



## **Sentencing and Criminal Justice Committee Meeting Agenda February 21, 2018**

- I. Call to Order & Approval of January 18, 2018 Meeting Notes**
  
- II. Updates for the good of the order:**
  - \* **T-CAP**
  - \* **2929.15**
  - \* **Reagan Tokes Act - SB201, SB202, HB365**
  - \* **SB66**
  - \* **HB439**
  
- III. Marsy's Law implementation**
  
- IV. Chapter 2925 review, discussion and timeline**
  
- V. Adjourn**

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**Next meeting:**

**Full Commission – March 15, 2018 10:00a – 31<sup>st</sup> floor Riffe Center**

**Sentencing & Criminal Justice Committee – April 19, 2018 Room 281 Ohio Judicial Center**



## Sentencing and Criminal Justice Committee Meeting Notes January 18, 2018

### I. CALL TO ORDER & APPROVAL OF NOVEMBER 16, 2017 MEETING NOTES

Judge Spanagel called the meeting to order, introductions were made and notes from the meeting on November 16, 2017 were unanimously approved.

### II. DISCUSSION AND DETERMINATION OF NEXT STEPS:

#### \* T-CAP Roundtable and 2929.15 – Update from OJC, DRC, Members

Marta Mudri from the Ohio Judicial Conference (OJC) updated the group on the roundtable discussion held in conjunction with the Ohio Common Pleas Judges Association winter meeting in December 2017. She advised that the participating Judges suggested improving the implementation of the provisions, specifically the MOU process and the distribution of funds – per diem. The conclusion of the group was that 2929.15 as enacted is unworkable.

Members then discussed the spectrum of interpretation regarding technical violation(s) and response(s) from the Court. There was conversation surrounding public policy v implementation and 2929.13(g). Kyle Petty from DRC agreed there are unintended consequences of unclear language, i.e. felony offense v felony conviction.

OJC will try to work with DRC and the legislature to make changes. The Commission and this committee should be participatory in that effort and can be helpful.

Cynthia Mausser updated members on the status of T-CAP per DRC. The program remains in grant phase until July 1, 2018, with 48 participating counties, 5 of the mandatory. DRC has 2 sets of commitment data and 21 commitments from all 48 counties had to be charged back to the respective county. DRC has not received negative feedback from participating counties. She also explained the funding formula and allocated funds are considerate of county size/population. She went on to say there are myths about how the rates are calculated and that the funding is not meant to be a per diem. (See supplemental T-CAP attachments from DRC)

#### \* Reagan Tokes Act - SB201, SB202, HB365 and Recodification Committee 2929 recommendations

The work on the bills continues and there will be amendments. Oriana is presenting on real-time GPS to legislators who can attend a meeting scheduled for next week. The primary points of contention are the longer sentences and the early release provisions for exceptional conduct (i.e. whether this should be the determination of the Judge or DRC).

Director Mohr suggested there are many changes pending – i.e. the request for data and said there are so many undefined pieces and it is confusing. He said there will be significant changes in the next 30 days.

#### \* Appellate review

The appellate committee of OJC will meet in February and may have close to final draft of recommendations at that meeting. An update at the full Commission meeting on March 15, 2018 may be a good timing.

\* **2925**

Members decided that our primary work will be to consider the Drug Chapter (2925) and a logical place to start is with the recommendations made by the Recodification Committee.

\* **Marsy's Law implementation – OJC, DRC, Members**

Marta Mudri from OJC told members that OJC is working on an impact document for the Courts for implementation. The effective date is February 5, 2018. It was also noted there is significant impact to Municipal Courts i.e. traffic law impact, definition of criminal offense to exclude MM, which currently isn't in Marsy's Law. Lara Baker-Morrish will provide information and the topic will be on the February meeting agenda for an update.

**III. "THE NEIGHBORHOOD SAFETY, DRUG TREATMENT AND REHABILITATION" AMENDMENT**

Sara advised members that we are working with Professor Berman via the new OSU Drug Enforcement & Policy Center and Hayden Capace, JD to consider the provisions as they compare to current law including Marsy's Law, the work of the recodification committee and try to estimate how many past, current and future cases may be impacted by the initiative. Hayden will also review/summarize past efforts --- in Ohio and elsewhere --- to reform drug sentencing through initiative at the full Commission meeting March 15, 2018.

**IV. OTHER LEGISLATIVE UPDATES AND CONSIDERATIONS**

Members briefly discussed the following list of pending legislation. Member comments, if any, are noted in bold following each bill summary.

**HB 4 COCAINE AMOUNTS DETERMINATION (CUPP, ROGERS)**

The bill provides that in determining the amount of cocaine for trafficking and possession offenses, it also includes a compound, mixture, preparation, or substance containing cocaine. The bill passed the House and was referred to the Senate Judiciary Committee on February 22, 2017. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017. There is also a similar bill, Senate Bill (SB 42 – Eklund) which had its third hearing in the Senate Judiciary Committee on March 28, 2017.

**SB 42 Drug Offense Penalties (EKLUND)** The bill expressly provides that drug offense penalties that refer to a particular type of drug also apply to a compound, mixture, preparation, or substance containing a detectable amount of that drug and to declare an emergency. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017.

**HB374 CHILD ENTICEMENT PROHIBITIONS (DUFFEY, CUPP)**

The bill creates additional criminal prohibitions within the offense of criminal child enticement and classifies criminal child enticement as a tier I sex offense when committed by a registered sex offender. The bill had a first hearing in the House Criminal Justice Committee on November 14, 2017. **There is concern that current section A1 is unconstitutional.**



#### HB439 RISK ASSESSMENT-BAIL SETTING (DEVER, GINTER)

The bill requires courts to use the results of a validated risk assessment tool in bail determinations; allows nonmonetary bail to be set; requires courts to collect certain data on bail, pretrial release, and sentencing; and requires the state Criminal Sentencing Commission to create a list of validated risk assessment tools and monitor the policies and procedures of courts in setting bail and utilizing pretrial supervision services. The bill incorporates several of the recommendations advanced by the Ohio Criminal Sentencing Commission. The bill was introduced on December 7, 2017. **There are some concerns with the provisions and an interested party meeting has been scheduled.**

#### HB457 OPIATE USE-PAROLE & COMMUNITY CONTROL (ANTANI)

The bill requires that an offender serving a community control sanction or a parolee who fails a drug test for heroin, fentanyl, or carfentanil be held in jail or admitted to a residential treatment program for up to 30 days. The bill was introduced on December 28, 2017.

**This legislation is concerning for a number of reasons, one of which is that for a person in the midst of relapse 30 days in jail defeats the purpose. It is not good public policy. Additionally, the Adult Parole Authority handling violations of Post Release Control timely is already problematic.**

#### HB 455 DRUG TRAFFICKING (WIGGAM)

The bill provides that, in determining the amount of cocaine for trafficking offenses, the weight of a compound, mixture, preparation, or substance containing cocaine is included. The bill also increases penalties for certain drug trafficking offenses, including making an F4 trafficking offense an F3 with a mandatory prison term, making an F3 trafficking offense an F2 with a mandatory prison term, and making an F3 aggravated trafficking offense an F1 (the statute already provides a mandatory prison term for this offense). The bill was introduced December 27, 2017. **Members suggested this bill “misses mark on true public safety trafficking”.**

#### SB 1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking, drug possession and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound; revises the manner of determining sentence for certain violations of the offense of permitting drug abuse, and adds lisdexamfetamine to the list of schedule II controlled substances. The bill had a second hearing in the House Criminal Justice Committee on October 10, 2017.

#### SB33 LEADS DISCLOSURE (EKLUND)

The bill allows disclosure of information from the law enforcement automated data system (LEADS) to a defendant in a traffic or criminal case and allows certain state highway patrol troopers to administer oaths and acknowledge criminal and juvenile court complaints, summonses, affidavits, and returns of court orders in matters related to their official duties. The bill also authorizes a court to continue a person on intervention in lieu of conviction if the person violates the terms and/or conditions, which mirrors a recommendation from the Ohio Criminal Sentencing Commission. The bill was signed by the Governor on 12/22/2017, effective in 90 days.



#### SB231 SIERAH'S LAW-VIOLENT OFFENDERS (GARDNER)

The bill requires the Ohio Attorney General Bureau of Criminal Investigation to establish a Violent Offender Database (VOD), requires persons convicted of certain violent offenses to enroll in the database and names the provisions of the act "Sierah's Law". The bill also increases the current membership of the Ex-Offender Reentry Coalition from 17 to 21, adding four members of the General Assembly, specifying two of the four will be the chairpersons of the standing committees that primarily address criminal justice matters, modifies the duties of the Coalition and eliminates its repeal. The bill requires halfway houses to use the single validated risk assessment tool selected by the Department of Rehabilitation and Correction for adult offenders and it provides that the notice of release from prison of specified offenders given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminates the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders. The bill had a first hearing in the Senate Judiciary Committee on November 28, 2017. **Members generally agreed that the legislation is not a public safety enhancement or deterrent to criminal activity.**

#### SB235 SEX OFFENDER REGISTRY CHANGES (EKLUND)

The bill creates a procedure for certain tier II sex offenders convicted of unlawful sexual conduct with a minor to petition a court for reclassification or removal from the sex offender registry and to permits record sealing in those cases. The bill was introduced on November 27, 2017.

#### V. ADJOURN

Prior to adjournment, members agreed the next meeting of the Committee will be February 21, 2018 at 10:00a. With no further business, the meeting was adjourned.

