

IN THE SUPREME COURT OF OHIO

State of Ohio, : Case No. 2006-1608
Appellee, : On Certified Conflict from the Lake
County Court of Appeals
v. :
Larry M. Schlee, : Court of Appeals Case No. 2005-L-105
Appellant. :

**MERIT BRIEF OF AMICI CURIAE
THE OFFICE OF THE OHIO PUBLIC DEFENDER AND
THE OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
IN SUPPORT OF APPELLANT LARRY M. SCHLEE**

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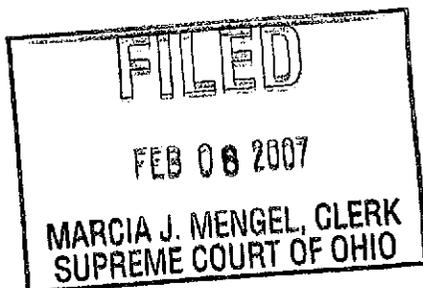


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STATEMENT OF THE FACTS

The Office of the Ohio Public Defender and the Ohio Association of Criminal Defense Lawyers adopt the Statement of the Facts and Case set forth in the Merits Brief of Defendant-Appellant Larry M. Schlee.

ARGUMENT

THE CERTIFIED CONFLICT QUESTION

Whether the trial court can recast appellant's motion for relief from judgment as a petition for postconviction relief when it has been unambiguously presented as a Civil Rule 60(B) motion.

PROPOSITION OF LAW OF AMICI CURIAE

The court may not recast a pro se litigant's unambiguously presented motion for relief from judgment under Civil Rule 60(B) as a postconviction petition unless the court:

- concludes that the motion fails on the merits under Civil Rule 60(B);
- notifies the movant that it will recast the motion and gives the movant the opportunity to object and/or to withdraw the motion or to amend it to include all the movant's postconviction claims; and
- recasts and decides the motion under the form of post-judgment relief appropriate to the claims raised in the motion.

I. INTRODUCTION

The Office of the Ohio Public Defender (OPD)¹ and the Ohio Association of Criminal Defense Lawyers (OACDL)² submit this amicus curiae brief in support of Appellant Larry M. Schlee, because the resolution of the certified question is one of great urgency for their present and future clients. When a court recasts a pro se filing as a postconviction petition, the court has foreclosed virtually any review of any other postconviction claims which that litigant might otherwise have had. Except in extraordinarily rare cases, a defendant may file only one postconvic-

¹ Statement of Interest of Amicus OPD: The Office of the Ohio Public Defender is authorized to "provide legal representation to any person incarcerated in any correctional institution of the state, in any matter in which the person asserts he is unlawfully imprisoned or detained." R.C. 120.06(A)(3).

² Statement of Interest of Amicus OACDL: The Ohio Association of Criminal Defense Lawyers, founded in 1986, is a professional association with more than 700 members in Ohio. OACDL is among the largest professional organizations of criminal practitioners in the state. OACDL advocates for progressive criminal laws and policies that are consistent with constitutional principles, limited government intrusion into the lives of Americans, and a free society.

tion petition under Ohio law; thus, any postconviction claims not included in a recast document will never be reviewed. Ohio Revised Code Section 2953.23 makes it virtually impossible to file a second postconviction petition. Any meritorious postconviction claims that the litigant might have had are not only barred from review in Ohio's courts because of the recasting, they are also barred from review in federal court. Recasting a pro se document as a postconviction petition therefore creates an extraordinary risk to the pro se litigant. For this reason alone, the resolution of the certified question will reach well beyond Mr. Schlee's case and will have a broad impact on the ability of trial courts to address the claims of pro se litigants.

Amici have unique perspectives and insights to bring to bear on the certified question, based upon their long experience in representing incarcerated clients who have previously attempted to litigate their cases pro se. Amici have all too often seen cases in which the pro se litigant has unknowingly aborted review of substantial constitutional claims by the manner in which they conducted the pro se litigation. In addition, amici have reviewed cases in which courts appear to have been unable to meaningfully consider a pro se litigant's filings.

Amici urge the Court to resolve the conflict question by reversing the Lake County Court of Appeals' decision in Mr. Schlee's case. For that reason, amici file this brief in support of Mr. Schlee. However, the vital interests that are endangered when a court recasts a pro se motion as a postconviction petition justify the Court in addressing the conflict question on a broader basis than simply reversing the decision in Mr. Schlee's case. Amici advocate an approach, based upon the rule followed in federal courts, that will both guide the trial courts regarding how to analyze pro se filings and will provide minimal due process protections to pro se litigants before a court recasts a filing. *Castro v. United States* (2003), 540 U.S. 375, 124 S.Ct. 786.

A. Civil Rule 60(B) plays a vital, safety-valve function in both civil and criminal cases by protecting the integrity of the court and its proceedings.

For good reasons, the Lake County Court of Appeals in Mr. Schlee's case and the Hamilton County Court of Appeals in the conflict case, *State v. Lehrfeld*, Hamilton App. No. C-030390, 2004-Ohio-2277, agreed on one point: Rule 60(B) applies in criminal cases, by the operation of Criminal Rule 57(B). Civil Rule 60(B) performs a critical, safety-valve function that is vital to protecting the integrity of the court and its proceedings in both civil and criminal cases. The rule "attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done." *Colley v. Bazell* (1980), 64 Ohio St.2d 243, 248, N.E.2d 214 (quoting 11 Wright & Miller, Federal Practice & Procedure 140, § 2851).

Ohio patterned its civil rules, including Rule 60(B), after the Federal Civil Rules, and review of federal case law and leading treatises is appropriate when Ohio rule and federal rule are similarly worded. *State ex. rel. State Fire Marshall v. Curl*, 87 Ohio St.3d 568, 571, 2000-Ohio-0248, 722 N.E.2d 73; *Industrial Risk Insurers v. Lorenz Equip Co.* (1994), 69 Ohio St.3d 576, 579, 635 N.E.2d 14. Federal Rule 60(b) has been construed as embodying an authority that courts in equity possessed inherently for centuries in the English common law, rooted in the former common law writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of review. Federal Rule 60(b) specifically abolished the above these writs because Rule 60(b) replaced them and provides the relief they formerly provided. Fed. R. Civ. P. 60(b). Federal Rule 60(b) "gives the courts a 'grand reservoir of equitable power to do justice in a particular case.'" *Pierce v. Cook Co.* (10th Cir. 1975), 518 F.2d 720, 722. The rule confirms the trial court's inherent and discretionary power, "firmly established in English practice long before

the foundation of our Republic,” to set aside a judgment whose enforcement would work inequity. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* (1944), 322 U.S. 238, 244.

