crack cases. The amount involved should be the actual weight of the crack, irrespective of the size of the rocks involved. This will result in considerably less disparity, both within jurisdictions and statewide.

The Commission's Research

The Commission's staff has studied offenders statewide to see if those with similar offense levels and criminal histories received similar sentences. Offenders were examined to see how sentencing patterns for similar offenders varied by race, gender, and size of jurisdiction. Using the tracking study data, the staff is developing a computer model which will simulate the sentencing decisions based on criminal history, offense seriousness, race, and gender. The model will be used to see precisely which conditions

foster racial disparities in imprisonment decisions. Some preliminary observations follow.

The size of the county can affect sentencing patterns by race, especially since the non-white populations of less populous counties are quite small when compared to the highly urbanized counties. Of the 805 indictments examined, whites accounted for 33.6% of the large county indictments, 68.9% of the medium-sized county indictments, and 88.8% of the small county indictments.

Large counties typically have less available jail space (small counties have 42% more jail space, controlling for crime rates, than large counties), making split sentencing to local jails a less viable option for non-whites. Thus, non-whites are sent to prison at higher rates from large counties. Conversely, since medium and small counties indict more whites and have more space available in local jails, a higher percentage of whites receive a split sentence rather than a prison term. Likewise, larger counties have better access to residential treatment programs, which is why African-Americans are more highly represented in those programs.

One way to test racial disparity is to look at the percentage of non-whites (primarily African-Americans, but also a few Hispanics, Asians, and Native Americans) at various stages of the criminal justice process. The table below shows the percentage of non-whites at arrest, indictment, conviction, and imprisonment, based on the Commission's tracking study and the FBI's Uniform Crime Reports. If the percentage of those imprisoned is higher than those convicted or indicted, then there is arguably a bias against non-whites in sentencing. Inversely, if the percentage is lower, then there is an arguable bias against whites.

Biases in the justice system are not in and of themselves of concern to the Sentencing Commission, so long as they are based on legitimate legal concerns. Males comprise the overwhelming majority of criminal offenders. Yet few would suggest there is an institutional bias against men, because men commit the overwhelming majority of felonies. In the same way, biases in favor of or against non-whites may be because of a greater involvement of non-whites in serious felonies. Other factors such as criminal history also may play a role in observed biases.

The staff did not find statistical patterns of racial bias for high-level felonies. But, as the following table shows, arguable biases against non-whites show up in the lower level offenses, (i.e., assaults, thefts, and drug abuse).

PERCENTAGE OF NON-WHITES AT STAGES OF THE JUDICIAL PROCESS

OFFENSE	*ARREST % NON-WHITE	INDICTMENT % NON-WHITE	CONVICTION % NON-WHITE	IMPRISONMENT % NON-WHITE
Homicide	69.3	69.2	63.6	63.6
Sex Offenses	33.1	36.8	32.2	31.9
Robbery	69.7	68.9	65.7	65.6
Burglary	40.4	39.2	39.4	37.7
Drug Abuse	60.5	86.1	84.2	89.1
Drug Trafficking	68.3	62.7	60.8	65.8
Assault	53.3	51.3	48.3	62.9
Theft	43.7	48.4	53.2	59.7
All Felonies	47.8	56.2	55.6	60.2

*From the 1990 Uniform Crime Reports for Ohio, Governor's Office of Criminal Justice Services.

Obviously, racial disparity is more complicated than looking at ethnicity percentages at various stages of the justice process. For example, levels of disparity in jurisdictions are often related to the overall incarceration rate. Those with higher incarceration rates tend to have lower racial disparity rates. The Commission staff will continue to study disparity, and prepare a more detailed report on racial and gender disparity in the coming months.

NOTES ON UNIFORMITY

A common stereotype in Ohio's justice system is that judges in rural counties are more likely to send offenders to State prison than those in urban counties. The theory is that individual crimes are rarer and more visible in small communities, and therefore there is more pressure on judges to imprison. Also, there are fewer sentencing alternatives available in small communities, leaving judges with few options other than imprisonment. The Commission's staff studied Ohio county by county to see if there were patterns that matched the stereotype.

The table below shows the DRC intake and available jail space adjusted for crimes recorded by the FBI's Uniform Crime Reports. It shows that small and large counties send the same percentage of UCR offenders to prison.

However, the pattern changes regarding jail beds. There is more space in small county jails than large county jails (again, as a percentage of UCR crimes). The extra jail space allows small county judges to split sentence to county jails more often than large county judges.

County Size	DRC Intake Per 100 UCR Crimes	Jail Beds Per 100 UCR Crimes
Large (>400,000 population)	4.0	1.41
Medium (100,000-400,000 population)	2.9	1.61
Small (<100,000 population)	4.0	2.01
Ohio Overall	3.7	1.54

The Commission's staff then examined the DRC Intake Study to see if large and small counties were sending to prison offenders with similar criminal histories and offense seriousness.

The next table shows that, while small and large counties imprison the same number of offenders per 100 UCR crimes, the prison bound offenders in large counties tend to have more prior felony convictions. Also, a slightly higher proportion of large county prison bound offenders are convicted of high level felonies (F-1s, F-2s, and murders). Thus, smaller counties send offenders to prison who, on balance, have shorter criminal histories and less serious crimes than those sentenced from large counties.

County Size	Ave. Number of Prior Felonies	Percent F1, F2, and Unclassified
Large (>400,000 population)	1.86	22.6%
Medium (100,000-400,000 population)	1.91	27.0%
Small (<100,000 population)	.95	21.1%
Ohio Overall	1.73	23.1%

Counties with medium-sized populations show a different pattern. They send proportionately fewer offenders to State prison, and those that they do send are on average more serious than those of large and small counties. Medium-sized counties seem willing to take risks with offenders in the community that neither large nor small counties are willing to do.

Medium-sized counties typically have about the same number of sentencing options as small counties. *(See the Appendix, printed separately, for a report that profiles sentencing options and the offenders sentenced to them in 18 counties.)* However, the counties are large enough and crimes frequent enough that individual crimes are not as visible to the community, making it easier for judges to select a non-prison sanction.

SENTENCING FOR FELONIES

(The Sentencing Commission's Proposed Draft, 7/1/93)

§2901.01 DEFINITION

As used in the Revised Code: . . .

(I) "Offense of violence" means any of the following:

(1) A violation of sections 2903.01 [aggravated murder], 2903.02 [murder], 2903.03 [voluntary manslaughter], 2903.04 [involuntary manslaughter], 2903.11 [felonious assault], 2903.12 [aggravated assault], 2903.13 [assault], 2903.21 [aggravated menacing], 2903.211 [menacing by stalking], 2903.22 [menacing], 2905.01 [kidnapping], 2905.02 [abduction], 2905.11 [extortion], 2907.02 [rape], 2907.03 [sexual battery], 2907.05 [gross sexual imposition], 2907.12 [felonious sexual penetration], 2909.02 [aggravated arson], 2909.03 [arson], 2911.01 [aggravated robbery], 2911.02 [robbery], 2911.11 [aggravated burglary], 2911.12 [burglary], 2917.01 [inciting to violence], 2917.02 [aggravated riot], 2917.03 [riot], 2917.31 [inducing panic], 2919.25 [domestic violence], 2921.03 [intimidation], 2921.04 [intimidation of crime victim or witness], 2921.34 [escape], and 2923.161 [discharging firearm into habitation or school] of the Revised Code . . ..

§2929.01 DEFINITIONS

As used in this chapter:

(A) "Bad time" means time added to an offender's prison sentence by the Parole Board under section 2929.21 of the Revised Code, beyond the offender's prison term or terms imposed under section 2929.14 of the Revised Code, for the offender's serious misbehavior in prison.

(B) "Community control" means a sanction other than a prison term, including but not limited to, any sanction imposed under sections 2929.16, 2929.17, or 2929.18 of the Revised Code;

(C) "Deadly weapon" and "firearm" have the same meaning as in section 2923.11 of the Revised Code;

(D) "Jail" means a residential facility for offenders that is operated by a political subdivision. "Jail" includes a county, multi-county, municipal, municipal-county, or multi-county-municipal jail or workhouse;

(E) "Juvenile delinquent" means a person who has been adjudicated a delinquent child as defined in section 2151.02 of the Revised Code;

(F) "Major drug offender" means an offender convicted of possession or sale of at least one thousand grams of cocaine powder, hashish, or hashish oil, one hundred grams of crack cocaine, two hundred fifty grams of heroin, five thousand unit doses of lysergic acid diethylamide, or at least one hundred times the amount necessary to commit a third degree felony violation involving other Schedule I or II controlled substances under Chapter 2925. or 3719. of the Revised Code, other than marijuana.