**48 Confirmed Targeted Community Alternatives to Prison (T-CAP) Counties with Funding Levels by Fiscal Year**

<b>County</b>	<b>FY18 Funding</b>	<b>FY19 Funding</b>	<b>Total Funding Amount</b>
Allen	\$ 204,012	\$ 249,349	\$ 453,361
Athens	\$ 119,064	\$ 145,523	\$ 264,587
Auglaize	\$ 89,648	\$ 109,570	\$ 199,218
Belmont	\$ 127,769	\$ 156,163	\$ 283,932
Brown	\$ 132,026	\$ 161,365	\$ 293,391
Clinton	\$ 142,923	\$ 174,683	\$ 317,606
Coshocton	\$ 76,266	\$ 93,214	\$ 169,480
Darke	\$ 80,213	\$ 98,038	\$ 178,251
Defiance	\$ 104,850	\$ 128,150	\$ 233,000
Erie	\$ 248,722	\$ 303,993	\$ 552,715
Fulton	\$ 99,144	\$ 121,176	\$ 220,320
Gallia	\$ 98,397	\$ 120,262	\$ 218,659
Geauga	\$ 127,810	\$ 156,213	\$ 284,023
Guernsey	\$ 91,106	\$ 111,351	\$ 202,457
Hancock	\$ 145,032	\$ 177,262	\$ 322,294
Harrison	\$ 67,500	\$ 82,500	\$ 150,000
Henry	\$ 67,500	\$ 82,500	\$ 150,000
Hocking	\$ 73,452	\$ 89,775	\$ 163,227
Holmes	\$ 67,500	\$ 82,500	\$ 150,000
Huron	\$ 132,683	\$ 162,169	\$ 294,852
Jefferson	\$ 102,978	\$ 125,862	\$ 228,840
Knox	\$ 117,253	\$ 143,309	\$ 260,562
Lawrence	\$ 203,630	\$ 248,881	\$ 452,511
Licking	\$ 438,642	\$ 536,118	\$ 974,760
Lorain	\$ 618,831	\$ 756,349	\$ 1,375,180
Lucas	\$ 780,374	\$ 953,790	\$ 1,734,164
Mahoning	\$ 527,151	\$ 644,295	\$ 1,171,446
Medina	\$ 370,949	\$ 453,383	\$ 824,332
Monroe	\$ 67,500	\$ 82,500	\$ 150,000
Montgomery	\$ 1,383,883	\$ 1,691,412	\$ 3,075,295
Morgan	\$ 67,500	\$ 82,500	\$ 150,000
Morrow	\$ 67,500	\$ 82,500	\$ 150,000
Noble	\$ 67,500	\$ 82,500	\$ 150,000
Ottawa	\$ 67,500	\$ 82,500	\$ 150,000
Paulding	\$ 69,328	\$ 84,735	\$ 154,063
Perry	\$ 67,500	\$ 82,500	\$ 150,000
Pickaway	\$ 195,326	\$ 238,731	\$ 434,057
Ross	\$ 277,061	\$ 338,630	\$ 615,690
Sandusky	\$ 126,672	\$ 154,822	\$ 281,494
Seneca	\$ 121,540	\$ 148,548	\$ 270,088
Summit	\$ 1,336,798	\$ 1,633,865	\$ 2,970,663

Tuscarawas	\$ 134,815	\$ 164,773	\$ 299,588
Union	\$ 84,645	\$ 103,454	\$ 188,099
Van Wert	\$ 70,482	\$ 86,144	\$ 156,626
Vinton	\$ 67,500	\$ 82,500	\$ 150,000
Washington	\$ 114,696	\$ 140,184	\$ 254,880
Wayne	\$ 204,192	\$ 249,569	\$ 453,761
Williams	\$ 82,821	\$ 101,226	\$ 184,047
<b>Total</b>	<b>\$ 10,130,183</b>	<b>\$ 12,381,336</b>	<b>\$ 22,511,519</b>

**Extension Request Counties - These counties submitted an initial deadline extension request and then did not submit an MOU to participate in FY18. Each county forfeited 50% of funding by not participating in FY18. The Counties below must submit an MOU in April/May 2018 to receive the FY19 funding listed.**

County	FY18 Funding	FY19 Funding	Total Funding Amount
Cuyahoga	\$ -	\$ 2,250,000	\$ 2,250,000
Franklin	\$ -	\$ 2,250,000	\$ 2,250,000
Hamilton	\$ -	\$ 2,250,000	\$ 2,250,000
Stark	\$ -	\$ 981,001	\$ 981,001
Butler	\$ -	\$ 1,362,184	\$ 2,476,698
<b>Total</b>	<b>\$ -</b>	<b>\$ 9,093,185</b>	<b>\$ 10,207,699</b>

	FY18 Funding	FY19 Funding	Total Funding Amount
<b>Total T-CAP Funding with 48 Confirmed Counties and Extension Counties for FY19</b>	<b>\$ 10,130,183</b>	<b>\$ 21,474,521</b>	<b>\$ 32,719,218</b>



Department of  
Rehabilitation & Correction

John R. Kasich, Governor  
Gary C. Mohr, Director

**TCAP FUNDING FORMULA METHOD**

**I. Sorted counties by Population Size.**

A. Created four categories of population size.

1. 200,000+
2. 75,000 – 199,999
3. 40,000 – 74,999
4. 39,999 –

B. Determined percentage of state population each group represents.

1. 60%
2. 22%
3. 12%
4. 6%

C. Applied the percentage to the funding amount to determine how much each group would receive.

**II. Determined How to Divide Funding Amount Assigned to Each Group to Each County Assigned Within the Group.**

D. Weighted three (3) factors evenly: (did not have strong reasons to weigh them differentially)

- Average TCAP commitments over 3 years (CY 14-16).
- Criminal case filings; Source: Supreme Court's website; 2015 most recent data; Historically used to predict future prison commitments; lead predictor.
- Population size; Source: 2014 US Census Bureau data.

E. The weights were multiplied by the county's percentage share of each factor within the group and then summed to produce a weighted percentage score. Each county received an unadjusted allocation based on taking the weighted share of the group total.

F. Two adjustments

- Capped at 2.25M with balance distributed proportionately statewide.
- Created a floor of \$75,000 by reducing top 11 that were not subject to the 2.25M cap proportionately to bring bottom 6 counties up to \$75,000.





## OHIO CRIMINAL JUSTICE RECODIFICATION COMMITTEE

HONORABLE FRED PEPPLE, CHAIRMAN  
MR. TIMOTHY YOUNG, VICE-CHAIRMAN

### **Announcement of Committee Meeting**

Thursday, April 28, 2016  
1:00 – 5:00 PM  
Senate Finance Hearing Room  
Room 126  
The Ohio Statehouse

### **Agenda**

- I. Call to Order & Roll Call
- II. Minutes – Meeting of April 14, 2016
- III. Workgroup Presentations and Committee Discussion
  - Chapter 2925 – Drug Offenses
- IV. Outstanding Business
- V. Adjournment

EXECUTIVE SUMMARY FOR CHAPTER RC 2925 – DRUG OFFENSES

- Generally
  - Removed mandatory sentences throughout the draft except for the Major Drug Offender (“MDO”) specification. Moved MDO specification into each substantive offense where it is available so that it functions, if applicable, as a mandatory sentence instead.
  - Removed mandatory fines throughout the draft
  - Removed mandatory license suspensions throughout the draft that do not have a nexus to driving
  - Removed enhancements throughout the draft.
  - Changed “convicted of or pleads guilty” to “found guilty” throughout the draft
- 2925.02 – Corrupting another with drugs
  - Removed division (A)(4) dealing with conduct that is penalized by enhanced penalties and mandatory sentences.
- 2925.03 – Trafficking, aggravated trafficking in drugs
  - Removed “offer to sell” in (A)(1) so that it would be considered an “attempted” trafficking using RC 2923.02.
  - Replaced division (C) penalties with a new chart with new amounts and felony levels.
- 2925.04 – Illegal manufacture of drugs – illegal cultivation of marihuana – methamphetamine offenses.
  - Reworded division (A) for clarity.
  - Added the modifier “substantial” to (A)(2) to distinguish between people who are actually manufacturing drugs and not just someone who buys or possesses chemicals like in 2925.041.
  - Added division (C) which precludes a person from being found guilty of division (A)(2) if the person is also found guilty of violating RC 2925.041(A) if the chemicals used to illegally manufacture drugs under division (A)(2) are the same chemicals that would give rise to a charge under RC 2925.041(A).
  - Capped penalties at a 4th degree felony; changed marijuana amounts to reflect new trafficking/possession chart amounts.
- 2925.041 – Illegal assembly or possession of chemicals for manufacture of drugs
  - In division (A)(1), replaced “intent” with “purpose” because Ohio has adopted modified MPC mental states.
  - Capped penalty at a 5th degree felony.
- 2925.05 – Funding, aggravated funding of drug or marihuana trafficking
  - Reworded division (A) for clarity. Currently, division (A) has three different applicable mental states that can be confusing to read and apply. By removing the phrase “with purpose that the recipient of the money or items of value use them” and replacing “knowingly” with “purposefully,” it still retains the concept that purposefully providing money to another to obtain a controlled substance for the purpose of manufacturing drugs or selling drugs should be criminalized.