A motion for relief under Rule 60(B) does not attack the merits of the underlying judgment itself, but aims at protecting the integrity of the court and its proceedings in the case. See, e.g., *Gonzales v. Crosby* (2005), 545 U.S. 524, 533. That is, a Rule 60(B) motion is not a vehicle for presenting a new claim for relief from a conviction or sentence, but is instead a means to inquire whether equity requires the judgment to be set aside because of deficiencies in the manner and circumstances under which it was procured. *Id.* The rule identifies the following specific circumstances that could warrant equitable relief: 1) mistake, inadvertence, surprise, excusable neglect; 2) newly discovered evidence; 3) fraud, misrepresentation, or other misconduct of an adverse party;³ 4) satisfaction or discharge of the judgment, the setting aside of a prior judgment on which the judgment was based. Civ. R. 60(B)(1) – (B)(4). The rule also includes a catch-all provision for “any other reason justifying relief.” Civ. R. 60(B)(5). Thus, a Rule 60(B) motion is not an independent, collateral action by which the movant may challenge a conviction or sentence. It is merely a means by which the court may re-visit that judgment to protect the integrity of the court.

B. The rule that filings by incarcerated, pro se litigants are to be construed liberally requires the court to identify liberally the claims asserted in a document. When construed liberally, Mr. Schlee’s Rule 60(B) motion could reasonably be construed as presenting a claim under Civil Rule 60(B)(3).

The courts have long recognized that special care is required when reviewing filings by pro se litigants. Although pro se litigants are not entitled to exceptions to the rules of practice and procedure, the courts must construe pro se filings liberally. This is true in federal courts, which

³ Mr. Schlee's Rule 60(B) motion, when liberally construed, asserts a claim under Civ. R. 60(B)(3).

hold pro se pleadings to less stringent standards than pleadings drafted by lawyers. *Estelle v. Gamble* (1976), 429 U.S. 97, 106, 97 S.Ct. 285; *Haines v. Kerner* (1972), 404 U.S. 519, 520, 92 S.Ct. 594 (“the pro se complaint . . . we hold to less stringent standards than formal pleadings drafted by lawyers”). Federal courts have even applied this rule to habeas corpus filings, holding that pro se petitions and supporting documents must be liberally construed, with a measure of tolerance. See, e.g., *Royce v. Hahn* (3d Cir. 1998), 151 F.3d 116, 118. This rule of liberality does not, however, extend so far as to excuse pro se litigants from generally applicable procedural and substantive rules. See *McNeil v. United States* (1993), 508 U.S. 106, 112, 113 S.Ct. 1980, 1984.

Ohio courts also liberally construe pro se pleadings. See, e.g., *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 614 N.E.2d 827; *Akbar-El v. Muhammed* (1995), 105 Ohio App.3d 81, 85, 663 N.E.2d 703 (“Although appellant’s arguments are difficult to decipher, we afford leniency to pro se prisoner litigants.”). One important aspect of this rule of liberality is that it involves more than merely interpreting the language of the litigant’s document. It also requires the court to identify liberally the claims asserted in the document, notwithstanding the difficulty in deciphering them. As the court in *Akbar-El* explained, “we will attempt to discern whether appellant’s arguments have merit and will review the record to determine whether there was any manifest error that reasonably can be said to have been raised by appellant.” *Id.* at 85. A trial court’s failure to apply the rule of liberal construction may amount to an abuse of discretion. See, e.g., *In the Matter of Fetters* (1996), 110 Ohio App.3d 483, 487, 674 N.E.2d 766, 769 (“the trial court’s dismissal of appellants’ complaint instead of providing appellants with an opportunity to cure the defect was not a valid exercise of the court’s discretion.”).

In addition, Rule 60(B), itself, must be applied liberally. *Colley*, 64 Ohio St.2d at 249. The liberal application of Rule 60(B) promotes the policy “that cases should be decided upon their merits, where possible, rather than on procedural grounds.” *Marion Production Credit Association v. Cochran* (1988), 40 Ohio St.3d 265, 271, 533 N.E.2d 325. Applying Rule 60(B) parsimoniously is inappropriate in light of its important equitable function in preserving the integrity of the court’s proceedings. As Justice Black once observed, “Rule 60(b)’s broad grant of power to the District Court should not be constricted by the importation of the concept of legal ‘rights.’ . . . Surely, the liberalizing provisions of 60(b) should not be emasculated by common-law ideas of ‘privity’ or ‘fiduciary relations.’” *Ackermann v. United States* (1950), 340 U.S. 193, 204-05 (Black, J., dissenting).

This tradition of liberally construing pro se filings, particularly in the case of incarcerated, indigent litigants, protects the right of all Americans to have access to the courts. Otherwise, justice would be available only to those who can afford to hire counsel. Indeed, the Ohio Constitution specifically guarantees its citizens – rich and poor alike – access to the courts (“All courts shall be open, and every person, for any injury done him . . . shall have remedy by due course of law”). Art. I, § 16, Ohio Const.

The plight of incarcerated pro se litigants demonstrates the wisdom of, and need for, this rule of liberality. Unlike the pro se litigation that frequently occurs in the civil courts (divorces, bankruptcies, civil suits for damages and the like), incarcerated pro se litigants are in special need of the courts’ restraint and liberality. First, typical pro se inmates, though they would prefer not to, are forced to proceed pro se because of the lack of financial resources. In Ohio, in-

mates in general population earn approximately \$16 to \$17 each month.⁴ This amount is barely sufficient to cover commissary costs for the month (toothpaste, soap, shampoo, deodorant, stamps, etc.); it often falls short of that when deductions are made from the inmate's account for medical co-payments, current child support, child support arrearages, civil judgments, fines, court costs, restitution, reimbursement of appointed counsel fees, and other deductions.⁵ Further, the typical pro se inmate is poorly schooled or virtually unschooled, and has limited access to current legal resources.⁶ A significant percentage of prison inmates are developmentally disabled or mentally ill, or both, and it is reasonable to assume that some of the pro se inmate litigation filed daily in Ohio's courts involves persons with significant mental deficits.⁷ Finally, it goes without saying that pro se inmates are not free to come and go as they please; therefore, they cannot access the resources generally available to other pro se litigants, such as public li-

⁴ This amount is based upon e-mail correspondence with the Department of Rehabilitation and Correction, on file with counsel for Amicus OPD.

⁵ See the attached "DRC Policy 24-CAS-02 (formerly 103-12) Cashier's Manual Policy, IV G," which describes the priority of payment of various deductions that can be made from an inmate's account.