(G) "Mandatory prison term" means the term in prison that shall be imposed and not reduced for the offenses or circumstances set forth in division (F) of section 2929.13 and division (E) of section 2929.14 of the Revised Code. Unless the maximum or another specific term is required under the latter section, the sentencing judge may impose as a "mandatory prison term" any prison term authorized for the level of offense that is subject to the mandatory term;

(H) "Mandatory jail term" means the term in jail that shall be imposed and not reduced under section 4507.99 [DUS] or 4511.99 [OMVI] of the Revised Code *[for later discussion]*;

(I) "Offender" means a person convicted in this state of a felony or a misdemeanor.

(J) "Previously convicted of aggravated murder, murder, or any first or second degree felony" means the person was convicted of any such crime under existing or former law of this state, any other state, or the United States that is substantially equivalent to aggravated murder, murder, or a first or second degree felony.

(K) "Prison" means a residential facility for felony offenders under the control of the Department of Rehabilitation and Correction.

(L) "Prison term" includes any of the following sanctions:
(1) A stated prison term;
(2) A prison term shortened under section 2929.22 of the Revised Code [Covers "shock", extended sentence review, "boot camp", and furlough releases];
(3) A prison term imposed by the sentencing court or Parole Board on offenders who violate conditions of community control and who are not amenable to other community control sanctions.

(M) "Repeat violent offender" means a person about whom all of the following apply:
(1) The person is convicted of aggravated murder, murder, a first or second degree felony, or an attempt to commit such an offense;
(2) The offense involved or resulted in attempted or actual serious physical harm to a person;
(3) The person was previously convicted of an aggravated murder, murder, or

a first or second degree felony and served a prison term;

(4) The prior felony resulted in actual physical harm to a person;

(5) The offense for which the offender is being sentenced occurred five years or less since the end of the maximum period of post-release control authorized for the previous conviction by section 2929.23 of the Revised Code.

(N) "Sanction" means any residential or nonresidential incapacitation, control, program, or treatment and any financial duty imposed upon an offender as a result of the offender's conviction for a crime. "Sanction" includes, but is not limited to, the sanctions under sections 2929.14 through 2929.18 of the Revised Code.

(O) "Sentence" means any sanction imposed by the sentencing judge on an offender;

(P) "Stated jail term" *[To be added; basically, the jail term imposed by a judge, typically for a misdemeanor.]*

(Q) "Stated prison term" means the time an offender will spend in prison unless extended by bad time under section 2929.21 or reduced under section 2929.22 of the Revised Code. The offender's stated prison term is calculated by adding all prison terms imposed by the sentencing judge under section 2929.14 of the Revised Code. The "stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense. It also includes any time spent under electronic monitoring or similar restrictions imposed after earning credits under section 2929.22 of the Revised Code. [Traditional "good time" reductions and parole releases would be abolished.]

2929.02-.06 AGGRAVATED MURDER AND MURDER

[No change from current penalties except for elimination of "good time" reductions.]

§2929.11 SENTENCING PURPOSES AND PRINCIPLES

(A) **OVERRIDING PURPOSES** The overriding purposes for imposing a sentence on an offender are to protect the public from future crime by the offender and others and to punish the offender. To achieve these purposes, the sentencing judge shall select an appropriate sanction, within the framework of law and fairness, by considering the need for incapacitation, deterrence, rehabilitation, and restitution.

(B) **PRINCIPLES IN CHOOSING A SENTENCE** In imposing a sentence under this chapter, the judge shall consider all of the following principles:

(1) The sentence should be reasonably calculated to achieve the overriding purposes set forth in this section;

(2) The sentence should be commensurate with, and not demean, the seriousness of the offender's conduct and its impact on the victim;

(3) The sentence should be consistent with sentences for other offenders with similar characteristics who have committed similar crimes.

(C) **PROHIBITED SENTENCING BASES** The judge shall not base a sentence on the race, ethnic background, gender, or religion of the offender.

§2929.12 JUDICIAL DISCRETION AND SENTENCING FACTORS

(A) **JUDICIAL DISCRETION** Except as otherwise provided in this chapter, the sentencing judge has discretion to determine the most effective way to achieve the overriding purposes and principles of sentencing under section 2929.11 of the Revised Code. In exercising that discretion, the judge shall consider the factors related to the seriousness of the conduct and recidivism under this section.

(B) **FACTORS INCREASING SERIOUSNESS** The judge shall consider all of the following, among other relevant factors, as indicating the offender's conduct is more serious than conduct normally constituting the offense:

(1) The impact of the conduct was greater because of the physical or mental condition or age of the victim;

(2) The victim suffered serious physical, psychological, or economic harm as a result of the offense;

(3) The offense related to a public office or position of trust in the community held by the offender;

(4) The offender's position obliged the offender to prevent the offense or bring others committing it to justice;

(5) The offender's professional reputation or position was used to facilitate the offense or is likely to influence the conduct of others;

(6) The offender's relationship with the victim was used to facilitate the offense;

(7) The offense was committed for hire or as a part of an organized criminal business;

(8) The offense was motivated by prejudice as to race, ethnic background, gender, sexual orientation, or religion.

(C) **FACTORS DECREASING SERIOUSNESS** The judge shall consider the following, among other relevant factors, as indicating the offender's criminal conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense;

(2) The offender acted under strong provocation;

(3) The offender did not cause or expect to cause physical harm to any person

or property;

(4) There are substantial grounds to mitigate the offender's conduct, although not enough to constitute a defense.

(D) **FACTORS INDICATING RECIDIVISM IS MORE LIKELY** The judge shall regard the following, among other relevant factors, as indicating the offender is likely to commit future crimes:

(1) The offender was released from confinement before trial or sentencing, under community control imposed for an earlier offense, or under post-release control at the time of the offense;

(2) The offender was adjudicated a juvenile delinquent or has a history of adult convictions;

(3) The offender has not responded favorably to sanctions previously imposed for juvenile delinquent or adult criminal acts;

(4) The offender refuses to acknowledge a demonstrated pattern of drug or alcohol abuse which is related to the offense, or refuses treatment for the abuse;

(5) The offender shows no remorse for the offense.

(E) **FACTORS INDICATING RECIDIVISM IS LESS LIKELY** The judge shall regard the following, among other relevant factors, as indicating the offender is unlikely to commit future crimes:

(1) The offender has never been adjudicated a juvenile delinquent or adult offender;

(2) The offender led a law-abiding life for a significant number of years before the offense;

(3) The offense was committed under circumstances unlikely to recur;

(4) The offender shows genuine remorse for the offense.

§2929.13 IMPOSING FELONY SENTENCES GENERALLY

(A) **JUDICIAL DISCRETION** Unless a specific sanction is required or precluded by law, the sentencing judge may impose any sanction or combination of sanctions on an offender, as provided in this chapter. The sentence should not impose an unnecessary burden on state or local resources.

When the offender is eligible for community control sanctions, the judge shall consider the appropriateness of a financial sanction or community service as the sole sanction for the offense.

Before imposing a sanction under this chapter, the judge shall consider any presentence investigation report prepared under section 2951.03 and any victim's impact statement prepared under sections 2947.051 and 2930.13 of the Revised Code.

(B) **PRESUMPTION AGAINST A PRISON TERM** Except as provided in division (E) of this section, for a fourth or fifth degree felony, it is presumed that a prison term is

not necessary to achieve the overriding purposes and principles of sentencing under section 2929.11 of the Revised Code, unless the judge finds any of the following on the record at the sentencing hearing:

(1) The offender caused physical harm to a person;

(2) The offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon;

(3) The offender attempted to cause or made an actual threat of physical harm to a person and was previously convicted of an offense that caused physical harm to a person;

(4) The offense related to a public office or position of trust held by the offender, the offender's position obliged the offender to prevent the offense or to bring those committing it to justice, or the offender's professional reputation or position facilitated the offense or was likely to influence the conduct of others;

(5) The offender committed the offense for hire or as part of an organized criminal business;

(6) The offender committed a violation of Chapter 2907. of the Revised Code involving sexual activity as defined in section 2907.01 of the Revised Code;

(7) The offender previously served a prison term;

(8) The offender violated the conditions of community control imposed by a court, and is not amenable to other community control sanctions, or committed another crime while under the sanction.

(C) **NO PRESUMPTION** Except as provided in division (E) of this section, there shall be no presumption in favor of or against a prison term for any third degree felony or for any fourth or fifth degree felon against whom the judge made any of the findings in division (B) of this section.

(D) **PRESUMPTION IN FAVOR OF A PRISON TERM** Except as provided in division (E) of this section, for a first or second degree felony, and for violations of Chapter 2925. or 3719. of the Revised Code [drug laws] in which such a presumption is stated, it is presumed that a prison term is necessary to achieve the overriding purposes and principles of sentencing under section 2929.11 of the Revised Code, unless the judge makes both of the following findings on the record at the sentencing hearing:

(1) A community control sanction should adequately punish the offender and protect the public from future crime because any factors indicating a decreased likelihood of recidivism under section 2929.12 of the Revised Code outweigh any factors indicating an increased likelihood of recidivism under that section;

(2) A community control sanction would not demean the seriousness of the offense because any factors decreasing the seriousness of the offender's conduct under section 2929.12 of the Revised Code outweigh any factors increasing the seriousness of the conduct under that section.