- Changed some of the drug amounts in divisions (A)(1), (2), (3), (4), (5), and (6) to reflect the new trafficking/possession chart amounts.
- Division (C)'s penalties are changed to be more proportional. Under current law, it is an F1 for funding what would otherwise be an F3 possession amount for schedule I and II drugs. Similarly, an F2 for funding what would otherwise be an F4 amount for schedule II, III, and IV and an F3 for funding what would otherwise be an F4 amount of marijuana.
- 2925.06 – Illegal administration or distribution of anabolic steroids
  - Removed division (E) because the language is dealing with prosecutorial discretion is inherent in a prosecutor's powers and does not need to be restated.
- 2925.09 – Unapproved drugs – dangerous drug offenses involving livestock
  - Added "knowingly" mental state to division (A).
- 2925.11 – Possession of controlled substances
  - Replaced division (C) penalties with a new chart with new amounts and felony levels.
- 2925.12 – Illegal use or possession of drug paraphernalia
  - Merged 2925.12, 2925.14, and 2925.141 into this section. Penalty sections for each section were merged into this new section but the substantive penalties were unaltered.
  - In division (C), removed outdated language (e.g., handbill) and other redundant language and replaced it with "publication"
- 2925.13 – Permitting Drug Abuse
  - No substantive changes except for the changes referenced above under "Generally"
- 2925.14 – Illegal use or Possession of drug paraphernalia
  - Merged into 2925.12 – illegal use or possession of drug paraphernalia
- 2925.141 – Illegal use or possession of marijuana drug paraphernalia
  - Merged into 2925.12 – illegal use or possession of drug paraphernalia
- 2925.22 – Deception to obtain a dangerous drug:
  - Reworded division (A) for clarity
  - In division (B)(2), changed amounts to reflect new trafficking/possession charts.
- 2925.23 – illegal processing of drug documents
  - In division (B), replaced "intentionally" with "purposefully" because Ohio has adopted modified MPC mental states.
- 2925.24 – Tampering with drugs
  - No substantive changes
- 2925.31 – Abusing harmful intoxicants
  - In division (B), removed enhancement for prior convictions under this section.
- 2925.32 – Trafficking in harmful intoxicants – improperly dispensing or distributing nitrous oxide
  - Removed (A)(2) and changed (A)(1) to simply state "any person" rather than distinguishing the age of the offender because both (A)(1) and (A)(2) combined prohibits a person from dispensing harmful intoxicants to another person (regardless of age) if the person knows it will be abused. There is also no difference in penalty for dispensing harmful intoxicants to a minor or someone over the age of 18. Therefore, the age threshold presented in both (A)(1) and (A)(2) seems arbitrary.

- In division (E), removed old (A)(2) from being applicable to the affirmative defense provided for in division (E). Division (E)'s affirmative defense provides for a defense based on age, but this defense does not make sense in light of division old (A)(2) because no person, whether under or over 18, can dispense harmful intoxicants to another person if that person knows it will be abused.
- 2925.33 – Possessing nitrous oxide in motor vehicle
  - In new division (A), added “knowingly” mental state
- 2925.34 – Restriction against sale of or offer for sale of a pure caffeine product; misdemeanor
  - Removed “offer for sale” in new division (A). Instead, this would be considered an attempt under this section using RC 2923.02.
- 2925.36 – Illegal dispensing of drug samples
  - No substantive changes except for the changes referenced above under “Generally”
- 2925.37 – Counterfeit controlled substance offenses.
  - In division (B) and (C), removed “offer to sell” language. Instead, this would be considered an attempt under this section using RC 2923.02
  - Removed division (E) because of 1st amendment concerns.
  - In new division (D), added “knowingly” mental state.
- 2925.38 – Notice of conviction of professionally licensed person sent to regulatory or licensing board or agency.
  - No substantive changes.
- 2925.42 – Criminal forfeiture of property relating to felony drug abuse offense.
  - No substantive changes.
- 2925.50 – Conviction or acquittal under federal drug abuse control laws bar to state prosecution
  - No substantive changes.
- 2925.51 – Evidence in drug offense cases.
  - Reworded division (A) for clarity; no substantive changes.
  - Reworded division (C) for clarity; no substantive changes.
  - Divided division (E) into (E), and new divisions (F) and (G); no substantive changes.
- 2925.511 – Reimbursement for costs of positive drug tests.
  - No substantive changes.
- 2925.52 – Motion for destruction of chemicals for methamphetamine production.
  - No substantive changes.
- 2925.55 – Unlawful purchase of pseudoephedrine or ephedrine product.
  - No substantive changes made
- 2925.56 – Unlawful sale of pseudoephedrine or ephedrine product.
  - In division (A)(1) and (B)(1), removed “offer to sell” language. Instead, an offer to sell should be considered an “attempt” under this section using 2923.02
  - In division (B)(1), added “knowingly” mental state.
  - In division (C), added “knowingly” mental state.

- Merged 2925.58 [Unlawful sale of pseudoephedrine product to minor – affirmative defenses] with 2925.56 by adding new division (I). 2925.58 was an entirely separate section dedicated to affirmative defenses specifically for 2925.56.
- 2925.57 – Illegal pseudoephedrine or ephedrine product transaction scan.
  - In division (C)(1), (2), (3), and (4), added “knowingly” mental state.
- 2925.58 – Unlawful sale of pseudoephedrine product to minor – affirmative defenses
  - Removed and merged with 2925.56 [Unlawful sale of pseudoephedrine product] in new division (I) of that section.
- 2925.61 – Lawful administration of naloxone
  - No substantive changes
- 2925.62 – Safe reporting of overdoses [\*NEW\*]
  - Provides an affirmative defense for persons seeking, in good faith, timely emergency medical attention, either for themselves or another person, for a drug overdose if the person seeking medical attention remained with the person overdosing and the person did not obstruct law enforcement or emergency services.
  - If a person is found to be in violation of probation or community control sanction, there is a rebuttable presumption of not imposing a prison term if the person otherwise meets the criteria above.
  - If the person is found to be in violation of a postrelease control sanction, it will be considered a mitigating factor when determining the penalty if the person otherwise meets the criteria above.

**CURRENT DRUG TRAFFICKING IN DRUGS REFERENCE CHART**

DRUG	AMOUNT	LEVEL S or J		DIVISION S or J		GUIDANCE S or J	
Schedule I or II*	< bulk	F-4	F-3	C(1)(a)	C(1)(b)	Div. C	Div. C
	≥ bulk → <5 x bulk	F-3	F-2	C(1)(c)	C(1)(c)	In Favor*	Mand.
	≥ 5 → <50 x bulk	F-2	F-1	C(1)(d)	C(1)(d)	Mand.	Mand.
	≥50 → <100 x bulk	F-1	F-1	C(1)(e)	C(1)(e)	Mand.	Mand.
	≥ 100 x bulk	F-1	F-1	C(1)(f)	C(1)(f)	MDO	MDO
Schedule III, IV, V*	< bulk	F-5	F-4	C(2)(a)	C(2)(b)	Div. B	Div. C
	≥ bulk → <5 x bulk	F-4	F-3	C(2)(c)	C(2)(c)	Div. B	In Favor
	≥ 5 → <50 x bulk	F-3	F-2	C(2)(d)	C(2)(d)	In Favor	In Favor
	≥ 50 x bulk	F-2	F-1	C(2)(e)	C(2)(e)	Mand.	Mand.
Marijuana	Gift ≤ 20 g	MM^	M-3	C(3)(h)	C(3)(h)	None	None
	< 200 g	F-5	F-4	C(3)(a)	C(3)(b)	Div. B	Div. B
	≥ 200 g → < 1 kg	F-4	F-3	C(3)(c)	C(3)(c)	Div. B	Div. C
	≥ 1 kg → < 5 kg	F-3	F-2	C(3)(d)	C(3)(d)	Div. C	In Favor
	≥ 5 kg → < 20 kg	F-3	F-2	C(3)(e)	C(3)(e)	In Favor	In Favor
	≥ 20 kg → < 40 kg	F-2	F-1	C(3)(f)	C(3)(f)	Mand. 5, 6, 7, 8 yrs	Mand. F-1 max.
Cocaine: Powder or Crack	≥ 40 kg	F-2	F-1	C(3)(g)	C(3)(g)	Mand. F-2 max.	Mand. F-1 max.
	< 5g	F-5	F-4	C(4)(a)	C(4)(b)	Div. B	Div. C
	≥ 5 g → < 10 g	F-4	F-3	C(4)(c)	C(4)(c)	Div. B	In Favor
	≥ 10 g → < 20 g	F-3	F-2	C(4)(d)	C(4)(d)	In Favor*	Mand.
	≥ 20 g → < 27 g	F-2	F-1	C(4)(e)	C(4)(e)	Mand.	Mand.
Controlled Substance Analog	≥ 27 g → < 100 g	F-1	F-1	C(4)(f)	C(4)(f)	Mand.	Mand.
	≥ 100 g	F-1	F-1	C(4)(g)	C(4)(g)	MDO	MDO
	≤ 10g	F-5	F-4	C(8)(a)	C(8)(b)	Div. C	Div. C
	≥ 10g → < 20g	F-4	F-3	C(8)(c)	C(8)(c)	Div. B	In Favor
	≥ 20g → < 30g	F-3	F-2	C(8)(d)	C(8)(d)	In Favor	In Favor
≥ 30g → < 40g	F-2	F-1	C(8)(e)	C(8)(e)	Mand.	Mand.	
≥ 40g → < 50g	F-1	F-1	C(8)(f)	C(8)(f)	Mand.	Mand.	
≥ 50g	F-1	F-1	C(8)(g)	C(8)(g)	MDO	MDO	