⁶ See the Executive Summary of the Ohio Department of Rehabilitation and Correction's *2005 Intake Study*, May 2006, which reports that, at the time of their arrest, the educational attainment of male inmates was: "7% had a grade school education or less, 36.5% had some high school, 39.5% were high school graduates or the equivalent but had not attended college, and 16.9% had some college training or had graduated. The respective education rates for females were: 7.7%, 34.6%, 35.6%, and 22.1%."

⁷ In a recent report, the U.S. Department of Justice found that, at mid-year 2005, 56% of state prison inmates suffered from a mental health problem. Bureau of Justice Statistics Special Report, *Mental Health Problems of Prison and Jail Inmates*, September 2006 (revised 12/14/06), at 1. "More than two-fifths of State prisoners (43%) . . . reported symptoms that met the criteria for mania. About 23% of State prisoners . . . reported symptoms of major depression. An estimated 15% percent of State prisoners . . . reported symptoms that met the criteria for a psychotic disorder." *Id.* For female prisoners, the percentage is much higher (73.1%), as is the percentage of inmates 24 years old or younger (62.6%). *Id.* at Table 3. Only 33.8% of those inmates suffering from a mental health problem received treatment for the problem after incarceration. *Id.* at Table 14.

barriers (which provide public access to internet research in addition to their other holdings).

These factors more than justify generously applying the rule of liberality to pro se inmate filings.

The liberality of construction afforded under this rule is not unlimited. The Fourth District, for example, has held “that considerable leniency *must* be afforded to pro se actions brought by prisoners. . . . There is, however, a limit. Principles requiring generous construction of *pro se* filings do not require courts to conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning.” (Citations omitted). *Karmasu*, 83 Ohio App.3d at 206, 614 N.E.2d at 832. In other words, the court must construe the document liberally and identify the claims inherent within it, but the court may not “conjure up” claims that the litigant did not include in the document.

Mr. Schlee’s motion, unlike the one in *Karmasu*, requires no conjuring. Rather, a court liberally construing Mr. Schlee’s March 16, 2005 motion could reasonably find that it presented a claim under Rule 60(B)(3), i.e., that the second trial was barred because of repeated instances of “misconduct of an adverse party.” Civ. R. 60(B)(3). The oppressive government conduct identified in the motion is sufficient to constitute “misconduct of an adverse party” within the meaning of the rule. Mr. Schlee’s essential claim was that his due process, speedy trial, and double jeopardy rights were violated by his being forced to defend a second trial that was necessitated by oppressive government conduct. 3/16/05 Motion, 8. The claim that a judgment was rendered as a result of the misconduct of the State’s counsel calls into question the integrity of the court’s proceedings and it is within the purview of the court’s authority under Rule 60(B)(3) to determine whether equitable relief is warranted. Mr. Schlee’s motion alleged that the prosecutorial misconduct which had resulted in the reversal of his first conviction was compounded by misconduct in the second trial. 3/16/05 Motion, 4-8, 9-11. Mr. Schlee supported his motion

with a legal argument relying on an emerging trend in double-jeopardy jurisprudence, as described in a law review article published in the Temple Law Review, i.e., Kenneth Rosenthal, *Prosecutor Misconduct, Convictions, and Double Jeopardy: Case Studies in an Emerging Jurisprudence*, 71 Temp. L. Rev. 887 (1998). 3/16/05 Motion, 11-15. The motion emphasized the parallels between Mr. Schlee's case and the facts in *Commonwealth v. Smith* (1992), 532 Pa. 177, 615 A.2d 321. The motion attacked not the merits of the underlying conviction, but the improprieties utilized to obtain it. Had the trial court liberally construed Mr. Schlee's motion, it would have had no reason to recast the motion as a postconviction petition.

C. R.C. 2953.21(J) does not bar the post-judgment relief that is provided for by rule of court, including Civil Rule 60(B).

Because a Rule 60(B) motion by definition does not collaterally attack the underlying conviction, R.C. 2953.21(J) does not bar relief under the rule. That section provides that a postconviction action is "the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence" *Id.* However, a Rule 60(B) motion is not "a collateral challenge to the validity of a conviction." A Rule 60(B) motion does not present a claim for relief from a conviction or sentence, but instead inquires into whether equity requires the judgment to be set aside because of deficiencies in the manner and circumstances under which it was procured. *Gonzalez* at 533. A motion for relief from judgment does not challenge the merits of the conviction. Rather, it challenges the integrity of the proceedings that led to the conviction.

Civil Rule 60(B), through Criminal Rule 57(B), is but one of a number of post-judgment remedies available to persons who have been convicted of a felony. In *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, this Court analyzed the applicability of R.C. 2953.21(J) to one such remedy: a Criminal Rule 32.1 motion to withdraw a guilty plea. The Court reasoned that R.C. 2953.21(J) does not apply because a motion to withdraw a guilty plea is

not a collateral attack and is an attack on the plea, not the conviction or sentence. *Bush* at ¶13. Other examples of post-judgment forms of relief provided for by rule include Criminal Rule 33 (a new trial motion) and Criminal Rule 34 (a motion to arrest judgment). Just as none of these remedies are barred by R.C. 2953.21(J), neither is a Rule 60(B) motion.

Even if the General Assembly intended R.C. 2953.21(J) to bar Rule 60(B) motions, to do so would violate the separation of powers doctrine. When an enactment of the General Assembly conflicts with lawfully adopted court rules governing procedure in Ohio courts, the court rules prevail. Sect. 5(B), Art. IV, Ohio Const.; *State v. Brown* (1988), 38 Ohio St.3d 305, 307, 528 N.E.2d 523 (“According to Section 5(B), Article IV, Ohio Constitution, where a conflict exists between a rule and statute, the rule prevails if the right involved is procedural. If the conflict involves a substantive right, the statute controls.”). Civil Rule 60(B), as applied through Criminal Rule 57(B), is a procedural rule that creates no substantive right; it is a mechanism for enforcing the court’s inherent authority to protect the integrity of judicial proceedings. An attempt to impose a statute of limitations or the more stringent standards applicable to postconviction petitions upon Rule 60(B) motions would violate the separation of powers doctrine. It would also virtually eliminate the rule as a means of obtaining equity and protecting the integrity of court proceedings.

II. This Court’s resolution of the certified conflict can, if not too narrowly fashioned, provide valuable guidance to Ohio’s trial courts on how they should analyze and dispose of filings by incarcerated, pro se litigants and do so in a just and fair manner.