(E) **DRUG PRESUMPTIONS**

(1) **Presumption Against Prison** For any fifth degree felony violation of

Chapter 2925. or 4729. of the Revised Code involving possession of any controlled substance, it is presumed that a prison term is not necessary to achieve the overriding purposes and principles of sentencing unless the judge makes any of the findings under division (B) of this section on the record at the sentencing hearing.

(2) **No Presumption** There shall be no presumption in favor of or against a prison term for any of the following:

(a) Any fifth degree felony that involves the sale of a controlled substance;

(b) Any fourth degree felony that involves the possession of a controlled substance other than powder or crack cocaine or hashish or hashish oil;

(c) Any fourth degree felony that involves the sale of marijuana or any Schedule I or II controlled substance other than powder or crack cocaine, heroin, hashish or hashish oil, or lysergic acid diethylamide;

(d) Any third degree felony that involves marijuana;

(e) Any other third, fourth, or fifth degree felony violation of Chapter 2925., 3719., or 4729. of the Revised Code.

(3) **Presumption For Prison** For other felonies involving a controlled substance under Chapter 2925. or 3719. of the Revised Code, it is presumed that a prison term is necessary to achieve the overriding purposes and principles of sentencing, unless the judge makes the findings required under division (D) of this section on the record at the sentencing hearing.

(4) **Presumption On Violation Of Community Control** As used in this division, "drug treatment program" means narcotics anonymous or similar programs, other nonresidential treatment, or residential drug treatment.

It is presumed that a prison term is not necessary to achieve the overriding purposes and principles of sentencing for a violation of community control, and that the offender should be placed in a drug treatment program for the violation, if all of the following are true:

(a) The offender was convicted of a violation of Chapter 2925., 3719., or 4729. of the Revised Code and there was a presumption against prison under division (E)(1) of this section;

(b) The offender was placed under a community control sanction for the offense, either in lieu of a prison term or as a condition of post-release control;

(c) The offender violated community control solely by possessing or using a controlled substance;

(d) The offender has not previously failed to meet the conditions of a community control drug treatment program.

(F) **MANDATORY PRISON TERMS** Notwithstanding divisions (A), (B), (C), and (E) of this section, a prison term or terms shall be imposed under section 2929.14 of the Revised Code and not reduced:

(1) For any of the following offenses:

(a) Aggravated murder and murder;

(b) Rape and felonious sexual penetration;

(c) Aggravated vehicular homicide or vehicular homicide when a prison term is

mandated by section 2903.06 or 2903.07 of the Revised Code;

(d) First and second degree felony violations of Chapter 2925. or 3917. of the Revised Code, or a violation of 2925.02 of the Revised Code unless it involved a Schedule III, IV, or V controlled substance and did not occur within one thousand feet of a school or within one hundred feet of a juvenile;

(e) Third degree felony violations of Chapter 2925. or 3719. of the Revised Code that involve the sale of a controlled substance, unless the sale involved marijuana, heroin, or any Schedule III, IV, or V controlled substance;

(f) Third degree felony violations of Chapter 2925. or 3719. of the Revised Code that involve the possession of powder cocaine.

(2) For any other first or second degree felon who was previously convicted of aggravated murder, murder, or any first or second degree felony, and for any repeat violent offender, as defined in section 2929.01 of the Revised Code.

(3) For an offender who had a firearm on or about the offender's person or under the offender's control while committing a felony.

§2929.14 IMPOSING PRISON TERMS

(A) **BASIC RANGES OF PRISON TERMS** When the sentencing judge elects or is required to impose a prison term under this chapter, the judge shall impose a term from the following ranges:

(1) For a first degree felony, three, four, five, six, seven, eight, nine, or ten years;

(2) For a second degree felony, two, three, four, five, six, seven, or eight years;

(3) For a third degree felony, one, two, three, four, or five years;

(4) For a fourth degree felony, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months;

(5) For a fifth degree felony, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(B) **FIRST PRISON TERM** If the judge elects or is required to impose a prison term on an offender who has not previously served a prison term, the judge shall impose the minimum term authorized for the offense by division (A) of this section, unless the judge finds on the record that the minimum term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

(C) **TERMS BETWEEN THE MINIMUM AND MAXIMUM** If the judge elects to impose a prison term between the minimum and maximum terms authorized for the offense by division (A) of this section, the judge shall select a term that is commensurate with and does not demean the seriousness of the offender's conduct and will adequately protect the public from future crime by the offender or others.

(D) **MAXIMUM PRISON TERM** The judge may impose the maximum prison term authorized for the offense by division (A) of this section only for the most serious forms of the offense, for offenders who pose the greatest likelihood of committing future crimes, for major drug offenders under division (E)(3), and for certain repeat violent offenders under division (E)(2) of this section.

(E) **ADDITIONAL PRISON TERMS**

(1) **Firearm Terms** (a) After imposing a prison term under division (A) of this section for any felony, the judge shall impose an additional prison term of three years, which cannot be reduced, on an offender who is convicted of a specification charging the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony, provided the firearm was brandished, used to facilitate the offense, or there was clear indication that the offender possessed the firearm. If the firearm is an automatic firearm or equipped with a firearm muffler or silencer, the judge shall instead impose an additional prison term of six years, which cannot be reduced.

If the firearm was on or about the offender's person or under the offender's control while committing the felony, but was not brandished, not used to facilitate the offense, or there was no clear indication that the offender possessed the firearm, then the judge shall instead impose an additional prison term of one year, which shall not be reduced.

(b) The additional terms under division (E)(1)(a) of this section shall not apply when the felony is carrying a concealed weapon. Such additional terms also shall not apply when the felony is having a weapon under disability unless the offender was previously convicted of aggravated murder, murder, or any first or second degree felony and less than five years had passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(2) **Repeat Violent Offender Term**

(a) If a judge finds that an offender is a repeat violent offender, the judge shall impose a prison term under division (A) of this section, which shall not be reduced.

(b) If the repeat violent offender, in committing the offense, caused any physical harm which carried a substantial risk of death or which involved substantial permanent incapacity or substantial permanent disfigurement, the judge shall impose the maximum prison term authorized for the offense under division (A) of this section.

(c) If the judge imposes the maximum term under division (A) of this section, the judge may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if the judge finds, on the record, that the terms imposed under division (A) and, if applicable, division (E)(1) and (3) of this section are either:

(i) Inadequate to punish the offender and protect the public from future crime because any factors indicating an increased likelihood of recidivism under section 2929.12 of the Revised Code outweigh any factors indicating a decreased likelihood of recidivism under that section;

(ii) Demeaning to the seriousness of the offense because any factors increasing the seriousness of the offender's conduct under section 2929.12 of the Revised Code outweigh any factors decreasing the seriousness of the conduct under that section.

(3) **Term For Major Drug Offenders, Attempted Child Rapists, And Certain Corrupt Activity** [Where the death penalty or life imprisonment are available at present (for aggravated murder, murder, and child rape), they would be retained by the Commission's plan.] If a judge finds an offender is a major drug offender, guilty of corrupt activity when the most serious offense in the pattern is a first degree felony, or guilty of attempted rape or attempted felonious sexual penetration when the victim is under age thirteen, the judge shall impose a ten year prison term, which cannot be reduced. The judge may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the judge finds, on the record, that the terms imposed under division (A) and, if applicable, division (E)(1) and (2) of this section are inadequate or demeaning as provided in divisions (E)(2)(c)(i) or (ii) of this section.

(F) **CONSECUTIVE PRISON TERMS**

(1) **Mandatory.** The judge shall impose consecutive prison terms when a mandatory prison term of one, three, or six years is imposed for having a firearm in the commission of a felony, when aggravated riot, riot, escape, or aiding escape is committed by an inmate in a residential sanction, or when a new felony is committed by an offender in the course of or after an escape from a residential sanction.

(2) **Discretionary.** The judge may impose consecutive prison terms for multiple offenses, when necessary to protect the public from future crime and to punish the offender, and when consecutive sentences are not disproportionate to the seriousness of the offender's conduct and danger to the public, if the judge finds on the record any of the following:

(a) The offenses were committed while the offender was awaiting trial or sentencing for another offense, under community control imposed for an earlier offense, or under post-release control at the time of the offense;

(b) The harm caused was so great or unusual that no single prison term for offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct;

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

§2929.15 IMPOSING NON-PRISON SANCTIONS

(A) **ELIGIBILITY** Unless otherwise provided, any offender who is not required to serve a mandatory prison term may be sentenced to a sanction or sanctions under section 2929.16, 2929.17, and 2929.18 of the Revised Code.