DRUG	AMOUNT	LEVEL S or J		DIVISION S or J		GUIDANCE S or J	
LSD: Solid	< 10 UD	F-5	F-4	C(5)(a)	C(5)(b)	Div. B	Div. C
	≥ 10 UD → < 50 UD	F-4	F-3	C(5)(c)	C(5)(c)	Div. B	In Favor
	≥ 50 UD → < 250 UD	F-3	F-2	C(5)(d)	C(5)(d)	In Favor*	Mand.
	≥ 250 UD → < 1000 UD	F-2	F-1	C(5)(e)	C(5)(e)	Mand.	Mand.
	≥ 1000 UD → < 5000 UD	F-1	F-1	C(5)(f)	C(5)(f)	Mand.	Mand.
LSD: Liquid	≥ 5000 UD	F-1	F-1	C(5)(g)	C(5)(g)	MDO	MDO
	< 1 g	F-5	F-4	C(5)(a)	C(5)(b)	Div. B	Div. C
	≥ 1 g → < 5 g	F-4	F-3	C(5)(c)	C(5)(c)	Div. B	In Favor
	≥ 5 g → < 25 g	F-3	F-2	C(5)(d)	C(5)(d)	In Favor*	Mand.
	≥ 25 g → < 100 g	F-2	F-1	C(5)(e)	C(5)(e)	Mand.	Mand.
Heroin	≥ 100 g → < 500 g	F-1	F-1	C(5)(f)	C(5)(f)	Mand.	Mand.
	≥ 500 g	F-1	F-1	C(5)(g)	C(5)(g)	MDO	MDO
	< 1 g; < 10 UD	F-5	F-4	C(6)(a)	C(6)(b)	Div. B	Div. C
	≥ 1 g → < 5 g; ≥ 10 UD → < 50 UD	F-4	F-3	C(6)(c)	C(6)(c)	Div. B	In Favor
	≥ 5 g → < 10 g; ≥ 50 UD → < 100 UD	F-3	F-2	C(6)(d)	C(6)(d)	In Favor	In Favor
Hashish: Solid	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-2	F-1	C(6)(e)	C(6)(e)	Mand.	Mand.
	≥ 50 g → < 250 g; ≥ 500 UD → < 2500 UD	F-1	F-1	C(6)(f)	C(6)(f)	Mand.	Mand.
	≥ 250 g; ≥ 2500 UD	F-1	F-1	C(6)(g)	C(6)(g)	MDO	MDO
	< 10 g	F-5	F-4	C(7)(a)	C(7)(b)	Div. B	Div. B
	≥ 10 g → < 50 g	F-4	F-3	C(7)(c)	C(7)(c)	Div. B	Div. C
Hashish: Liquid	≥ 50 g → < 250 g	F-3	F-2	C(7)(d)	C(7)(d)	Div. C	In Favor
	≥ 250 g → < 1 kg	F-3	F-2	C(7)(e)	C(7)(e)	In Favor	In Favor
	≥ 1 kg - < 2 kg	F-2	F-1	C(7)(f)	C(7)(f)	Mand. 5, 6, 7, or 8	Mand. F-2 max.
	≥ 2 kg	F-2	F-1	C(7)(g)	C(7)(g)	Mand. F-2 max.	Mand. F-2 max.
	< 2 g	F-5	F-4	C(7)(a)	C(7)(b)	Div. B	Div. B
Controlled Substance Analog	≥ 2 g → < 10 g	F-4	F-3	C(7)(c)	C(7)(c)	Div. B	Div. C
	≥ 10 g → < 50 g	F-3	F-2	C(7)(d)	C(7)(d)	Div. C	In Favor
	≥ 50 g → < 200 g	F-3	F-2	C(7)(e)	C(7)(e)	In Favor	In Favor
	≥ 200 g - < 400 g	F-2	F-1	C(7)(f)	C(7)(f)	Mand. 5, 6, 7, or 8	Mand. F-2 max.
	≥ 400 g	F-2	F-1	C(7)(g)	C(7)(g)	Mand. F-2 max.	Mand. F-2 max.

\* The schedule of controlled substances is in O.R.C. §3719.41.  
 ^ Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.  
 S or J = The offense occurred in the vicinity of a school or juvenile.  
 MDO (Major Drug Offender) = Mandatory maximum term from F-1 range, R.C. 2929.14(A)(1).  
 Mand., or Mandatory = Judge must impose a prison term from range available for that offense level.

In Favor = A rebuttable presumption in favor of imposing a prison term  
 Div. B = Sentencing is guided by R.C. §2929.13(B), the rules for F-4s and F-5s.  
 Div. C = Sentencing is guided by R.C. §2929.13(C).  
 In Favor\* = Presumption in favor, but mandatory if 2 or more prior felony drug abuse offenses.  
 Note: As used in this section, "drug" includes any substance that is represented to be a drug.

**PROPOSED POSSESSION OF CONTROLLED SUBSTANCES REFERENCE CHART**

DRUG	AMOUNT	LEVEL
Schedule I or II*	< bulk	F-5
	≥ bulk → < 50 x bulk	F-3
	≥ 50 → < 100 x bulk	F-2
	≥ 100 x bulk	F-1 (MDO)
Schedule III, IV, or V*	< bulk	M-1†
	≥ bulk → < 50 x bulk	F-4
	≥ 50 x bulk	F-2
Marijuana	< 100 g	MM
	≥ 100 g → < 200 g	M-4
	≥ 200 g → < 1 kg	F-5
	≥ 1 kg → < 20 kg	F-4
	≥ 20 kg	F-2
Cocaine: Powder or Crack	< 10 g	F-5
	≥ 10 g → < 27 g	F-4
	≥ 27 g → < 100 g	F-3
	≥ 100 g → < 500 g	F-2
	≥ 500 g	F-1 (MDO)
LSD: Solid	< 50 UD	F-5
	≥ 50 UD → < 250 UD	F-4
	≥ 250 UD → < 5000 UD	F-3
	≥ 5000 UD	F-2
LSD: Liquid	< 5 g	F-5
	≥ 5 g → < 25 g	F-4
	≥ 25 g → < 500 g	F-3
	≥ 500 g	F-2
Heroin/Fentanyl‡	< 1 g → < 10 UD	F-5
	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-3
	≥ 50 g → < 250 g; ≥ 500 UD → < 2500 UD	F-1
	≥ 250 g; ≥ 2500 UD	F-1 (MDO)
Hashish: Solid	< 5 g	MM
	≥ 5 g → < 10 g	M-4
	≥ 10 g → < 50 g	F-5
	≥ 50 g → < 1 kg	F-4
	≥ 1 kg	F-2
Hashish: Liquid	< 1 g	MM
	≥ 1 g → < 2 g	M-4
	≥ 2 g → < 10 g	F-5
	≥ 10 g → < 200 g	F-4
	≥ 200 g	F-2
Controlled Substance Analog	< 10 g	F-5
	≥ 10 g → < 30 g	F-4
	≥ 30 g → < 50 g	F-2
	≥ 50 g	F-1 (MDO)

\* The schedule of controlled substances is in O.R.C. §3719.41.

^ Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.

MDO (Major Drug Offender) = Mandatory maximum term from F-1 range

† F-5 if the offender previously has been convicted of a drug abuse offense.

‡ Heroin/Fentanyl shall include any derivative of either heroin or fentanyl and any mixture containing both heroin and fentanyl.

Note: As used in this section, "drug" includes any substance that is represented to be a drug.

**CURRENT POSSESSION OF CONTROLLED SUBSTANCES REFERENCE CHART**

DRUG	AMOUNT	LEVEL	GUIDANCE
Schedule I or II*	< bulk	F-5	Div. B
	≥ bulk → < 5 x bulk	F-3	In Favor
	≥ 5 → < 50 x bulk	F-2	Mandatory
	≥ 50 → < 100 x bulk	F-1	Mandatory
	≥ 100 x bulk	F-1	MDO
Schedule III, IV, or V*	< bulk	M-1†	None
	≥ bulk → < 5 x bulk	F-4	Div. C
	≥ 5 bulk → < 50 x bulk	F-3	In Favor
	≥ 50 x bulk	F-2	Mandatory
Marijuana	< 100 g	MM	None
	≥ 100 g → < 200 g	M-4	None
	≥ 200 g → < 1 kg	F-5	Div. B
	≥ 1 kg → < 5 kg	F-4	Div. C
	≥ 5 kg → < 20 kg	F-3	In Favor
	≥ 20 kg → < 40 kg	F-2	Mandatory 5,6,7, or 8 years
	≥ 40 kg	F-2	Mandatory F-2 Max
Cocaine: Powder or Crack	< 5 g	F-5	Div. B
	≥ 5 g → < 10 g	F-4	Div. B
	≥ 10 g → < 20 g	F-3	In Favor*
	≥ 20 g → < 27 g	F-2	Mandatory
	≥ 27 g → < 100 g	F-1	Mandatory
	≥ 500 g	F-1	MDO
LSD:	< 10 UD	F-5	Div. B
	≥ 10 UD → < 50 UD	F-4	Div. C
	≥ 50 UD → < 250 UD	F-3	In Favor
	≥ 250 UD → < 1000 UD	F-2	Mandatory
	≥ 1000 UD → < 5000 UD	F-1	Mandatory
Solid	≥ 5000 UD	F-1	MDO
LSD:	< 1 g	F-5	Div. B
	≥ 1 g → < 5 g	F-4	Div. C
	≥ 5 g → < 25 g	F-3	In Favor
	≥ 25 g → < 100 g	F-2	Mandatory
	≥ 100 g → < 500 g	F-1	Mandatory
Liquid	≥ 500 g	F-2	MDO
Heroin	< 1 g; < 10 UD	F-5	Div. B
	≥ 1 g → < 5 g; ≥ 10 UD → < 50 UD	F-4	Div. C
	≥ 5 g → < 10 g; ≥ 50 UD → < 100 UD	F-3	In Favor
	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-2	Mandatory
	≥ 50 g → < 250 g; ≥ 500 UD → < 2500 UD	F-1	Mandatory
	≥ 250 g; ≥ 2500 UD	F-1	MDO
Hashish: Solid	< 5 g	MM	None
	≥ 5 g → < 10 g	M-4	None
	≥ 10 g → < 50 g	F-5	Div. B
	≥ 50 g → < 250 g	F-4	Div. C
	≥ 250 g → < 1 kg	F-3	In Favor
	≥ 1 kg → < 2 kg	F-2	Mand. 5,6,7, or 8 years
	≥ 2 kg	F-2	Mandatory F-2 max.
Hashish: Liquid	< 1 g	MM	None
	≥ 1 g → < 2 g	M-4	None
	≥ 2 g → < 10 g	F-5	Div. B
	≥ 10 g → < 50 g	F-4	Div. C
	≥ 50 g → < 200 g	F-3	In Favor
	≥ 200 g → < 400 g	F-2	Mand. 5,6,7, or 8
	≥ 400 g	F-2	Mandatory F-2 max.



Controlled Substance Analog	< 10g	F-5	Div. B
	≥ 10 g → < 20 g	F-4	In Favor
	≥ 20 g → < 30 g	F-3	In Favor
	≥ 30 g → < 40 g	F-2	Mandatory
	≥ 40 g → < 50 g	F-1	Mandatory
	≥ 50 g	F-1	MDO

\* The schedule of controlled substances is in O.R.C. §3719.41.

**In Favor** = A rebuttable presumption in favor of imposing a prison term

^ Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.