Litigation by incarcerated, pro se litigants often poses vexing problems for Ohio’s trial courts. A number of competing interests come to bear when a court must rule on a pro se motion. No simple solution can speak to the complexities of the court’s struggle. For that reason, a hard-and-fast rule – whether it *requires* recasting or *forbids* it – will not promote a just resolution

of pro se litigation. The experience of amici bears out the fact that recasting will frequently inure to the benefit of an incarcerated, pro se litigant. The only way to ensure the meaningful and just resolution of a motion by an incarcerated, pro se litigant is for the trial court to review the substance of the motion and, if necessary for a just resolution, to recast the motion into the form most appropriate to the claims and circumstances asserted in the motion – so long as the court provides the procedural safeguards of notice and an opportunity to be heard.

Amici recognize that this Court could resolve the conflict in this case in a very narrow fashion. It has already determined a similar issue in *Bush*, 96 Ohio St.3d 235. There, the Court held that a trial court may not recast a motion filed under Criminal Rule 32.1 as a postconviction petition. *Bush* at ¶14. It would only require a slight extension of the *Bush* holding and rationale to reach the narrow holding here that a court may not recast an unambiguously filed Rule 60(B) motion as a postconviction petition.

In fact, a comparison of the court of appeals' opinion in Mr. Schlee's case with the one in the conflict case, *Lehrfeld*, 2004-Ohio-2277, would support that narrow holding. In the opinion below, the court completely ignored *Bush* and erroneously applied *State v. Reynolds* (1997), 79 Ohio St.3d 158, 679 N.E.2d 1131, instead. Thus, the court ignored that, in *Bush*, this Court had strictly limited *Reynolds* to its facts, i.e., to cases involving miscellaneous, "no-name" motions. *Bush* at ¶10, 11. *Reynolds* did not apply to Mr. Schlee's motion because he had clearly captioned it as a Rule 60(B) motion. On the other hand, the analysis of the First District in *Lehrfeld* was completely correct. The court applied the rationale of *Bush* to hold that the trial court erred in recasting *Lehrfeld*'s Rule 60(B) motion as a postconviction petition. *Lehrfeld* at ¶5-7. As did Mr. Schlee, "*Lehrfeld* unambiguously invoked Civ.R. 60(B) in seeking relief Therefore, *Lehrfeld*'s motion may not be recast as, or reviewed under the standards applicable to, a post-

conviction petition.” *Lehrfeld* at ¶6. The deficient analysis by the court in Mr. Schlee’s case is highlighted by the fact that the court actually cited to the *Lehrfeld* decision. *Schlee* at ¶23. Thus, the court must have considered, and rejected, the *Lehrfeld* analysis and, by extension, this Court’s *Bush* analysis.

Amici, however, urge the Court to forswear a narrow approach in favor of a more helpful, slightly broader one. A narrow resolution of the conflict question will fail to promote judicial economy; it will leave unanswered many questions involving recasting other types of post-judgment motions. This will result in unnecessary piecemeal litigation and will pose the risk of conflicting decisions among the appellate districts. Also, a narrow ruling will fail to assist the trial courts in sorting out the vexing problems associated with litigation by pro se prisoners. Instead, the Court should adopt a rule that will give the trial courts precise guidance as to how to resolve pro se motions. Pronouncing a slightly broader answer to the conflict question will enable the Court to assist the trial courts in disposing of pro se filings in an equitable, orderly fashion, as well as to guarantee just and fair rulings to countless pro se litigants in the future.

III. The decision to recast a pro se filing as a postconviction petition must be made with the utmost of caution. Before recasting a Civil Rule 60(B) motion filed by an incarcerated, pro se litigant, a court must: 1) determine that the motion fails on its merits under Rule 60(B) analysis; 2) notify the movant that it will recast the motion and give the movant the opportunity to object and/or to withdraw the motion or to amend it to include all of the movant’s postconviction claims; and 3) recast the motion under the most appropriate form of post-judgment relief considering the facts and claims asserted in the motion.

In Ohio, the decision to recast a pro se filing as a postconviction petition must be made with the utmost of caution, because it can result in barring both state and federal review of meritorious postconviction claims in the future. Revised Code Section 2953.23 prohibits a court from entertaining a second or successive postconviction petition, except in extremely rare circumstances. R.C. 2953.23(A). For most defendants, it is virtually impossible to satisfy the require-

ments of R.C. 2953.23(A). Therefore, a court's decision to recast a motion as a postconviction petition effectively aborts any review of the litigant's potential postconviction claims. This result is not limited to review of those potential claims in Ohio's courts; a federal habeas court would deny review of those foreclosed claims on the grounds of procedural default. A petitioner's failure to present his or her federal claims to state court according to the state's procedural rules constitutes a procedural default of those claims, for federal habeas purposes. Therefore, the decision to recast a pro se filing as a postconviction must be made with the utmost of caution. Because of the serious, potentially fatal, consequences of recasting a filing as a postconviction petition, the trial court must provide the pro se litigant with the basic protections of procedural due process, i.e., notice and the opportunity to be heard.

The Supreme Court's analysis in *Castro v. United States* (2003), 540 U.S. 375, 124 S.Ct. 786, is instructive on the proper manner in which courts may recast pro se filings when the decision to recast will likely foreclose the litigant's opportunity to obtain relief in the future. *Castro* involved a similar issue: the practice of recasting a motion by a pro se litigant as a first petition under 18 U.S.C. § 2255 (the federal equivalent of a postconviction petition). *Castro*, 540 U.S. at 382. Recasting a motion as a § 2255 petition subjects any future, potentially meritorious petition to the extremely rigorous standards required for second or successive petitions. *Id.* This is precisely the same danger that recasting as a postconviction petition poses in Ohio.

The Court in *Castro* held that, before recasting a pro se litigant's motion as a first § 2255 petition, the court must notify the litigant that it intends to recast the motion and warn the litigant that any future § 2255 petition will be subject to the restrictions on second or successive petitions. *Castro* at 383. The court must also give the litigant the opportunity to withdraw the pro se motion or to amend it to include all the litigant's § 2255 claims. *Id.* If the court fails to provide

this notice and opportunity to respond, the pro se motion cannot later be considered a § 2255 petition for the purpose of applying to a subsequently filed § 2255 petition the bar against second or successive petitions. *Id.*

This Court should adopt the *Castro* court's solution, for several reasons. First, it is a solution to virtually the same legal problem, i.e., how to mitigate the potentially fatal results of recasting a pro se motion. Second, the rule is easily applied by trial courts. There has been little, if any, criticism of the workability of the rule after years of application in the federal courts. Third, the rule promotes justice by affording pro se litigants the basic protections of procedural due process. Prior notice of recasting, with a warning regarding the consequences, gives the pro se litigant the ability to decide how the matter should proceed. To that extent, the litigant remains in control of his or her case and can make an informed decision about its direction. Finally, the consequences of failing to comply with the rule before recasting a pro se motion appeal to common sense and basic fairness.