(B) **DURATION OF NON-PRISON SANCTIONS** If imposed, a community control sanction or combination of such sanctions shall not exceed five years for any felony.

(C) **PENALIZING VIOLATORS** If conditions of a community control

sanction are violated, the sentencing court may impose, or order imposition of, a longer term under the sanction, additional conditions, or a more restrictive sanction including a prison term. The court may reduce the period that the offender shall spend under community control or in prison for the violation by the time successfully spent under community control before the violation occurred, if a sanction is imposed for the violation.

(D) **REWARDING SUCCESS** If an offender fulfills conditions of a community control sanction in an exemplary manner for a significant period, the judge may impose, or order imposition of, a shorter time under the sanction or a less restrictive sanction.

§ 2929.16 RESIDENTIAL SANCTIONS OTHER THAN PRISON

(A) **RESIDENTIAL SANCTIONS** The sentencing judge may sentence any felony offender who is not required to serve a mandatory prison term to residential community control sanctions including, but not limited to, the following:

(1) **COMMUNITY-BASED CORRECTIONAL FACILITY** A community-based correctional facility and program developed under sections 2301.51 through 2301.56 of the Revised Code or a substantially similar facility and program, for up to six months.

The primary purposes of a community-based correctional facility are to incapacitate felony offenders while encouraging rehabilitation, including but not limited to, employment, training, education, treatment, habilitation, compliance with financial sanctions, and other activities designed to rehabilitate the offender and deter future crime.

(2) **JAIL** A jail term for up to four months for a felony of the third, fourth, or fifth degree.

(3) **HALFWAY HOUSE** A halfway house term for up to six months. The primary purposes of a halfway house term are to limit the offender's freedom while encouraging reintegration into society through rehabilitation, including but not limited to, employment, training, education, treatment, habilitation, compliance with financial sanctions, and other activities designed to rehabilitate the offender and deter future crime.

(4) **OTHER TREATMENT OR WORK FACILITY** A residential term for purposes including, but not limited to, treatment, habilitation, seeking or maintaining employment, training, or similar purposes. The judge may specify the level of security needed for the offender.

The primary purposes of residential terms are to rehabilitate the offender, obtain, to maintain needed treatment, employment, or education, and to deter future crime.

(B) **INTERMITTENT CONFINEMENT AND WORK RELEASE** The judge may authorize the release of an offender under any sanction, other than a mandatory prison term, to seek or maintain work, training, education, or treatment. Releases under this

division shall be only for the duration needed to fulfill the purpose of the release and for reasonable travel to and from the residential facility. The court may order that a reasonable part of any income earned may be applied to any financial sanction imposed under section 2929.18 of the Revised Code.

§ 2929.17 NONRESIDENTIAL SANCTIONS

The sentencing judge may sentence any eligible offender who does not have to serve a mandatory prison term to nonresidential community control sanctions including, but not limited to, the following:

(A) **DAY REPORTING** A day reporting term under which an offender shall attend a day reporting program, or employment, school, treatment, or other activity approved by the judge that is monitored by a day reporting program. An offender sentenced to day reporting shall report to and leave the center or other approved place each day at assigned times, leave the center or place during assigned times only for approved purposes, and be subject to a curfew during time not spent at the center.

The primary purposes of day reporting are to partially incapacitate, punish, and rehabilitate the offender, and to deter future crime at reduced costs.

(B) **HOUSE ARREST** A house arrest term under which the offender shall remain at a residence or other suitable setting.

The primary purposes of house arrest are to punish and partially incapacitate the offender at minimal costs.

(C) **COMMUNITY SERVICE** A term of community service under which the offender consents to perform supervised community service work without remuneration for up to five hundred hours under division (H) of section 2951.02 of the Revised Code.

The primary purposes of community service are to encourage the offender to repay society for some or all of the harm caused by the offense and to foster greater social responsibility and rehabilitation.

The judge may consider imposing community service on any offender who is unable to pay restitution to the victim of the offense or to comply with other financial sanctions.

(D) **OUTPATIENT PROGRAMS** An outpatient term for purposes, including, but not limited to, intervention or treatment for alcohol or other drug abuse, sexual misconduct, and mental health, mental retardation habilitation, seeking or maintaining employment or training, or other innovative programs. The judge may specify the level of security needed for the offender.

The primary purposes of such outpatient terms are to rehabilitate the offender through needed treatment, employment, or education, and to deter future crime in a setting that is less expensive than residential settings.

(E) **INTENSIVE SUPERVISION** A term of intensive supervision under which the offender shall maintain frequent contacts with a supervising officer while seeking or maintaining necessary employment and participating in training, education, and treatment programs specified in the judge's order.

The primary purposes of an intensive supervision term are to limit an offender's freedom, encourage the offender's rehabilitation, and deter future crime at minimal costs.

(F) **BASIC SUPERVISION** A term of basic supervision under which the offender shall maintain contact with a supervising officer while meeting conditions set by the judge.

The primary purposes of basic supervision are to give the offender an opportunity to lead a law-abiding life rather than impose a more restrictive or expensive sanction, while providing supervision to encourage that other conditions imposed upon the offender are met.

(G) **MONITORED TIME** A term of monitored time under which the offender continues to be under the control of the sentencing court or Parole Board subject to no conditions other than leading a law-abiding life.

The primary purposes of monitored time are to encourage the offender to lead a law-abiding life, at minimal costs, during a period of minimal court control.

(H) **DRUG AND ALCOHOL TESTING** An order that the offender submit to random testing for consumption of alcohol, other drugs, or both.

The primary purpose of alcohol or other drug testing is to help assure that an offender remains free of alcohol and other drug abuse.

(I) **ALCOHOL OR OTHER DRUG ABSTINENCE** A term of alcohol abstinence or other drug abstinence during which the offender shall refrain from using alcohol or another drug. Abstinence shall be monitored by random drug or alcohol testing.

The primary purpose of a term of alcohol or other drug abstinence is to encourage an offender to remain free of substance abuse at less cost than formal treatment.

(J) **ELECTRONIC MONITORING** A term under the control of an electronic monitoring device, as defined in section [existing] 2929.23 of the Revised Code.

The primary purpose of electronic monitoring is to help verify that the offender is in an assigned place.

(K) **CURFEW** An order placing the offender under a curfew that requires the offender to be at a designated place at designated times.

The primary purpose of a curfew is to limit the freedom of an offender at minimal cost.

(L) **EMPLOYMENT** An order requiring the offender to seek or maintain

gainful employment. The primary purpose of employment is to reintegrate the offender into the community and foster greater social responsibility.

(M) **EDUCATION** An order requiring the offender to obtain vocational or academic education, including literacy. The primary purpose of education is to give the offender the knowledge or skills needed to find gainful employment and to foster greater social responsibility.

(N) **VICTIM-OFFENDER MEDIATION** If the victim consents, order the offender to participate in a victim-offender reconciliation or mediation program that allows the victim and offender to discuss the offense and, when appropriate, helps establish restitution and other sanctions.

The primary purposes of victim-offender mediation are to allow willing victims to help establish appropriate sanctions and to demonstrate the impact of crimes to offenders.

(O) **PROFESSIONAL LICENSE VIOLATION REPORTS** Reporting the conviction to the regulatory board or agency that has administrative authority to suspend or revoke the license or permit, if the offender is professionally licensed by the state or owns a business that is regulated by the state.

The primary purpose of the report is to encourage the professional punishment of offenders.

§ 2929.18 FINANCIAL SANCTIONS

(A) The sentencing judge may sentence any offender to pay a financial sanction or sanctions. If the offender does not have the current or likely future ability to reasonably pay a financial sanction, the court shall consider imposing a sentence of community service.

Financial sanctions include, but are not limited to, the following:

(1) **RESTITUTION** A term of restitution under which the offender shall repay the victim of the offender's crime an amount based on the victim's economic loss, as defined in section 2743.51 of the Revised Code, and on the victim's property loss. It may include reimbursement to third parties for amounts paid to the victim as a result of the offense. If such reimbursement is made, it shall be made first to any governmental entity, then to any private entity.

The primary purposes of restitution are to compensate the victim through repayment of losses incurred as a result of an offense and to foster greater social responsibility and rehabilitation.

At sentencing, the judge shall determine the amount of restitution to be paid by the offender. Restitution payment shall be credited against any recovery of economic loss in a civil action brought by the victim against the offender.

(2) **FINES** Either of the following:

(a) **Day Fine** A day fine term under which the offender shall pay a financial penalty to the state or a political subdivision that is based on a standard percentage of the offender's daily income over a time period determined by the seriousness of the offense. A day fine shall not exceed the amount authorized for the offense level by division (A)(2)(b) of this section.

The primary purposes of a day fine are to punish an offender in a manner tailored to the offender's ability to pay and to recoup some of the costs of the offender's proceedings.