Div. B = Sentencing is guided by R.C. §2929.13(B), the rules for F-4s and F-5s.

S or J = The offense occurred in the vicinity of a school or juvenile.

Div. C = Sentencing is guided by R.C. §2929.13(C).

MDO (Major Drug Offender) = Mandatory maximum term from F-1 range, R.C. 2929.14(A)(1).

In Favor\* = Presumption in favor, but mandatory if 2 or more prior felony drug abuse offenses.

Mand., or Mandatory = Judge must impose a prison term from range available for that offense level.

Note: As used in this section, "drug" includes any substance that is represented to be a drug.

**PROPOSED TRAFFICKING IN DRUGS REFERENCE CHART**

DRUG	AMOUNT	LEVEL
Schedule I or II*	< bulk	F-4
	≥ bulk → < 50 x bulk	F-3
	≥ 50 → < 100 x bulk	F-2
	≥ 100 x bulk	F-1 (MDO)
Schedule III, IV, or V*	< bulk	F-5
	≥ bulk → < 50 x bulk	F-4
	≥ 50 x bulk	F-2
Marijuana	Gift ≤ 20g	MM^
	< 200 g	F-5
	≥ 200 g → < 1 kg	F-4
	≥ 1 kg → < 20 kg	F-3
Cocaine: Powder or Crack	≥ 20 kg	F-2
	< 10 g	F-5
	≥ 10 g → < 27 g	F-4
	≥ 27 g → < 100 g	F-3
LSD: Solid	≥ 100 g → < 500 g	F-2
	≥ 500 g	F-1 (MDO)
	< 50 UD	F-5
	≥ 50 UD → < 250 UD	F-4
LSD: Liquid	≥ 250 UD → < 5000 UD	F-3
	≥ 5000 UD	F-2
	< 5 g	F-5
Heroin/Fentanyl†	≥ 5 g → < 25 g	F-4
	≥ 25 g → < 500 g	F-3
	≥ 500 g	F-2
	< 1 g → < 10 UD	F-5
Hashish: Solid	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-3
	≥ 50 g → < 1 kg	F-2
	≥ 1 kg	F-1
Hashish: Liquid	≥ 250 g → < 2500 UD	F-1 (MDO)
	Gift ≤ 1 g	MM^
	< 10 g	F-5
	≥ 10 g → < 50 g	F-4
Controlled Substance Analog	≥ 50 g → < 1 kg	F-3
	≥ 1 kg	F-2
	Gift ≤ 0.2 g	MM^
	< 2 g	F-5
	≥ 2 g → < 10 g	F-4
	≥ 10 g → < 200 g	F-3
	≥ 200 g	F-2
	< 10 g	F-5
	≥ 10 g → < 30 g	F-4
	≥ 30 g → < 50 g	F-2
	≥ 50 g	F-1 (MDO)

\* The schedule of controlled substances is in O.R.C. §3719.41.

^ Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.

MDO (Major Drug Offender) = Mandatory maximum term from F-1 range

† F-5 if the offender previously has been convicted of a drug abuse offense.

♦ Heroin/Fentanyl shall include any derivative of either heroin or fentanyl and any mixture containing both heroin and fentanyl.

Note: As used in this section, "drug" includes any substance that is represented to be a drug.

**RC §2951.041 Judicial Diversion**

- (A) A defendant charged with a misdemeanor substance abuse offense or a fourth or fifth degree felony offense that is not a sexually oriented offense as defined under RC§ 2950.01(A), an offense of violence as defined under RC§ 2901.01(9), a violation of RC§ 4511.19(A), a violation of RC §2903.06, a violation of RC §2903.08, or an offense for which a sentencing court is required to impose a mandatory period of incarceration, may file a Motion for Judicial Diversion with an attached memorandum in support consistent with Crim. R. 12. Once filed, the time within which defendant must be brought to trial is stayed pursuant to RC §2945.72(G) with all delay attributed to defendant.
- (B) Within 30- days of the filing of the Motion, the court shall docket and conduct a hearing to consider the merits of the Motion. The time to conduct the hearing may be extended for good cause demonstrated. The victim notification provisions of RC § 2930.06
- (C) apply in relation to any hearing. The court shall rule upon the Motion within 15-days after the hearing.
- (C) It is presumed the Motion shall be granted, **and the court may only grant the Motion without approval of the prosecuting attorney**, if defendant demonstrates the following criteria are met at hearing:
- a. Defendant provides the court an assessment from a community treatment provider reflecting defendant has a substance use disorder and / or a mental health disorder which was a factor leading to the criminal offense for which defendant stands charged; and that treatment for such substance use and / or mental health disorder will decrease the likelihood that the accused will commit criminal offenses in the future.
  - b. Defendant has never successfully completed a judicial diversion program under this section or never successfully completed a felony intervention in lieu of conviction program under prior law.
  - c. Alternatively, if defendant has previously successfully completed a judicial diversion program under this section or successfully completed a felony intervention in lieu of conviction program under prior law, the prosecuting attorney has no objection to the pending Motion being granted.

- (D) If defendant satisfies the presumptive criteria described under paragraph (C), the court shall grant the Motion unless the court finds the presumption is overcome for reasons set forth on the record. If the Motion is denied, the court shall set forth findings in support of its written decision denying the Motion and the criminal proceedings shall proceed as if the defendant's Motion had not been made.
- (E) If the Motion is granted, defendant shall present a plea of guilty to all charges then before the court. Upon finding all tendered pleas of guilty are knowingly, voluntarily, and intelligently entered, the court shall stay all further criminal proceedings and order defendant to comply with all terms and conditions imposed by the court pursuant to this section. The court shall establish a judicial diversion plan requiring defendant, for at least one year and no more than five years, to abstain from the use of illegal drugs, alcoholic beverage, and intoxicating liquor, to remain of good behavior, to participate in treatment and recovery support services as well as any other programs deemed necessary, and to submit to regular random testing for drug and alcohol usage. The court may include any other treatment terms and conditions similar to community control sanctions, including community service, restitution, payment of court costs, and payment of supervision fees and drug testing fees as part of the plan.
- (F) To monitor the judicial diversion plan, defendant shall be placed under the general control and supervision of the county probation department, the adult parole authority, or another appropriate local probation or court services agency, if one exists, as if defendant was subject to a community control sanction imposed under section 2929.15, 2929.18, or 2929.25 of the Revised Code.
- (G) If the court finds that defendant has successfully completed the judicial diversion plan, the court shall dismiss the proceedings against defendant. Successful completion of the judicial diversion program under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. The court may order the sealing of records related to the offense in question in the manner provided in sections 2953.31 to 2953.36 of the Revised Code simultaneously with the Entry dismissing the case.
- (H) If defendant fails to comply with any material term or condition imposed as part of the judicial diversion plan, the supervising authority monitoring defendant shall promptly

advise the court and the prosecuting attorney of this failure. Upon the filing of a notice or motion from the prosecuting attorney advising the court of the alleged failure to comply or upon the court's own initiative, the court shall hold a hearing to determine whether defendant failed to comply with a material term or condition imposed as part of the plan.

- (I) If the court determines that defendant has failed to comply with a material term of condition of the plan as alleged, it may enter a finding of guilty and impose an appropriate sanction under Chapter 2929 of the Revised Code for all offenses for which defendant has pled guilty.
  
- (J) In lieu of entering a finding of guilty, the court may modify the judicial diversion plan to provide defendant another opportunity to achieve full compliance with the plan as modified. Only one such modification of a judicial diversion plan is authorized for demonstrated violations unless otherwise approved by the prosecuting attorney.
  
- (K) "Community treatment provider" means a provider that operates a program that provides substance use and / or mental health disorder assessment and treatment for persons and that satisfies all of the following:
  - (a) The purpose of the program shall be to provide substance use disorder and / or mental health assessments, develop an individual treatment plan and provide treatment to help improve public safety and reduce substance use relapses and recidivism while in the community.
  - (b) Each community treatment provider shall be certified by the department of mental health and addiction services under RC §5119.36 to provide substance use disorder assessments, development of individual treatment plans and provide such treatment.
  - (c) It is not in any prison but may be in a community-based correctional facility; provided that OMHAS or the community treatment provider may contract for residential services with a county or municipality in a jail facility or with a facility licensed under RC 2967.14(C) for residential detoxification and treatment.
  - (d) It provides an assessment and treatment for qualified accused persons placed into diversion under this section in a residential or non-residential program that is approved by OMHAS.

# **Foundational Information**

Gary C. Mohr, Director

# Identifying Opportunities

Identification of the five most frequent offenses (most serious commitment offense) for male and female offenders provides a central focus in rehabilitation efforts around the state.