Justice Scalia's concurring opinion in *Castro* and Mr. Schlee's merit brief raise a legitimate concern regarding the decision to recast a pro se litigant's motion. Justice Scalia argues that:

Recharacterization . . . requires a court deliberately to override the *pro se* litigant's choice of procedural vehicle for his claim. It is thus a paternalistic judicial exception to the principle of party self-determination, born of the belief that the "parties know better" assumption does not hold true for *pro se* prisoner litigants.

Castro at 386 (Scalia, J., concurring). Justice Scalia further argues that "[t]he injustice caused by letting the litigant's own mistake lie is regrettable, but incomparably less than the injustice of producing prejudice through the court's intervention." *Id.* at 386-87 (emphasis in original).

These concerns can be resolved by applying the following rule:

The court may not recast a pro se litigant's unambiguously presented motion for relief from judgment under Civil Rule 60(B) as a postconviction petition unless the court:

- first concludes that the motion fails on the merits under Civil Rule 60(B);
- notifies the movant that it will recast the motion and gives the movant the opportunity to object and/or to withdraw the motion or to amend it to include all of the movant's postconviction claims; and
- recasts and decides the motion under the form of post-judgment relief appropriate to the claims raised in the motion.

This rule incorporates the rule approved in *Castro*, while safeguarding against the dangers involved in interfering with a party's right to self-determination.

The first step under the proposed rule is the court's decision to recast the pro se motion. The court should not recast the motion unless it decides, after considering the merits, that the motion must fail as originally characterized by the pro se litigant. This requirement protects and promotes the litigant's right to self-determination. If a pro se litigant captions a motion as seeking a particular form of relief and argues the merits consistently with that form of relief, there is no reason to recast the motion if it is meritorious. The decision to recast should only be made if the court decides that the motion, as captioned by the litigant, fails on its merits.

Obviously, this requires the court to review the form and substance of the motion and evaluate its merits. This is not objectionable, since every motion, whether pro se or not, requires the court consider the manner in which the motion is captioned as well as its substance. Only then can the court know whether recasting is appropriate. Without considering both the form and substance of a motion, a court cannot know whether recasting will "avoid an unnecessary dismissal," "avoid inappropriately stringent application of formal labeling requirements," or "create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." *Castro* at 381-82.

The second and third steps under the proposed rule are interrelated, as will be developed below. The second step incorporates the due process requirements stated in *Castro*. It provides

for notice of the court's intention to recast the motion (including a warning of the consequences of recasting), and gives the movant the right to be heard. It specifically provides the opportunity to object to recasting and/or to withdraw the motion or amend it to include postconviction claims. These safeguards are critical to protecting against the inadvertent waiver of vital constitutional claims.

The third step reflects a critical aspect of the recasting decision that was not addressed in the *Schlee* and *Lehrfeld* opinions. Postconviction should not be the default option for recasting pro se motions. When *Bush* and *Reynolds* are read together, they teach that postconviction is the default option only for "no name" post-judgment motions like the one at issue in *Reynolds*. Where a motion is characterized as seeking a particular form of post-judgment relief, the *Bush* rationale prohibits automatically recasting such a motion as a postconviction petition. A court is not required to recast this kind of pro se motion as a postconviction petition. Rather, the court should recast the motion as the form of post-judgment relief most appropriate to the claims and facts presented in the motion. This includes, but not limited to, postconviction relief. Such other forms of relief include a motion for leave to withdraw a guilty plea under Criminal Rule 32.1, a motion for a new trial under Criminal Rule 33, and a motion to arrest judgment under Criminal Rule 34.

For example, assume that a pro se litigant filed an unambiguously captioned motion for a new trial under Criminal Rule 33. Assume further that this litigant was convicted based upon a guilty plea, and that all the arguments in the motion attack the validity of the guilty plea. Finally, assume that the arguments in the pro se motion satisfy the requirements of Criminal 32.1, a motion to withdraw a guilty plea. In this circumstance, *Reynolds* would not apply because the motion unambiguously sought relief under Criminal Rule 33. The motion would fail on the merits

as a motion for a new trial under Criminal Rule 33 standards. Thus, applying the rule proposed by amici, the court would be justified in recasting the motion. There is, however, no reason to automatically recast the motion as a postconviction petition. It presents an arguable claim for relief under Rule 32.1 and “better correspond[s]” to a Rule 32.1 motion. *Castro* at 381. Under the proposed rule, the court should recast the motion as a Rule 32.1 motion rather than a post-conviction petition.

This analysis impacts the warnings involved in the second step of the proposed rule. Whether a warning is required depends upon whether the court intends to recast the motion as a postconviction petition. If it decides to recast as a postconviction petition, then the court must include a warning in the nature of that which *Castro* requires of federal courts. No such warning would be necessary if the court decides to recast the motion as seeking a different form of post-judgment relief.

In sum, the proposed rule incorporates the protections provided to pro se litigants in federal courts under *Castro* and, at the same time, protects the pro se litigant’s right to be the master of his or her suit. The rule is more cumbersome in its articulation than it will be in its implementation. It will provide the trial courts helpful guidance in dealing with pro se motions by incarcerated litigants. Most importantly, the proposed rule will promote the just resolution of the merits of claims asserted by pro se litigants.

Applying the rule to Mr. Schlee’s case leads ineluctably to the conclusion that the court erred when deciding to recast the motion. Mr. Schlee unambiguously presented his motion as a Rule 60(B) motion, so *Reynolds* does not apply. Therefore, the court should have analyzed the motion as captioned. The court should have liberally construed the motion when identifying the claims inherent within it and should have evaluated the merits of the motion under Rule 60(B)

standards. Had it done so, it would have concluded that the motion presented a claim under Rule 60(B)(3) that the second conviction was improper because it was obtained through oppressive government conduct. Because the court failed to conduct this analysis, its decision to recast the motion as a postconviction petition was error. The court compounded this error by failing to notify Mr. Schlee of its intention to recast the motion, and to give him an opportunity to object and/or to withdraw the motion or to include additional postconviction claims.

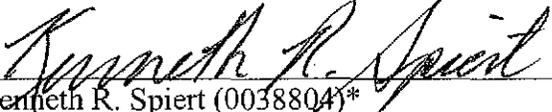
For these reasons, the decision of the court of appeals must be reversed. On remand, the court should be instructed to apply the rule proposed by amici before recasting Mr. Schlee's March 16, 2005 motion for relief from judgment.