(b) **Conventional Fine** A fine term under which the offender shall pay a financial penalty to the state or a political subdivision.

The primary purposes of a conventional fine are to punish an offender and to recoup some of costs of the offender's proceedings.

When appropriate for a felony, a fine shall be imposed as follows:

(i) For a first degree felony, not more than twenty thousand dollars;

(ii) For a second degree felony, not more than fifteen thousand dollars;

(iii) For a third degree felony, not more than ten thousand dollars;

(iv) For a fourth degree felony, not more than five thousand dollars;

(v) For a fifth degree felony, not more than two thousand five hundred dollars.

(c) **Mandatory Drug Fine** In sentencing offenders for first, second, and third degree violations of Chapter 2925. or 3719. of the Revised Code [drug laws], the sentencing judge shall impose a mandatory fine term of at least one-half, but not more than, the maximum fine available for the level of offense under division (A)(2)(b) of this section. Any fine imposed for a violation of Chapter 2925. or 3719., whether mandatory or not, shall be paid to law enforcement agencies pursuant to division (J) of section 2925.03 of the Revised Code.

(3) **REIMBURSEMENT** A term of reimbursement under which the offender shall repay either or both of the following:

(a) All or part of the costs of any community control or collection of financial sanctions incurred in the offender's case.

(b) All or part of the costs of confinement in a jail under [existing] section 2929.15 of the Revised Code that do not exceed ten thousand dollars or the assets of the offender, whichever is greater;

(c) All or part of the costs of confinement in a community-based correctional facility or prison that do not exceed ten thousand dollars or the assets of the offender, whichever is greater;

The primary purposes of reimbursement are to make the offender repay society for all or part of the specific costs of confinement or supervision incurred by the offender.

Revenue from reimbursements shall be deposited in special revenue accounts in the county treasury for use by the agency responsible for implementing the sanction.

(B) **DETERMINING ABILITY TO PAY** A financial sanction may be imposed on any offender whose present income or assets, including any assets likely to be subject

to forfeiture, or likely future income or assets, indicate an ability to pay the sanction.

(C) **JUDGMENT** A financial sanction also shall be a civil judgment against the offender.

(D) **COLLECTION OF FINANCIAL SANCTIONS** During any period of community control imposed by the sentencing court or the Parole Board, financial sanctions may be collected through the enforcement powers of the court or, when appropriate, by the Board.

The court may designate a court employee, a city or county attorney, or enter into a contract with a private entity to collect the money. The Parole Board may designate an employee to collect the money.

Payments may be withheld from wages, bank accounts, worker's compensation payments, retirement benefits, insurance proceeds, lottery awards, trust income, disability benefits, unemployment compensation, social security benefits, public assistance other than Aid to Dependent Children, and any other income or assets of the offender.

If a court finds that an offender has satisfactorily completed all other sanctions imposed, and that restitution has been paid as ordered, the court may suspend any financial sanctions that have not been paid.

(E) **VICTIM'S CIVIL REMEDIES** No financial sanction imposed under this section shall preclude a civil action that might be brought by a victim against the offender.

§2929.19 SENTENCING HEARING

(A) **PARTICIPANTS** Before imposing or modifying a sentence under this chapter, the judge shall hold a sentencing hearing. At the hearing, the judge shall afford an opportunity to speak or present relevant information to the offender, the offender's counsel on behalf of the offender, the prosecuting attorney, the victim or the victim's representative in accordance with section 2930.14 of the Revised Code, and, with the approval of the judge, any other person likely to present additional information relevant to sentencing in the case.

(B) **JUDGE'S DUTIES** (1) At the sentencing hearing, the judge shall consider the record, the information presented by any person at the hearing, and, if prepared and available, the presentence investigation and victim impact statement. The judge shall impose a sentence and state reasons for the sentence on the record, including reasons for overriding the presumptions against or in favor of a prison term under division (B) or (D) of section 2929.13 of the Revised Code.

(2) If a prison term is imposed, the judge shall do all of the following:

(a) Impose a stated prison term under section 2929.14 of the Revised Code;

(b) Notify the offender that any prison sentence imposed could be extended administratively for bad time imposed under section 2929.21 of the Revised Code;

(c) Notify a first, second, or third degree felon that a period of control under section 2929.23 of the Revised Code follows the offender's release from prison or notify a fourth or fifth degree felon that such a period may be imposed by the Parole Board.

(3) If a community control sanction is imposed, the judge shall sentence the offender directly to the sanction. [Suspending sentences would be unnecessary.] The judge shall notify the offender that a longer duration under the sanction or more restrictive sanctions may be imposed if the conditions of community control are violated. The judge shall notify the offender that sanctions for a violation may include a prison term and indicate the specific prison term that may be imposed for the violation, selected by the judge from the range of prison terms available for the offense under section 2929.14 of the Revised Code.

§2929.20 APPELLATE REVIEW OF SENTENCES

(A) **OFFENDER'S RIGHT TO APPEAL** An offender may appeal any of the following as a matter of right:

(1) A sentence in which the maximum prison term allowed by division (A) of section 2929.14 of the Revised Code is imposed for any offense or for the most serious offense for which the offender was convicted that arose out of a single incident;

(2) A sentence which is contrary to a presumption against a prison term under section 2929.13 of the Revised Code;

(3) A sentence which is contrary to law.

(B) **STATE'S RIGHT TO APPEAL** The state may appeal any of the following as a matter of right:

(1) A sentence which is contrary to a presumption favoring a prison term in section 2929.13 of the Revised Code;

(2) A granting of judicial release to a first or second degree felon under section 2929.22 of the Revised Code;

(3) A sentence which is contrary to law.

(C) **APPEAL BY LEAVE OF COURT**

(1) In addition to appeals of right under this section, leave to appeal shall be granted by a court of appeals to the offender or the state if there is sufficient evidence that the sentence is part of a consistent pattern of disparity by the sentencing judge with regard to the race, ethnic background, gender, or religion of offenders.

(2) In addition to appeals of right under this section, leave to appeal may be granted by a court of appeals to the offender or the state if the sentencing judge imposes consecutive sentences that exceed the maximum prison term allowed by division (A) of section 2929.14 of the Revised Code for the most serious offense for which the offender is convicted.

(D) **LIMITATION** A sentence allowed by law and jointly recommended by

the state and offender, which the sentencing judge imposes, shall not be subject to review.

(E) **TIME FOR APPEAL** An appeal under this section shall be filed within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure.

(F) **RECORD ON APPEAL** The record to be reviewed on appeal shall include all of the following: any presentence, psychiatric, and other investigative reports that were submitted to the court in writing before sentencing; the trial record; oral or written statements made to or by the court at the sentencing hearing; and written explanations filed by the court and served on counsel within fifteen days after the modification of a sentence.

(G) **APPELLATE COURT OPTIONS** The court of appeals may increase, reduce, or otherwise modify the sentence that is appealed under this section, or remand the sentence to the trial court, if any of the following clearly and convincingly appears:

(1) The sentence is not supported by sufficient evidence on the record;

(2) There is not sufficient evidence to override a presumption against or in favor of a prison term;

(3) The sentence is otherwise contrary to law.

(H) **RULES** The Supreme Court shall adopt rules designed to simplify and expedite the appeals created by this section. The rules should include, but not be limited to, rules that permit the appellate court to rule on a sentence appeal without a hearing, without addressing every issue raised by the appellant, and without a written opinion.

§2929.21 BAD TIME

(A) **DEFINITION** As used in this section, "violation" means an act that would be a crime under state or federal law.

(B) **PROCEDURE** Nothing in this section precludes referral of an alleged crime for formal prosecution or the use of disciplinary processes that do not involve imposition of bad time.

(1) **Rules Infraction Board** The rules infraction board of a prison shall promptly investigate an alleged violation by any of the prison's inmates and hold a hearing on the allegation. The accused inmate shall have the right to testify at the hearing, confront witnesses, and be represented by a counsel substitute under section 5120-9-07 of the Administrative Code. The hearing shall be audio taped. If the board finds some evidence of a violation, the board shall report its finding to the prison's warden within ten days, together with a recommendation regarding the amount of bad time to be imposed for the violation.

(2) **Warden's Findings** Within ten days after receipt of a bad time

recommendation from the rules infraction board, the warden shall review the board's finding and determine whether the inmate committed the violation. If the warden finds by clear and convincing evidence that the inmate committed the violation and concludes that bad time should be imposed, the warden shall report the finding to the Parole Board within ten days, together with the warden's recommendation regarding the amount of bad time that should be imposed for the violation. If the warden does not find clear and convincing evidence of a violation or does not conclude that bad time should be imposed, no bad time shall be imposed.

(3) **Parole Board Duties** Within thirty days after receipt of a bad time report from a warden, the Parole Board shall review the rules infraction board's and the warden's findings. The Board's review is limited to determining whether there is clear and convincing evidence of a violation and, if so, the amount of bad time to be imposed.