## MALES

Drug Possession 12.4 %  
Burglary 9.9%  
Drug Trafficking 9.5%  
Grand Theft 5.3%  
Robbery 5.0%

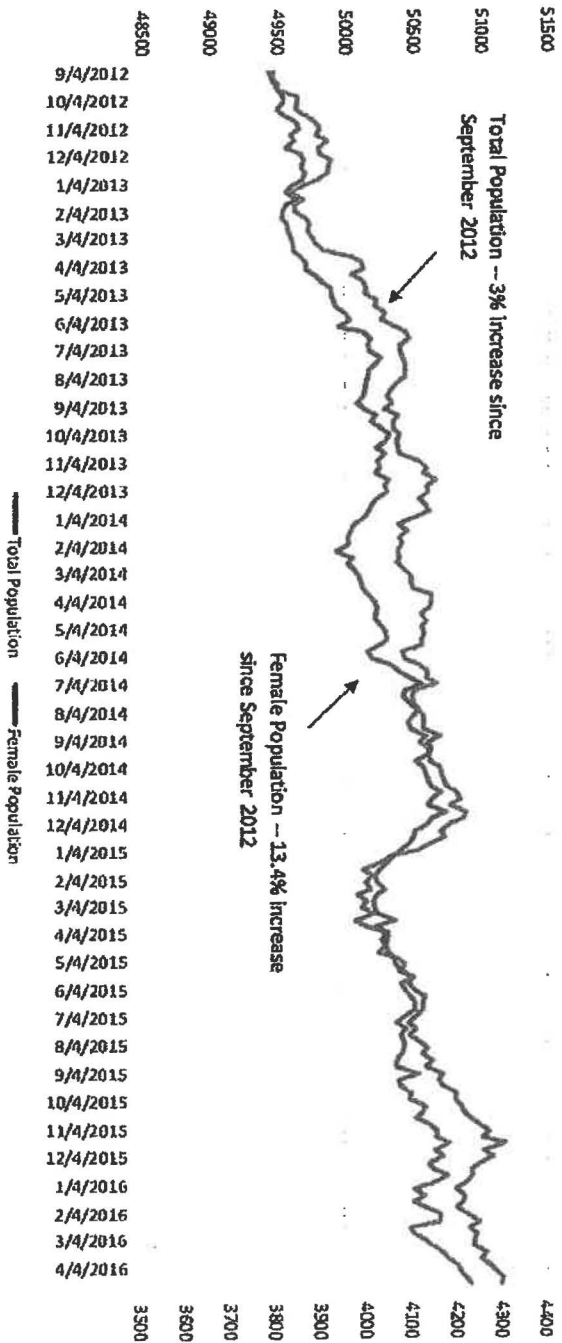
## FEMALES

Drug Possession 21.5%  
Drug Trafficking 10.9%  
Grand Theft 10.3%  
Burglary 7.9%  
Illegal Mfg. Drugs 6.0%

Source: Bureau of Research and Evaluation, Ohio Department of Rehabilitation and Correction (2016). *Calendar Year 2015 Commitment Report*. (<http://www.drc.ohio.gov/web/Reports/Commitment/Calendar%20Year%202015.pdf>).

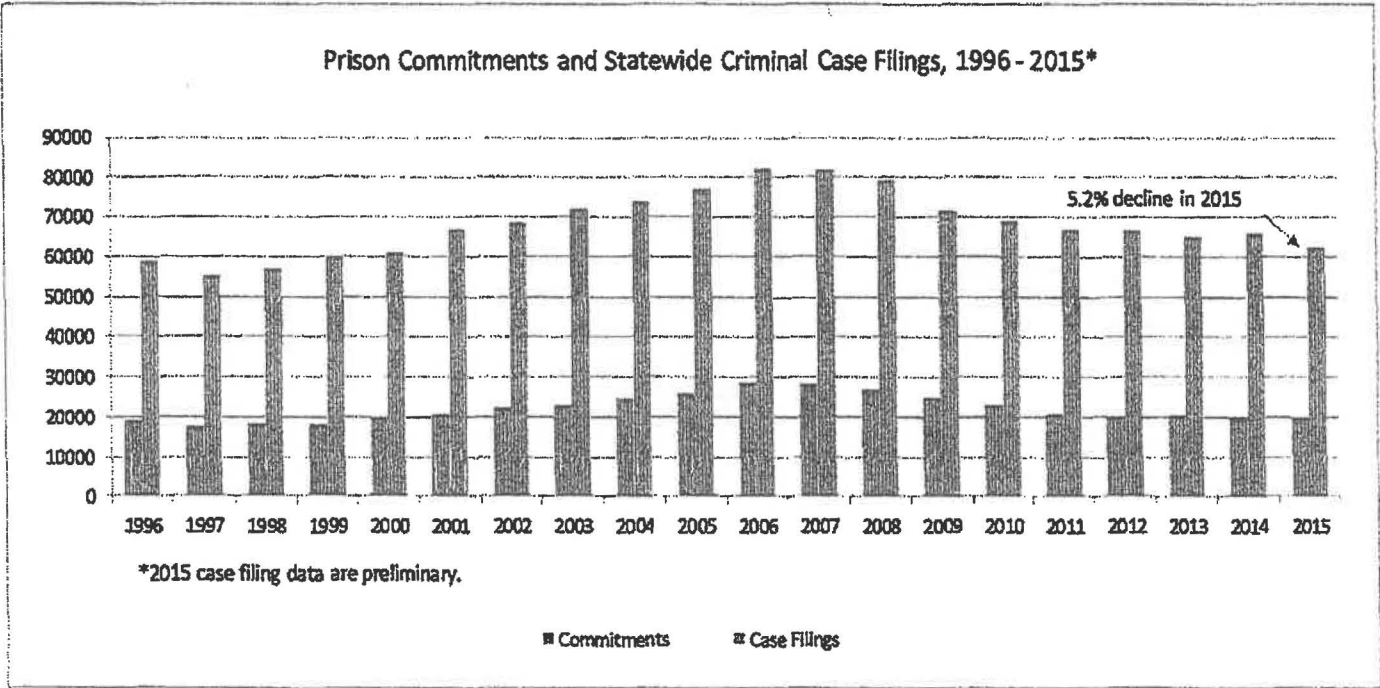
# Gender Population Growth

Total and Female Weekly Population Counts, Sep 2012 - Apr 2016



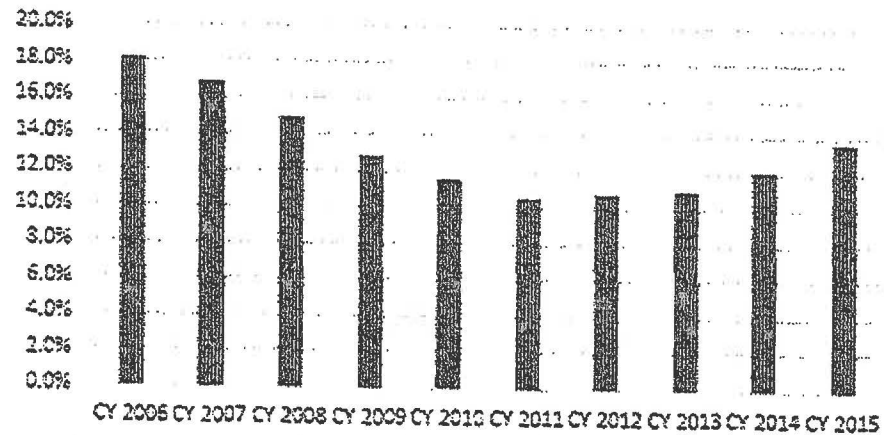


# Case Filings

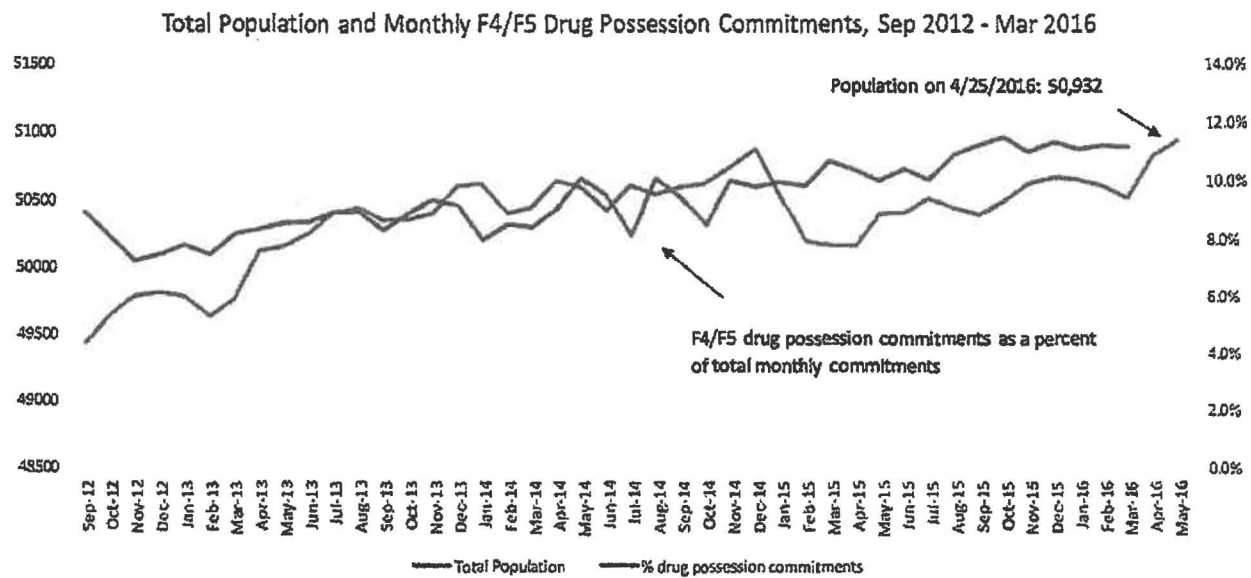


# Drug Possession Commitments

Proportion of Drug Possession Commitments  
(most serious), CY 2006 - CY 2015



# Drug Population/Growth





## OHIO CRIMINAL JUSTICE RECODIFICATION COMMITTEE

HONORABLE FRED PEPPE, CHAIRMAN  
MR. TIMOTHY YOUNG, VICE-CHAIRMAN

### Memorandum

**To:** Members, Ohio Criminal Justice Recodification Committee

**From:** Chairman Fred Pepple

**Date:** June 20, 2016

**RE:** Committee Update

Several significant and meaningful comments have been received concerning 2925 and 2929, and through the significant efforts of both workgroups, the various comments are resulting in significant changes from the original drafts. In order to facilitate these efforts, the 2925 and 2929 workgroups have agreed to hand their work over to a new workgroup to review all of their work to date.

This "Review Workgroup" will be charged to review, re-write, and make its recommendations on Chapter 2925 and 2929. Additionally, this new workgroup will consider Chapter 2953 and 2967 to make those chapters consistent with the recommendations on Chapters 2925 and 2929. Finally, this workgroup is also authorized to review any and all of the other work that has been done so far for inclusion in any recommendations that it may make. The intention is to authorize a specific proposal that keeps in mind our "big picture" discussions that we have had over the past year and a half.