CONCLUSION

For the foregoing reasons, the Office of the Ohio Public Defender and the Ohio Association of Criminal Defense Lawyers request this Court to reverse and remand the matter to the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Amici Curiae the Office of the Ohio Public Defender and the Ohio Association of Criminal Defense Lawyers in Support of Appellant Larry M. Schlee** was sent by regular U.S. Mail, postage prepaid, this 6th day of February, 2007, to Charles Coulson, Lake County Prosecutor, 105 E. Main Street, Painesville, Ohio 44077, and to Douglas R. Cole, Jones Day, 325 John H. McConnell Blvd., Suite 600, P.O. Box 165017, Columbus, OH 43216-5017.

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Bureau of Justice Statistics Special Report

September 2006, NCJ 213600

Mental Health Problems of Prison and Jail Inmates

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At midyear 2005 more than half of all prison and jail inmates had a mental health problem, including 705,600 inmates in State prisons, 78,800 in Federal prisons, and 479,900 in local jails. These estimates represented 56% of State prisoners, 45% of Federal prisoners, and 64% of jail inmates. The findings in this report were based on data from personal interviews with State and Federal prisoners in 2004 and local jail inmates in 2002.

Mental health problems were defined by two measures: a recent history or symptoms of a mental health problem. They must have occurred in the 12 months prior to the interview. A recent history of mental health problems included a clinical diagnosis or treatment by a mental health professional. Symptoms of a mental disorder were based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV).

Mental health problem	Percent of inmates in —		
	State prison	Federal prison	Local jail
Any mental problem	56%	45%	64%
Recent history	24	14	21
Symptoms	49	40	60

More than two-fifths of State prisoners (43%) and more than half of jail inmates (54%) reported symptoms that met the criteria for mania. About 23% of State prisoners and 30% of jail inmates reported symptoms of major depression. An estimated 15% of State prisoners and 24% of jail inmates reported symptoms that met the criteria for a psychotic disorder.

Highlights

High prevalence of mental health problems among prison and jail inmates

Selected characteristics	Percent of inmates in —			
	State prison		Local jail	
	With mental problem	Without	With mental problem	Without
Criminal record				
Current or past violent offense	61%	56%	44%	36%
3 or more prior incarcerations	25	19	26	20
Substance dependence or abuse	74%	56%	76%	53%
Drug use in month before arrest	63%	49%	62%	42%
Family background				
Homelessness in year before arrest	13%	6%	17%	9%
Past physical or sexual abuse	27	10	24	8
Parents abused alcohol or drugs	39	25	37	19
Charged with violating facility rules*	58%	43%	19%	9%
Physical or verbal assault	24	14	8	2
Injured in a fight since admission	20%	10%	9%	3%

*Includes items not shown.

- Nearly a quarter of both State prisoners and jail inmates who had a mental health problem, compared to a fifth of those without, had served 3 or more prior incarcerations.
- Female inmates had higher rates of mental health problems than male inmates (State prisons: 73% of females and 55% of males; local jails: 75% of females and 63% of males).
- About 74% of State prisoners and 76% of local jail inmates who had a mental health problem met criteria for substance dependence or abuse.
- Nearly 63% of State prisoners who had a mental health problem had used drugs in the month before their arrest, compared to 49% of those without a mental health problem.
- State prisoners who had a mental health problem were twice as likely as those without to have been homeless in the year before their arrest (13% compared to 6%).
- Jail inmates who had a mental health problem (24%) were three times as likely as jail inmates without (8%) to report being physically or sexually abused in the past.
- Over 1 in 3 State prisoners and 1 in 6 jail inmates who had a mental health problem had received treatment since admission.
- State prisoners who had a mental health problem were twice as likely as State prisoners without to have been injured in a fight since admission (20% compared to 10%).

Symptoms of mental disorder highest among jail inmates

Jail inmates had the highest rate of symptoms of a mental health disorder (60%), followed by State (49%), and Federal prisoners (40%). Symptoms of a mental health disorder were measured by a series of questions adopted from a structured clinical interview for diagnosing mental disorders based on the DSM-IV (see box on page 2 and *References* for sources on DSM-IV measures). The questions addressed behaviors or symptoms related to major depression, mania, or psychotic disorders that occurred in the 12 months before the interview.

To meet the criteria for major depression, inmates had to report a depressed mood or decreased interest or pleasure in activities, along with 4 additional symptoms of depression. In order to meet the criteria for mania, during the 12-month period inmates had to report 3 symptoms or a persistent angry mood. For a psychotic disorder, 1 symptom of delusions or hallucinations met the criteria.

The high rate of symptoms of mental health disorder among jail inmates may reflect the role of local jails in the criminal justice system. Jails are locally operated correctional facilities that receive offenders after an arrest and hold them for a short period of time, pending arraignment, trial, conviction, or sentencing. Among other functions, local jails hold mentally ill persons pending their movement to appropriate mental health facilities.

While jails hold inmates sentenced to short terms (usually less than 1 year), State and Federal prisons hold offenders who typically are convicted and sentenced to serve more than 1 year. In general, because of the longer period of incarceration, prisons provide a greater opportunity for inmates to receive a clinical mental health assessment, diagnosis, and treatment by a mental health professional.¹

¹Persons who have been judged by a court to be *mentally incompetent to stand trial or not guilty by reason of insanity* are not held in these correctional facilities and are not covered by this report.

Table 1. Recent history and symptoms of mental health problems among prison and jail inmates

Mental health problem	Percent of inmates in —		
	State prison	Federal prison	Local jail
Any mental health problem	56.2%	44.8%	64.2%
Recent history of mental health problem ^a	24.3%	13.8%	20.6%
Told had disorder by mental health professional	9.4	5.4	10.9
Had overnight hospital stay	5.4	2.1	4.9
Used prescribed medications	18.0	10.3	14.4
Had professional mental health therapy	15.1	8.3	10.3
Symptoms of mental health disorders ^b	49.2%	39.8%	60.5%
Major depressive disorder	23.5	16.0	29.7
Mania disorder	43.2	35.1	54.5
Psychotic disorder	15.4	10.2	23.9

Note: Includes inmates who reported an impairment due to a mental problem. Data are based on the Survey of Inmates in State and Federal Correctional Facilities, 2004, and the Survey of Inmates in Local Jails, 2002. See *Methodology* for details on survey sample. See *References* for sources on measuring symptoms of mental disorder based on a Structured Clinical Interview for the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV).

^aIn year before arrest or since admission.

^bIn the 12 months prior to the interview.