(C) **SCOPE OF REVIEW AND DURATION OF BAD TIME** If the Parole Board finds that bad time should be imposed under this section, the Board shall consider the nature of the violation, the offender's conduct in prison, and any other evidence relevant to maintaining order in the institution. The Board shall impose thirty, sixty, or ninety days of bad time for the violation. The maximum cumulative prison term that may be imposed under this section for all violations shall be one-half of the offender's stated prison term. The Board shall impose bad time within sixty days of the rules infractions board's finding.

(D) **HOLDOVER PERIOD** If an inmate is accused of a violation within sixty days of the end of the inmate's stated prison term, the rules infraction board, warden, and Parole Board shall attempt to complete the procedures of this section before the stated prison term ends. If necessary, the inmate may be held for up to ten days beyond the stated prison term, pending review of the violation and possible imposition of bad time.

(E) **RULES** Within ninety days after the effective date of this section, the Parole Board shall adopt formal rules to govern the imposition of bad time, consistent with this section.

§2929.22 EARLY RELEASES FROM PRISON

(A) **JUDICIAL RELEASE** [This would replace existing shock and "super" shock probation.]

(1) **Eligibility** An eligible offender's stated prison term may be reduced by the sentencing court under this division. Any offender whose stated prison term is five years or less is eligible for judicial release unless the offender is serving a mandatory prison term.

(2) **Timing** An offender may file only one motion for release with the sentencing court within the time limits under this section. The offender shall promptly send a copy of the motion to the prosecuting attorney of the county in which the offender

was indicted.

An offender sentenced to prison for a fourth or fifth degree felony shall file the motion not earlier than thirty days nor later than ninety days after the offender is delivered to prison. An eligible offender sentenced to prison for a first, second, or third degree felony shall file the motion not earlier than one hundred eighty days after the offender is delivered to prison. An offender on whom a one, three, or six year firearm term is imposed may file the motion within the time authorized for the level of the underlying felony committed; however, the time for filing does not begin to run until the end of the one, three, or six year term.

An offender sentenced to both a mandatory and a non-mandatory prison term becomes eligible for a sentence reduction at the expiration of the mandatory term. The time under this division begins to run at the expiration of the mandatory term.

(3) **Procedure** On receipt of a timely motion for release, or on the sentencing court's own motion made within the same time periods, the court may schedule a hearing on the motion. The court may deny the motion without a hearing. The court shall not grant the motion without a hearing. If a motion is denied without a hearing, the court may still consider release on its own motion, for good cause, within the same time periods. The court shall not hold more than one hearing under this section for any offender. Any hearing on the motion shall be held in open court within sixty days after the motion is filed, unless the court delays the hearing for a period not to exceed one hundred eighty additional days. The court shall enter its ruling on the motion within ten days after the hearing.

If the court schedules a hearing on the offender's motion, the offender shall promptly serve a copy of the motion on the warden of the institution in which the offender is confined. If the court schedules a hearing on its own motion, the court shall promptly give notice of the hearing to the prosecuting attorney and the warden of the institution in which the offender is confined. The prosecuting attorney shall notify the victim of the date of any early release hearing.

Before the hearing date, the warden shall provide the court with a report on the offender's conduct while in the institution. The report shall cover the offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender. The report shall be made part of the record.

At the hearing, the court shall afford an opportunity to speak and present oral or written information relevant to the motion to the offender, the offender's counsel on behalf of the offender, the prosecuting attorney, the victim or the victim's representative, and, with the approval of the court, any other person likely to present additional relevant information.

Before ruling, the court shall consider the victim's impact statements under sections 2947.051, 2930.14, and 2930.17 of the Revised Code, if available. After ruling on the motion, the court shall apprise the victim of the court's ruling.

(4) **Factors Concerning Offenders With Presumptive Prison Terms** Before granting a release under this section to an offender who is in prison for a first or second degree felony, or to an offender who violated Chapter 2925. or 3719. of the

Revised Code [drug laws] and for whom there was a presumption in favor of a prison term, the court shall find both of the following on the record:

(a) A sanction other than prison should adequately protect the public from future crime because any factors presented at the release hearing outweigh any factors indicating an increased likelihood of recidivism.

(b) A sanction other than prison would not demean the seriousness of the offense because any factors decreasing the seriousness of the offender's conduct presented at the release hearing outweigh any factors increasing the seriousness of the conduct.

(5) **Conditions** After the hearing, the court may grant a motion under this section, order the offender released, and place the offender on post-release control under any community control sanction, provided the offender first serves any bad time imposed under section 2929.21 of the Revised Code.

(B) **REVIEW OF EXTENDED SENTENCES** [This would replace parole releases and the caps on consecutive sentences.]

(1) **Eligibility** An eligible offender's stated prison term may be reduced by the Parole Board under this division. Any offender is eligible for release unless the offender is serving a mandatory prison term or terms of ten years or less.

(2) **Timing** After the time for granting judicial release under this section has passed:

(a) An offender sentenced to a stated prison term of least five years, but less than ten years, may file one motion for release with the Parole Board at any time after serving five years in prison;

(b) An offender sentenced to a stated prison term of at least ten years, but less than fifteen years, may file one motion for release with the Parole Board at any time after serving ten years in prison;

(c) Except as provided in the next division, an offender sentenced to a stated prison term of least fifteen years may file a motion for release with the Parole Board at any time after serving fifteen years in prison and once every five years thereafter;

(d) An offender sentenced to a term of life imprisonment with parole eligibility after serving fifteen, twenty, or thirty years may file a motion for release at any time after reaching the parole eligibility date and once every five years thereafter. If consecutive terms are imposed, the offender may first file for release at any time after reaching the aggregate minimum parole eligibility date and once every five years thereafter.

(3) **Procedure and Conditions** The procedures and conditions authorized by divisions (A)(3) and (5) of this section shall apply to extended sentence reviews except that the Parole Board shall have the powers and duties of the sentencing court. The Board shall notify the victim and the sentencing court of the date of any extended sentence review hearing. In addition to the others listed in division (A)(3), the court shall have an opportunity to speak and present relevant oral or written information at any extended sentence review hearing.

(4) **Factors** Before granting a release under this section, the Parole Board shall do all of the following:

(a) Give great weight to the appropriateness of the stated prison term imposed by the sentencing judge;

(b) Give great weight to any oral or written recommendations made by the sentencing judge;

(c) Review the warden's report required under this section;

(d) Determine whether there are substantial grounds to believe the offender may be released without jeopardizing public safety or demeaning the seriousness of the offense.

(C) **EARNED CREDITS** Every prison inmate is eligible to receive one day of earned credit for each month's participation in education, vocational training, employment with penal industries, or substance abuse or sex offender treatment while in prison. At the end of each calendar month in which the inmate meaningfully participates in such a program, the Department of Rehabilitation and Correction shall deduct one day from the date on which the offender is scheduled to be released from prison.

Any inmate who receives credit under this section and is released before expiration of the inmate's stated prison term shall remain under the control of the Department until the term ends. The released inmate shall be placed under electronic monitoring or similar restrictions during this period. [Other good time credits would be eliminated.]

Any credits earned may be denied as punishment for violating prison rules.

(B) Within ninety days after the effective date of this section, the Department of Rehabilitation and Correction shall adopt rules that set forth the programs for which credit may be earned, the criteria for meaningful participation and awarding of credit, and the criteria for deducting time from credit earned for violating institutional rules.

(D) **INTENSIVE PROGRAM PRISONS** ["Boot Camps" and other intensive regimens]

(1) **Eligibility** A prison term may be shortened by the Department of Rehabilitation and Correction, with the approval of the sentencing court, on the offender's successful completion of a ninety day regimen in an intensive program prison. The following offenders are not eligible for such shortened prison terms:

(a) An offender sentenced for aggravated murder, murder, or a felony of the first or second degree;

(b) An offender sentenced to a mandatory prison term, while serving the mandatory term;

(c) An offender who, at any time, has been sentenced to prison for a third, fourth, or fifth degree felony that is either a sex offense, an offense betraying public trust, or an offense in which the offender attempted or caused actual physical harm to a person.

(2) **DRC's Duties** Within eighteen months of the effective date of this section, the Department of Rehabilitation and Correction shall develop intensive program prisons for male and female inmates that are sufficient in number at all times to reduce the prison terms of at least fifteen hundred inmates who are eligible under this section.

The intensive prison regimens shall include paramilitary boot camp prisons and prisons that focus on educational achievement, vocational training, alcohol and other drug abuse treatment, community service and conservation work, and other intensive regimens or combinations of regimens. They shall include prison terms reduced to ninety days, with the approval of the sentencing court, followed by post-release control under terms set by the Parole Board. [The existing shock incarceration law would be amended accordingly.]