The Review Workgroup will include the following:

- Vice-Chairman Young (Reporter for the group)
- Senator Eklund, Chair, Senate Criminal Justice Committee
- Representative Manning, Vice-Chair, House Judiciary Committee
- Director Mohr
- Prosecuting Attorney O'Brien.

I wish to thank all of the workgroups for all of the work you have done. When we get the recommendations from the Review Workgroup, we will discuss and then vote out Chapter 2925, 2929, 2953, and 2967.

We also need to review the remaining chapters of Title 29. I am asking the staff attorneys to prepare a draft that changes those sections to track the Criminal Rules and current practices, taking into account Constitutional requirements as determined by case law.

In the meantime, I am asking that the staff attorneys provide to each of us a collective copy of the various chapters as we have voted them out, so that we may each review those chapters and prepare to have final consideration for the proposal. After a vote on the final chapters being reworked by the Review Workgroup, we will update the collective final drafts and vote on the entire package. While there is still a lot of work to do, the light is at the end of the tunnel. Thanks again to all.



## OHIO CRIMINAL JUSTICE RECODIFICATION COMMITTEE

HONORABLE FRED PEPPLE, CHAIRMAN  
MR. TIMOTHY YOUNG, VICE-CHAIRMAN

### COMMITTEE MINUTES MARCH 2, 2017

Chairman Pepple called the meeting of the Ohio Criminal Justice Recodification Committee to order at approximately 1:10 PM.

The clerk called the roll and a quorum was present. Mr. Nunes motioned to approve the February 9, 2017 minutes. The motion was seconded by Director Reed. The minutes were approved without objection.

The Chairman next asked the committee to join him in welcoming its newest member, Senator Matt Huffman.

The committee next began debate on the voting list distributed to the committee and voted on the following amendments:

1. Drug Amounts/Penalties offered by OPAA. The vote failed 3-16.
2. Controlled Substance Analog Amounts offered by Senator Thomas. The amendment was withdrawn by the proponent.
3. Mandatory Sentences in Chapter 2925 offered by Senator Thomas. The vote failed 5-14.
4. Good Samaritan Evidence offered by Senator Thomas. The amendment was withdrawn by the proponent.
5. Good Samaritan Limits offered by Senator Thomas. The amendment was withdrawn by the proponent.
6. Good Samaritan Arrests offered by Senator Thomas. The amendment was withdrawn by the proponent.
7. Illegal Assembly Penalties offered by OPAA. The vote failed 3-16.
8. Aggravated Funding on Drug Trafficking Penalties offered by OPAA. The vote failed 4-15.
9. Deception to obtain a dangerous drug offered by Senator Thomas. The vote passed 11-7.
10. Tampering with drug terms offered by Senator Thomas. The amendment was tabled by the proponent.
11. Intensive Supervision – Randomization offered by Senator Thomas. The vote failed 1-14.
12. Intensive Supervision – Eligibility offered by Senator Thomas. The amendment was split into two parts. For the first part, the vote passed 16-2. For the second part, the vote passed 17-0.

Committee Secretary Tom Hancock, 1 Capitol Square, Columbus, Ohio 43215  
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13. Expand Eligibility offered by Senator Thomas. The amendment was withdrawn by the proponent.
14. Intensive Supervision Review Group offered by Senator Thomas. The vote passed by voice vote unanimously.
15. ILC Eligibility offered by OPAA. The amendment was withdrawn by the proponent.
16. Sealing of Records – Drugs offered by OPAA. The vote failed 2-14.
17. Spousal Exception to Sex Offenses offered by OPAA. The amendment was withdrawn by the proponent.
18. Removing Mistake of Age Defense offered by OPAA. The vote passed 12-5.
19. Rape/Unlawful Sexual Conduct with Minor Ages offered by Jill Beeler. The amendment was split into three parts. For the first part, the vote passed 12-4. For the second part, the vote passed 9-6. For the third part, the vote passed 9-6.
20. Aggravated Rape Ages offered by OPAA. The vote failed 6-9.
21. Unlawful Sexual Conduct with a Minor offered by OPAA. The vote failed 6-9.
22. Aggravated Rape/Life Sentences offered by OPAA. The vote failed 2-12.
23. HIV Strengthen Penalties offered by OPAA. The amendment was tabled by the proponent.
24. HIV Reduce Penalties Part 1 offered by Jill Beeler. The amendment was tabled by the proponent.
25. HIV Reduce Penalties Part 2 offered by Jill Beeler. The amendment was tabled by the proponent.
26. HIV Uniformity offered by Jill Beeler. The amendment was tabled by the proponent.
27. Truth Verification offered by Staff. The vote failed 0-14.
28. Sexually Violent Predator offered by OPAA. The vote failed 2-12.
29. Purpose of Sex Offender Registry offered by Tim Young. The vote passed 13-1.
30. Second Risk Assessment – No Cost to Indigent offered by Tim Young. The vote passed 14-0.

With no further business to come before the Committee, Chairman Pepple motioned to adjourn the meeting. The motion to adjourn was approved without objection and the committee meeting was adjourned at approximately 4:55 PM.

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Judge Fred Pepple, Chair



### **POSSESSION OF TRACE DRUG AMOUNTS**

As early as 2011, the Ohio Criminal Sentencing Commission (Commission) identified possession of trace drug amounts as a cause of prison overcrowding.<sup>1</sup> The Commission noted that trace cocaine amounts can be prosecuted as a felony and, in some jurisdictions, that was the norm. The Commission suggested the possibility, at that time, of treating trace amount possession as a misdemeanor or limiting fifth degree felony sanctions, meaning no prison sentence, in these cases. That suggestion was not pursued by the Commission or the legislature.

In 2015, the Commission revisited the issue of trace drug amounts. In doing so, the Commission surmised that there were wide disparities in what was considered a “trace” amount between county prosecutor offices in Ohio jurisdictions. In July 2015 the Commission sent suggestions and a review of other state statutes on trace drug amounts to the Recodification Committee for consideration in their review of the Drug Chapter. The Commission recommended that the Recodification Committee consider what constitutes a reasonable amount below which the offense of possession should not be charged. The Commission’s idea was to institute a floor amount below which possession would not be charged. The Commission also suggested that a change in the statute where a set amount of drugs are need to necessitate a felony charge be considered. Currently, cases are regularly charged and tried as per se or strict liability crimes based upon the smallest amount, sometimes microscopic, of a drug where it is nearly impossible to prove that the offender had the required mens rea.

The Commission noted that HB 86, passed in 2011, created a presumption against prison for possession offenses and, should trace amount possession be eliminated, offenders not charged under the possession statute would likely face prosecution under the drug paraphernalia statute. The Commission argued that, under current law, a person found to be in possession of drug paraphernalia is currently charged with possession of the drug (trace amount), potentially a felony, and possession of the paraphernalia (a misdemeanor); however, the offender likely doesn’t possess the mens rea for the drug possession charge because the amount is so miniscule. As the Commission noted in its comments to the Recodification Committee: “Since this charge addresses people who don’t know they are walking around with small amounts of drugs, society is not put more at risk if the trace amount charge is eliminated.”<sup>2</sup>

The Recodification Committee plan takes into account the suggestions of the Commission in that the drug amounts in the possession statutes indicate a floor below which possession will not be charged. For example, in the proposed RC §2925.04 (unlawful possession of drugs), possession of heroin or fentanyl is a felony of the fifth degree if the amount is greater than or equal to .025 grams but less than 1 gram. This indicates that any amount less than .025 would not be charged as possession. As another example, the Recodification Committee plan indicates that possession of marijuana (RC §2925.041) is a minor misdemeanor if the amount possessed is

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<sup>1</sup> “2011 Monitoring Report, Prison Crowding: The Long View, With Suggestions”, Ohio Criminal Sentencing Commission, March 2011.

<sup>2</sup> “Sentencing Committee responses June 18, 2015”, Ohio Criminal Sentencing Commission.





greater than or equal to .025 grams and less than 200 grams. Again, this implies than any trace amount less than .025 grams would not be a chargeable offense. Both proposed possession statutes do not have a presumption of prison nor do they include mandatory minimum prison terms.

Except for the elimination of driver's license suspension language<sup>3</sup>, the Recodification Committee plan does not make any substantive changes to the drug paraphernalia statute (new RC §2925.14) but does incorporate RC §2925.12 (possessing drug abuse instruments) and RC §2925.141 (illegal use or possession of marijuana drug paraphernalia) into the newly constituted section. Therefore, possession of drug paraphernalia would be a felony of the fourth degree or, if it is marijuana paraphernalia, a minor misdemeanor, but there would not be a concurrent possession of drugs charge if there was a trace amount in or on the paraphernalia.

### **INTERVENTION IN LIEU OF CONVICTION (ILC)**

In early 2015 the Commission identified eligibility for intervention in lieu of conviction, the assessment process, and improvement of the overall statutory structure as a priority issue for the Commission's work. In October 2015 the Commission recommended proposed amendments to intervention in lieu of conviction (ILC) under RC §2951.041. The Commission forwarded the recommendations to the Recodification Committee in November 2015 for consideration. The Commission's goal was to continue ILC as a diversion program while balancing treatment and relapse with criminal behavior and enforcement. The Commission's primary focus in its revisions was not eligibility for ILC but the procedure for requesting ILC and administrative application of the ILC statutes.

Under the Commission's recommendations an offender with any criminal offense where drugs or alcohol was a factor leading to the commission of the offense would be eligible except:

- 1) those who were previously granted ILC and the prosecutor objects to a second chance;
- 2) offenders who had a previous offense of violence;
- 3) if the victim of the offense was older than 65, younger than 13 or a peace officer or disabled;
- 4) if the offense was a first, second, or third degree felony;
- 5) if the offense was an offense of violence;

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<sup>3</sup> Note that the Recodification Committee plan centralizes all mandatory driver's or commercial driver's license suspensions into one section (new RC 2925.11) and makes all license suspensions discretionary.