Table 2. Prevalence of mental health problems among prison and jail inmates

Mental health problem	State prison inmates		Federal prison inmates		Local jail inmates	
	Number	Percent	Number	Percent	Number	Percent
Any mental health problem ^a	705,600	56.2%	70,200	44.8%	479,900	64.2%
History and symptoms	219,700	17.5	13,900	8.9	127,800	17.1
History only	85,400	6.8	7,500	4.8	26,200	3.5
Symptoms only	396,700	31.6	48,100	30.7	322,900	43.2
No mental health problem	549,900	43.8%	86,500	55.2%	267,600	35.8%

Note: Number of inmates was estimated based on the June 30, 2005 custody population in State prisons (1,255,514), Federal prisons (156,643, excluding 19,311 inmates held in private facilities), and local jails (747,529).

^aDetails do not add to totals due to rounding. Includes State prisoners, Federal prisoners, and local jail inmates who reported an impairment due to a mental problem.

High proportion of inmates had symptoms of a mental health disorder without a history

Around 4 in 10 local jail inmates and 3 in 10 State and Federal prisoners were found to have symptoms of a mental disorder without a recent history (table 2). A smaller proportion of inmates

had both a recent history and symptoms of mental disorder: 17% in State prisons, 9% in Federal prisons, and 17% in local jails.

An estimated 7% of State prisoners, 5% of Federal prisoners, and 3% of local jail inmates were found to have a recent history of a mental health problem and no symptoms.

About 1 in 10 persons age 18 or older in the U.S. general population met DSM-IV criteria for symptoms of a mental health disorder

• An estimated 11% of the U.S. population age 18 or older met criteria for mental health disorders, based on data in the National Epidemiologic Survey on Alcohol and Related Conditions, 2001-2002 (NESARC).

• Similar to the prison and jail inmate populations, females in the general population had higher rates of mental disorders than males (12% compared to 9%).

	Percent of U.S. population age 18 or older with symptoms of a mental disorder		
	Total	Male	Female
Any symptom	10.6%	8.7%	12.4%
Major depression ^a	7.9	5.5	10.1
Mania disorder ^a	1.8	1.6	2.0
Psychotic disorder ^b	3.1	3.2	3.1

Note: See *Methodology* for sources on mental health disorders in the general population.

^aIn the last 12 months, not excluding symptoms due to bereavement, substance use, or a medical condition.

^bBased on life-time occurrence.

Source: National Institute on Alcohol Abuse and Alcoholism, NESARC, 2001-2002.

Table 3. Prison and jail inmates who had a mental health problem, by selected characteristics

Characteristic	Percent of inmates in —		
	State prison	Federal prison	Local jail
All inmates	56.2%	44.8%	64.2%
Gender			
Male	55.0%	43.6%	62.8%
Female	73.1	61.2	75.4
Race			
White ^a	62.2%	49.6%	71.2%
Black ^a	54.7	45.9	63.4
Hispanic	46.3	36.8	50.7
Other ^{a,b}	61.9	50.3	69.5
Age			
24 or younger	62.6%	57.8%	70.3%
25-34	57.9	48.2	64.8
35-44	55.9	40.1	62.0
45-54	51.3	41.6	52.5
55 or older	39.6	36.1	52.4

^aExcludes persons of Hispanic origin.

^bIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, and inmates who specified more than one race.

Mental health problems more common among female, white, and young inmates

Female inmates had much higher rates of mental health problems than male inmates. An estimated 73% of females in State prisons, compared to 55% of male inmates, had a mental health problem (table 3). In Federal prisons, the rate was 61% of females compared to 44% of males; and in local jails, 75% of females compared to 63% of male inmates.

The same percentage of females in State prisons or local jails (23%) said that in the past 12 months they had been diagnosed with a mental disorder by a mental health professional. This was almost three times the rate of male inmates (around 8%) who had been told they had a mental health problem.

Mental problem*	Percent of inmates in —			
	State prison		Local jail	
	Male	Female	Male	Female
Recent history	22%	48%	18%	40%
Diagnosed	8	23	9	23
Overnight stay	5	9	4	9
Medication	16	39	12	30
Therapy	14	32	9	23
Symptoms	48%	62%	59%	70%

*See table 1 for detailed description of categories.

Table 4. Homelessness, employment before arrest, and family background of prison and jail inmates, by mental health status

Characteristic	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Homelessness in past year	13.2%	6.3%	6.6%	2.6%	17.2%	8.8%
Employed in month before arrest ^a	70.1%	75.6%	67.7%	76.2%	68.7%	75.9%
Ever physically or sexually abused before admission						
Physically abused	27.0%	10.5%	17.0%	6.4%	24.2%	7.6%
Sexually abused	22.4	8.3	13.7	5.4	20.4	5.7
Sexually abused	12.5	3.8	7.3	1.7	10.2	3.2
While growing up —						
Ever received public assistance ^b	42.5%	30.6%	33.3%	24.9%	42.6%	30.3%
Ever lived in foster home, agency or institution	18.5	9.5	9.8	6.3	14.5	6.0
Lived most of the time with —						
Both parents	41.9%	47.7%	45.4%	50.5%	40.5%	49.1%
One parent	43.8	40.8	39.8	38.8	45.4	40.4
Someone else	11.6	10.2	13.5	10.3	12.0	9.4
Parents or guardians ever abused —	39.3	25.1	33.3	20.0	37.3	18.7
Alcohol	23.6	16.9	21.7	15.4	23.2	14.1
Drugs	3.1	1.9	2.2	1.4	2.7	1.1
Both alcohol and drugs	12.7	6.2	9.4	3.2	11.5	3.4
Neither	60.7	74.9	66.7	80.0	62.7	81.3
Family member ever incarcerated —	51.7%	41.3%	44.6%	38.9%	52.1%	36.2%
Mother	7.2	4.0	5.0	3.2	9.4	3.4
Father	20.1	13.4	15.3	9.9	22.1	12.6
Brother	35.5	29.4	29.4	27.0	34.8	25.8
Sister	7.0	5.1	5.5	4.2	11.3	5.1
Child	2.7	2.3	3.4	2.8	4.0	2.6
Spouse	1.7	0.9	2.6	1.8	2.4	0.9

^aThe reference period for jail inmates was in the month before admission.

^bPublic assistance includes public housing, AFDC, food stamps, Medicaid, WIC, and other welfare programs.

The prevalence of mental health problems varied by racial or ethnic group. Among State prisoners, 62% of white inmates, compared to 55% of blacks and 46% of Hispanics, were found to have a mental health problem. Among jail inmates, whites (71%) were also more likely than blacks (63%) or Hispanics (51%) to have a mental health problem.