(E) **FURLOUGH** A prison term that is served in a local facility under contract with the Department of Rehabilitation and Correction, by an offender who is within six months of the end of the offender's stated prison term, with the approval of the sentencing court. The Department shall notify the sentencing court and the victim at least thirty days before such a placement. The judge may veto the placement within ten days after receipt of the notice. If the judge does not veto the placement, the Department may proceed with the placement.

§2929.23 POST-RELEASE CONTROL

(A) **RULE AND DURATION**

(1) **For High-Level Felons** When an offender is sentenced to a prison term under section 2929.14 of the Revised Code for any first or second degree felony, or for certain third degree felonies, the offender also is sentenced to a period of control after release from prison. The term may be reduced by the Parole Board. Unless reduced by the Board, the duration of post-release control shall be:

(a) Five years for a first degree felony;

(b) Four years for a second degree felony;

(c) Three years for a third degree felony sex offense or an offense in which actual physical harm to a person was threatened or occurred.

(2) **For Other Felons** When an offender is sentenced to a prison term under section 2929.14 of the Revised Code for a third degree felony other than those under division (A) of this section, or for any fourth or fifth degree felony, the offender also is sentenced to any period of control after release from prison imposed by the Parole Board in its discretion. The discretionary period of control shall not exceed one year.

(B) **PAROLE BOARD DUTIES** Before an offender is released from prison, the Parole Board shall review the offender's juvenile delinquent and adult criminal history and conduct in prison. The Board shall impose a reasonable post-release control sanction or sanctions on the offender from the sanctions set forth in sections 2929.16 through 2929.18 of the Revised Code. Unless a more restrictive sanction is warranted, it is presumed that monitored time is the appropriate post-release control sanction for most fourth and fifth degree felons. The sanction becomes effective on the offender's release from the prison term.

If an offender is placed under post-release control, within nine months after the offender's release from prison, the Board shall review the offender's behavior under post-

release control. Based on the review, the Board may impose a more or less restrictive sanction from section 2929.16 through 2929.18 of the Revised Code, reduce the duration of control, or both.

(C) **PAROLE BOARD RULES** Within ninety days after the effective date of this section, the Parole Board shall adopt formal rules to govern all of the following:

(1) Imposing post-release control sanctions consistent with the overriding purposes and sentencing principles of section 2929.11 of the Revised Code and the offender's needs;

(2) Determining which fourth and fifth degree felons should be placed under post-release control so as not to overburden state resources;

(3) Reducing the duration of post-release control or imposing a less-restrictive sanction based on activities including, but not limited to, remaining free of crime and alcohol or other drug abuse, successfully participating in approved rehabilitative programs, maintaining employment, and paying restitution to the victim or meeting the terms of other financial sanctions;

(4) Imposing sanctions on offenders who violate post-release control sanctions. The procedures shall classify violations by seriousness, define when formal action is warranted, establish evidentiary standards to be used at violation hearings, assure procedural due process to the alleged violator, encourage nonresidential community control for most misdemeanor and technical violations, and provide for returning offenders to prison for repeated violations of post-release control or new felonies.

(D) **VIOLATIONS**

(1) **Non-Felony Violations** The Parole Board may hold a hearing on any alleged violation or violations of post-release control other than an alleged felony. If, after the hearing, the Board finds that the offender violated the sanction, the Board may increase the duration of the offender's post-release control up to the maximum duration authorized by division (A) of this section or impose a more restrictive residential, nonresidential, or financial sanction authorized by sections 2929.14 through 2929.18 of the Revised Code.

When appropriate, a residential sanction may include a prison term of thirty, sixty, or ninety days, for the violation or violations. A new prison term shall be considered when the violation involved a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, sexual misconduct, or repeated violations of post-release control sanctions.

The maximum cumulative prison term that may be imposed for all non-felony violations of one period of post-release control shall be one-half of the stated prison term originally imposed on the offender.

(2) **Felony Violations** If an offender is accused of violating post-release control by committing a felony, the offender shall be prosecuted for the new offense. Upon conviction, the sentencing court shall impose sentence for the new felony. In addition, the judge may impose a prison term for the violation. The maximum prison term for the violation shall be the remainder of the stated prison term, if one was shortened

under section 2929.22 of the Revised Code, the maximum period of post-release control available for the earlier offense under division (A) of this section minus any time already spent under post-release control for the offense, or twelve months, whichever is greater. If imposed, the prison term for the violation shall be served consecutively with the term for the new felony.

The duration of post-release control for an offender who commits a felony while under such control shall be the longer of the duration for the new felony under division (A) of this section or the time remaining under control for the earlier felony.

Sec. 2929.31, et seq. MISDEMEANOR SENTENCING

[Reserved for future debate.]

CRIME VICTIMS' RIGHTS

(The Sentencing Commission's Proposed Draft, 7/1/93)

§2930.01 DEFINITIONS

As used in this chapter:

(A) "Crime" means any felony and any violation of sections 2903.13, 2903.21, 2903.22, 2919.25, 2921.04 of the Revised Code.

(B) "Defendant" means a person charged with or convicted of having committed a crime against a victim.

(C) "Member of the victim's family" means the victim's spouse, child by birth or adoption, stepchild, sibling, parent by birth or adoption, stepparent, grandparent, or other relative designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include a person who is accountable for the crime or another crime arising from the same conduct, criminal episode, or plan.

(D) "Prosecutor" means the prosecuting attorney for a county, the attorney general, the city attorney or law director, a village solicitor, a special prosecuting attorney, an attorney designated by the county prosecutor, and, when appropriate, the prosecutor's employees.

(E) "Victim" means a person identified as the victim of a crime in a police report, a criminal complaint or warrant, indictment, information, or other charging instrument. "Victim" includes the victim's representative designated under section 2930.02 of the Revised Code.

§2930.02 DERIVATIVE RIGHTS OF VICTIM'S REPRESENTATIVE

(A) If a victim is a minor, incapacitated, incompetent, or deceased, a member of the victim's family or another person may exercise the rights of the victim under this chapter as the victim's representative. If more than one individual seeks to act as representative, a court in which the crime is being or may be prosecuted may designate one as the representative.

The victim or representative shall notify the prosecutor that the person is the victim's representative.

(B) If a member of the victim's family or other individual acts as the victim's representative, notices and rights under this chapter shall be sent or granted only to the representative, unless the victim informs the notifying authority that the victim also wishes to receive the notices or exercise the rights.

§2930.03 GENERAL REQUIREMENTS FOR NOTICE

(A) Notice under this chapter shall be given to a victim by any means reasonably calculated to provide prompt actual notice. The notice may be oral or written.

(B) The obligation to furnish notice to a victim under this chapter is conditioned upon the victim apprising the person or agency with the duty to provide notice of any change of name, address, or telephone number.

(C) The person or agency responsible for providing notice under this chapter shall promptly notify the victim of significant changes in the information that this chapter requires to be furnished.

§2930.04 NOTICE FROM LAW ENFORCEMENT AGENCY

(A) After initial contact between a victim and a law enforcement agency responsible for investigating a crime, the agency shall promptly give all of the following in writing to the victim:

(1) An explanation of the victim's rights under this chapter;

(2) Information concerning the availability of:

(a) Assistance to victims, including medical, housing, counseling, and emergency services;

(b) Compensation for victims under Chapter 2743. of the Revised Code and the name, street address, and telephone number of the agency to contact;

(c) Protection of the victim, including protective court orders;

(3) As soon as practicable, the law enforcement agency shall give to the victim all of the following:

(a) The business telephone number of a law enforcement officer assigned to investigate the case;

(b) The prosecutor's name, office address, and telephone number;

(c) A statement that, if the victim is not notified of an arrest in the victim's case within a reasonable time, the victim may contact the appropriate law enforcement agency to learn the status of the case.

§2930.05 ARREST, BAIL, AND RELEASE NOTICES

(A) Within a reasonable time after the arrest of a defendant for a crime, the law enforcement agency investigating the crime shall give notice to the victim of the arrest, the availability of pretrial release for the defendant, the telephone number of the agency, and that the victim may contact the agency to determine whether the defendant has been released from custody.

(B) Based on the victim's affidavit that acts or threats of violence or intimidation were made by the defendant or, at the defendant's direction, against the victim, the victim's family, or representative, the prosecutor may move that the bond or personal recognizance of the defendant be revoked.

§2930.06 PROSECUTOR'S PRE-TRIAL CONFERENCE AND NOTICE

(A) The prosecutor, to the extent practicable, shall confer with the victim before a trial by judge or jury, amending or dismissing a charge, agreeing to a negotiated plea, or pretrial diversion.

Failure of the prosecutor to confer with the victim and the prosecutor's reasons for not conferring shall be noted on the record. Such failure shall not affect the validity of an agreement between the prosecutor and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition.