- 6) if the offender faced a mandatory term under RC §§ 4511.19, 2903.06, or 2903.08 (OVI and vehicular homicide/assault/manslaughter);
- 7) if the offense was first, second, or third degree trafficking;
- 8) if the offense was under RC §§ 2925.02 (corrupting another with drugs), 2905.04 (illegal manufacture), or 2925.06 (illegal distribution of steroids);
- 9) if the offense was under RC §4506 (commercial driver's license); or
- 10) if there were multiple offenses and any of the offenses were ineligible.

The Commission's proposal prescribes the process by which the offender files a motion and affidavit of eligibility within 14 days of the prosecutor delivering discovery. The prosecutor can respond to the motion and, if the prosecutor does respond, the court is not required to hold a hearing. If a hearing is held, the court must get an addiction services assessment and intervention plan. At the hearing the defendant can testify as to their eligibility and the intervention plan. If the motion is granted the defendant accepts a waiver of speedy trial and the criminal proceedings are stayed. If the motion is denied the court must state the reason for the denial on the record. Monitoring of the ILC offender is done by the same agency that supervises community control offenders and if the defendant is successful on ILC then the proceedings are dismissed and the offender can seek sealing of the records. If the offender commits a violation while on ILC, the Commission proposal allows the court to extend the ILC period and not enter a finding of guilty on the original charge. This provision accounts for the reality that, in drug and alcohol treatment, relapse is common.

The Recodification Committee, with the Commission's recommendations to consider, took a slightly different approach to ILC. First, the Recodification Committee plan separates those seeking intervention in lieu for offenses arising from substance abuse (§2951.12) and those arising from mental illness, disability or human trafficking (§2951.13). Eligibility for offenders under proposed RC §2951.12 is similar to the Commission's requirements in that only offenders charged with a misdemeanor or third, fourth, or fifth degree felonies are eligible. The offense also cannot be an OVI violation, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or aggravated vehicular assault or vehicular assault.

As to process under the Recodification Committee plan, the defendant submits an application, waives their speedy trial rights, and agrees to abide by the intervention plan. The court may conditionally grant the application and send the defendant for screening by a community treatment provider that then provides a report to the court. After screening the court then determines if the defendant should be granted intervention in lieu of conviction and, if it does, stays the criminal proceedings and orders the defendant to treatment. If the defendant is successful in treatment, the court dismisses the case against the defendant and the defendant may get their record sealed. If the defendant fails in treatment the court has the option to



continue them on the treatment plan and extend the term by six to eighteen months, impose a thirty day jail term and continue them on the treatment plan, or terminate intervention and find them guilty and sentence them accordingly.

Under the proposed RC §2951.13 for those with mental illness, an intellectual disability, or victims of human trafficking, the Recodification Committee proposal allows defendants to apply for intervention in lieu only once and they cannot have been previously found guilty of a serious offense of violence or felony sex offense. The current offense must be a fourth or fifth degree felony or a misdemeanor and cannot be an OVI violation, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or aggravated vehicular assault or vehicular assault. Also ineligible under this section are those charged with tampering with drugs if physical harm resulted or the offense would result in the offender being disqualified from operating a commercial motor vehicle. The results of successful completion of intervention are the same for this group of defendants as those in the class above as are the ramifications of failure.

It is important to note that the Commission considered intervention in lieu of conviction separately from other issues related to drug offenses; however, the Recodification Committee noted that it is “designed to be the pathway to treatment options for those caught in the cycle of addiction.”<sup>4</sup> The Recodification Committee viewed intervention in lieu as the second step in a two-step drug treatment process. The first step in the process is intensive supervision under RC 2951.11. The Recodification Committee intensive supervision model is based upon a Hawaii program called HOPE which institutes a swift, certain, and fair model of punishment for failure in treatment. If a defendant was initially allowed to participate in intensive supervision and repeatedly violates the conditions of that supervision, they can apply or be referred to ILC.<sup>5</sup>

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<sup>4</sup> Ohio Criminal Justice Recodification Committee, Summary of Committee’s plan, June 15, 2017 available at <http://ocjrc.legislature.ohio.gov/Assets/Files/committee-notes.pdf>.

<sup>5</sup> *Id.* at 65.

To: Sara Andrews

From: Hayden Capace, Esq. – Extern for the Criminal Sentencing Commission

Date: 12/14/17

Re: 5 Questions from Drug Chapter Recodification

1. At pages 262-263 of the “plain language version”, no reference to the current law that expressly directs fire and emergency medical responders, on request of law enforcement, to divulge to law enforcement the names of the persons to whom naloxone was administered. was this provision deleted? And, if so – should it be reinserted because it has the potential to materially assist in detecting the upstream suppliers of heroin and related drugs;

Answer:

“(f) Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d et seq., as Distributed to OCJRC on 6/5/2017 263 amended, and regulations promulgated by the United States department of health and human services to implement the act or the requirements of 42 C.F.R. Part 2.”

- This suggests that nothing in this section shall COMPELL (forceful language, means there is no additional requirement under this section) to disclose information in a way that CONFLICTS with HIPAA and US DHS
  - This is common in state laws to avoid constitutional challenges
    - The law explicitly limits itself to Federal legislation, versus it could be challenged as unconstitutional if the law is vague about it conflicting (though most read it to avoid just constitutional questions I think it was to avoid such challenges)
  - We cannot reinsert due to the constitutional issues, and no requirement can be made to ever force disclosure of HIPAA protected info without express exception
2. At page 268 of the plain language version, section 2925.061(B), there is concern with the language that it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance, and that the assembly or possession of a single chemical is sufficient. Way back in in the General Assembly, Representative Seitz went to great lengths to establish that one of principal ingredients of meth is a common chemical used on virtually every farm in Ohio. The way this language reads, it would make criminals out of all Ohio farmers who regularly possess this chemical that may be used in the manufacture of meth. Perhaps this is saved by the language “with the purpose to manufacture a controlled substance”, but please offer an interpretation;

Answer:

“(A) No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the purpose to manufacture a controlled substance in schedule I or II in violation of R.C. 2925.06.”

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in schedule I or II. The assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in schedule I

or II, with the purpose to manufacture a controlled substance in either schedule, is sufficient to violate this section.

- Intent requirement would “save” the average farmer who simply possesses the chemicals
- This law is not strict liability, and requires and intent (purpose) to manufacture a controlled substance
- Must independently prove two things
  - Possession of 1 or more chemicals
  - Purpose to manufacture those chemicals into a controlled substance
    - Purpose is the highest level of intent
    - Negligent → Reckless → Knowingly → Purpose (also sometimes called intent to)
    - This basically means the person has to want to manufacture a drug and be in possession
    - Example: Bleach can be used to make mustard gas, but owning bleach isn’t intent to manufacture a chemical weapon without some evidence of plans to do so
- Still some concern over what I dubbed the “chain lightning effect”
  - Farmer/Farmer’s relative is arrested for possession, use, or distribution → assumption that any chemicals on the farm were intended to be used in the manufacturing of a controlled substance
  - Basically, they could rope in all the chemicals for a user or small scale distributor
    - It’s hard to distinguish what is for meth and what is for farming when you are doing both
- The law-abiding farmer with a law abiding family should have no issues with this law

3. At page 278, section 2925.31, why do we really need a statute on this?

Answer:

- “2925.31 Abusing harmful intoxicants. (A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant. (B) Whoever violates this section is guilty of abusing harmful intoxicants, a first degree misdemeanor. (C) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. 2925.38.”
- This is, in my opinion, trying to make the acquiring of legal substances with the purpose to induce intoxication a crime
- Think huffing paint, or whippits
- Does this make every huffer unable to buy paint? Probably not, but it becomes a question of intent

4. How do the proposed penalties in the area of fentanyl and carfentanyl compare to the penalties that are currently prescribed in the version of SB 1 that has passed the Senate and that is pending before the House? We believe them to be rather different, and that the Senate language creates harsher penalties involving lesser quantities, but please confirm.

Answer:

- Generally, the punishment is higher for smaller amounts
- Here’s a summary done by the ACLU
  - <http://www.acluohio.org/archives/legislation/sb-1-revise-drug-laws-2017-2018>

- 20 grams for use and distribution
  - SB 1: F1
  - Recod: F3
    - Pg 255, section (A)(2)e “(e) An amount of heroin or fentanyl equal to or exceeding one hundred unit doses or ten grams, but less than three hundred unit doses or thirty grams;” 10-30 grams
    - Pg 256, section (C)
      - “(C) Except as provided in division (D), whoever violates this section is guilty of trafficking in drugs, a **third degree felony**. If an accused is charged with a violation of this section and the court has reason to believe that the offender would be amenable to treatment as provided in R.C. 2951.12, the accused may apply to the court for intervention in lieu of conviction as provided in R.C. 2951.12. (D)(1) It is a partial affirmative defense to a charge under this section that the controlled substance involved in the offense was possessed in an amount and under circumstances that indicate that the controlled substance was solely for personal use and not for sale or distribution to others. (2) Notwithstanding any contrary provision of this section, if a person who is charged with a violation of this section establishes, by a preponderance of the evidence, the partial affirmative defense described in division (D), the person is not guilty of trafficking in drugs but is instead guilty of bulk possession of a controlled substance, a fourth degree felony, and may apply for intensive supervision under R.C. 2951.11(A)(1).”
  - Recod also gives a defense of use only, which can reduce punishment
    - I haven’t seen similar language in SB 1

5. Are we carrying forward the equalization of crack/powder cocaine sentencing as was prescribed by HB 86 in 2011?

Answer:

- A quick ctrl-F shows all the mentions of cocaine without any distinguishing between powder and rock forms
- No mentions of crack, or any distinguishing for different compounds
- For example
  - Pg 260
    - (1) Twenty-five one-thousandths of one gram or more, but less than five times the bulk amount of any compound, mixture, preparation, or substance included in schedule I or schedule II, **other than** marijuana, **cocaine**, L.S.D., heroin, fentanyl, hashish, or a controlled substance analog;
    - (3) Twenty-five one-thousandths of one gram or more, but less than twenty-seven grams of cocaine;