(B) After a prosecution is commenced, the prosecutor shall, to the extent practicable, promptly notify a victim of all of the following:

(1) The crime with which the defendant has been charged;

(2) The file number of the case;

(3) A brief statement regarding the procedural steps in the processing of a criminal case and the victim's right to be present throughout the prosecution of a case;

(4) The victim's rights under the Revised Code;

(5) Suggested procedures if the victim is subjected to threats or intimidation;

(6) A person to contact for further information;

(7) The right to have a representative exercise the victim's rights under this chapter pursuant to section 2930.02 of the Revised Code and, if requested by the victim, the procedure for having a court name a representative.

(B) Upon the request of the victim, the prosecutor shall give the victim notice of any scheduled court proceedings and notice of any changes in that schedule.

(C) A victim who requests notice under this section and who chooses to receive any other notice under this chapter shall keep the prosecutor informed of the victim's current address and phone number until the case is dismissed or terminated, the defendant is acquitted or sentenced, or the appellate process is completed, whichever occurs later.

§2930.07 CONFIDENTIALITY OF VICTIM INFORMATION

(A) Based upon the victim's reasonable apprehension of acts or threats of violence or intimidation by the defendant, or at the defendant's direction, against the victim, the victim's family, or representative, the prosecutor may make a motion that the victim or any other witness not be compelled to testify at any criminal proceeding for purposes of identifying the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in the judge's chambers.

(B) The address of the victim or representative shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or used to identify the place of the crime. The telephone number of the victim or representative shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

§2930.08 VICTIM'S INTEREST IN SPEEDY PROSECUTION

If practicable, the prosecutor shall inform the victim of a motion, request, or agreement between the prosecutor and defense counsel that may substantially delay the prosecution. The prosecutor shall inform the court of the victim's position on the motion, if any. The court shall consider the victim's objections to the delay.

§2930.09 VICTIM'S PRESENCE AT COURT PROCEEDINGS

A victim may be present whenever the defendant is present during any critical stage of a criminal case, that is conducted on the record, concerning the crime charged, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant's right to a fair trial. The court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

§2930.10 SEPARATING VICTIMS FROM DEFENDANTS

(A) The court shall make reasonable efforts to minimize unwanted contact between the victim, members of the victim's family, the victim's representative, or prosecution witnesses and the defendant, members of the defendant's family, or defense witnesses before, during, and immediately after court proceedings.

(B) The court shall provide a waiting area for the victim or representative separate from the defendant, defendant's relatives, and defense witnesses if such an area is available and the use of the area is practical.

§2930.11 RETURN OF VICTIM'S PROPERTY

(A) The law enforcement agency having responsibility for investigating a reported crime shall promptly return property belonging to the victim which is taken in the course of the investigation, except as otherwise provided in sections 2933.41 through 2933.43 of the Revised Code.

(B) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.

(C) The agency shall retain any property needed as evidence, including any weapon used in the crime, if the prosecutor certifies there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

(D) If the defendant files a motion to retain such property, the property shall be retained until the court rules on the pending motion.

§2930.12 NOTICE OF CONVICTION AND PARTICIPATION IN SENTENCING

At the victim's request, the prosecutor shall give the victim notice of all of the following:

(A) The defendant's conviction;

(B) The crimes for which the defendant was convicted;

(C) The address and telephone number of the probation office which is to prepare a presentence investigation report under section 2951.03 of the Revised Code;

(D) That the victim may make an impact statement to the probation officer under section 2947.051 of the Revised Code, which shall be used in preparing a presentence investigation report, and that any victim's impact statement included in the report will be made available to the defendant unless exempted from disclosure by the court;

(E) The victim's right to make an impact statement at sentencing;

(F) The date, time, and place of the sentencing hearing;

(G) Any sentence imposed and any modification of that sentence.

§2930.13 VICTIM'S INPUT IN PRESENTENCE INVESTIGATION

(A) The victim may make a written or oral impact statement to the probation officer under section 2947.051 for use by that officer in preparing a presentence investigation report concerning the defendant in the victim's case under section 2951.03 of the Revised Code. A written statement shall, upon the victim's request, be included in the presentence investigation report.

(B) The impact statement may include the following:

(1) An explanation of the nature and extent of any physical, psychological, or emotional harm suffered by the victim;

(2) An explanation of the extent of any property damage and other economic loss suffered by the victim;

(3) An opinion regarding a need for, and extent of, restitution and information on whether the victim has applied for or received any compensation for loss or damage;

(4) The victim's recommendation for an appropriate sanction.

(C) If requested, the court may release the contents of the victim impact statement pursuant to section 2951.03 of the Revised Code.

§2930.14 VICTIM'S STATEMENT AT SENTENCING

(A) Before imposing sentence at the sentencing hearing under section 2929.19 of the Revised Code, the judge shall permit the victim to make a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, and the manner in which the crime was perpetrated. At the judge's option, the victim may present the statement in writing before the sentencing hearing, orally at the hearing, or both.

(B) The court shall give copies of any written victim's statement to the

prosecutor and the defendant.

(C) The court shall consider the victim's statement along with other factors. If the statement includes new material facts upon which the court intends to rely, the court shall adjourn the sentencing proceeding or take other appropriate action to allow the defendant adequate opportunity to respond.

§2930.15 NOTICE OF APPEAL; RIGHTS ON REVERSAL OF CONVICTION

(A) If requested by the victim, the prosecutor shall notify the victim when the defendant files an appeal of the defendant's conviction. The prosecutor also shall notify the victim of all of the following:

(1) A brief explanation of the appellate process, including the possible disposition;

(2) Whether the defendant has been released on bail or other recognizance pending disposition of the appeal;

(3) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings;

(4) The result of the appeal.

(B) If the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has all of the rights previously requested in the case.

§2930.16 NOTICE CONCERNING CONFINEMENT

(A) If the defendant is incarcerated, a victim who requests notice under division (B) of section 2930.06 of the Revised Code and who chooses to receive any other notice under this chapter shall, as directed by the prosecutor, keep the director of rehabilitation and correction, sheriff, or other custodian informed of the victim's current address and telephone number.

(B) Upon the victim's request, the custodial agency shall do all of the following:

(1) As soon as practicable, before a decision of the Governor to grant a commutation or pardon to the defendant, notify the victim of the victim's right to comment on the proposed release and submit a statement on the impact of the release on the victim to the appropriate official;

(2) Notify the victim at least thirty days before the furlough of the defendant under section 2929.22 of the Revised Code, and inform the victim of the victim's rights under section 2930.17 of the Revised Code.

(C) Upon the victim's request, promptly after sentencing, the prosecutor shall notify the victim of the estimated date of the defendant's release from confinement, if reasonably ascertainable.

(D) The prosecutor also shall promptly notify the victim of any motion for early release or release after review of extended sentence under section 2929.22 of the

Revised Code. The court shall notify the victim of its ruling on any such motion.

(E) The custodial agency shall promptly notify the victim of all of the following concerning the defendant:

(1) An escape from a detention facility or absence without leave from a mental health facility or other custody;

(2) A recapture after such an escape or absence;

(3) A release from confinement and the conditions of release;

(4) The defendant's death.

§2930.17 VICTIM'S STATEMENT BEFORE JUDICIAL RELEASE

(A) In determining whether to release the defendant from a prison term under section 2929.22 of the Revised Code, before the defendant's stated prison term expires, the judge shall permit a victim to make an additional statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the defendant should be released. The victim may make the statement in writing or orally, at the court's discretion. The judge shall give the defendant a copy of any written impact statement made under this section.

(B) In deciding whether to release the defendant, the judge shall consider any victim's impact statement made under this section and sections 2947.051 and 2930.14 of the Revised Code.

§2930.18 LIMITATIONS ON EMPLOYERS

An employer may not discharge, discipline, or otherwise retaliate against a victim, a member of the victim's family, or a victim's representative for participating, at the prosecutor's request, in preparation for a criminal justice proceeding or, pursuant to a subpoena, for attendance at a criminal justice proceeding, if the attendance is reasonably necessary to protect the interests of the victim. Any employer who knowingly violates this section is in contempt of court.

§2930.19 COMPLIANCE WITH THIS CHAPTER

(A) Consistent with the duty to represent the interests of the public as a whole, the prosecutor shall seek compliance with this chapter on behalf of a victim, a member of the victim's family, or the victim's representative.

(B) Failure to comply with this chapter does not create a claim for damages against a government employee, official, or entity, except that a governmental employer may be held responsible as an employer for violating section 2930.18 of the Revised Code.

(C) The failure to provide a right, privilege, or notice to a victim under this chapter is not grounds to have the conviction or sentence set aside or grounds to declare a mistrial, new trial, or post conviction release.

(D) If any provision in this chapter conflicts with procedures specified elsewhere in law for capital cases, the capital case procedures control over this chapter.

(E) If the victim is incarcerated in a state or local penal facility, the victim's rights under this chapter may be modified by court order to prevent any security risk, hardship or undue burden upon any governmental employee, official, or entity having a duty under this chapter.

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