The rate of mental health problems also varied by the age of inmates. Inmates age 24 or younger had the highest rate of mental health problems and those age 55 or older had the lowest rate. Among State prisoners, an estimated 63% of those age 24 or younger had a mental health problem, compared to 40% of those age 55 or older. An estimated 70% of local jail inmates age 24 or younger had a mental health problem, compared to 52% of those age 55 or older.

Homelessness, foster care more common among inmates who had mental health problems

State prisoners (13%) and local jail inmates (17%) who had a mental health problem were twice as likely as inmates without a mental health problem (6% in State prisons; 9% in local jails) to have been homeless in the year before their incarceration (table 4).

About 18% of State prisoners who had a mental health problem, compared to 9% of State prisoners who did not have a mental problem, said that they had lived in a foster home, agency, or institution while growing up.

Among jail inmates, about 14% of those who had a mental health problem had lived in a foster home, agency, or institution while growing up, compared to 6% of jail inmates who did not have a mental health problem.

Low rates of employment, high rates of illegal income among inmates who had mental problems

An estimated 70% of State prisoners who had a mental health problem, compared to 76% of those without, said they were employed in the month before their arrest. Among Federal prisoners, 68% of those who had a mental health problem were employed, compared to 76% of those who did not have a mental problem.

Among jail inmates, 69% of those who had a mental health problem reported that they were employed, while 76% of those without were employed in the month before their arrest.

Of State prisoners who had a mental health problem, 65% had received income from wages or salary in the month before their arrest. This percentage was larger for inmates without a mental health problem (71%). Over a quarter (28%) of State prisoners who had a mental health problem reported income from illegal sources, compared to around a fifth (21%) of State prisoners without a mental problem.

Sources of income ^a	Percent of State prison inmates	
	With mental problem	Without
Wages, salary	65%	71%
Welfare	6	4
Assistance from family or friends	14	8
Illegal income	28	21
Compensation payments ^b	9	6

^aIncludes personal income in month before arrest, except for compensation which was in the month before admission.

^bIncludes Supplemental Security Income (SSI) payments and pension.

Table 5. Substance dependence or abuse among prison and jail inmates, by mental health status

Substance dependence or abuse	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Any alcohol or drugs	74.1%	55.6%	63.6%	49.5%	76.4%	53.2%
Dependence	53.9	34.5	45.1	27.3	56.3	25.4
Abuse only	20.2	21.1	18.5	22.2	20.1	27.8
Alcohol	50.8%	36.0%	43.7%	30.3%	53.4%	34.6%
Dependence	30.4	17.9	25.1	12.7	29.0	11.8
Abuse only	20.4	18.0	18.6	17.7	24.4	22.8
Drugs	61.9%	42.6%	53.2%	39.2%	63.3%	36.0%
Dependence	43.8	26.1	37.1	22.0	46.0	17.6
Abuse only	18.0	16.5	16.1	17.2	17.3	18.4
No dependence or abuse	25.9%	44.4%	36.4%	50.5%	23.6%	46.8%

Note: Substance dependence or abuse was based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV). For details, see *Substance Dependence, Abuse and Treatment of Jail Inmates, 2002*, <<http://www.ojp.usdoj.gov/bjs/abstract/sdatj02.htm>>.

Past physical or sexual abuse more prevalent among inmates who had mental health problems

State prisoners who had a mental health problem (27%) were over two times more likely than those without (10%) to report being physically or sexually abused in the past.

Jail inmates who had a mental health problem were three times more likely than jail inmates without to have been physically or sexually abused in the past (24% compared to 8%).

Family members of inmates with mental problems had high rates of substance use and incarceration

Inmates who had a mental health problem were more likely than inmates without to have family members who abused drugs or alcohol or both. Among State prisoners, 39% of those

who had a mental health problem reported that a parent or guardian had abused alcohol, drugs, or both while they were growing up. In comparison, 25% of State prisoners without a mental health problem reported parental abuse of alcohol, drugs, or both.

A third (33%) of Federal prisoners who had a mental health problem, compared to a fifth (20%) of those without, reported that a parent or guardian had abused alcohol, drugs, or both while they were growing up.

An estimated 37% of jail inmates who had a mental health problem said a parent had abused alcohol, drugs, or both while they were growing up. This was almost twice the rate for jail inmates without a mental health problem (19%).

The majority of prison and jail inmates who had a mental health problem (52%) reported that they had a family member who had been incarcerated in the past. Among those without a mental health problem, about 41% of State inmates and 36% of jail inmates reported that a family member had served time.

Over a third of both State prisoners and local jail inmates who had a mental health problem (35%) had a brother who had served time in prison or jail. The rate for inmates without a mental health problem was 29% in State prisons and 26% in local jails.

High rates of both mental health problems and substance dependence or abuse among State prison and local jail inmates

- An estimated 42% of inmates in State prisons and 49% in local jails were found to have both a mental health problem and substance dependence or abuse.
- Slightly less than a quarter (24%) of State prisoners and a fifth (19%) of local jail inmates met the criteria for substance dependence or abuse only.

Mental health problems and substance dependence or abuse	Percent of inmates in —		
	State prison	Federal prison	Local jail
Both	41.7%	28.5%	48.7%
Dependence or abuse only	24.4	27.3	18.9
Mental problems only	14.5	16.3	15.0
None	19.5	27.8	17.3

Inmates who had mental health problems had high rates of substance dependence or abuse

Among inmates who had a mental health problem, local jail inmates had the highest rate of dependence or abuse of alcohol or drugs (76%), followed by State prisoners (74%), and Federal prisoners (64%) (table 5). Substance dependence or abuse was measured as defined in the DSM-IV.²

Among inmates without a mental health problem, 56% in State prisons, 49% in Federal prisons, and 53% in local jails were dependent on or abused alcohol or drugs.

²For a detailed description of the DSM-IV measures, see *Substance Dependence, Abuse and Treatment of Jail inmates, 2002*, <<http://www.ojp.usdoj.gov/bjs/abstract/sdatj02.htm>>

By specific type of substance, inmates who had a mental health problem had higher rates of dependence or abuse of drugs than alcohol. Among State prisoners who had a mental problem, 62% were dependent on or abused drugs and 51% alcohol. An estimated 63% of local jail inmates who had a mental problem were dependent on or abused drugs, while about 53% were dependent on or abused alcohol.

When dependence was estimated separately from abuse only, local jail inmates who had a mental health problem had the highest rate of drug dependence (46%). They were two and a half times more likely to be dependent on drugs than jail inmates without a mental problem (18%).

A larger percentage of State prisoners who had a mental health problem than those without were found to be dependent on drugs (44% compared to 26%). Among Federal prisoners, 37% who had a mental health problem were found to be dependent on drugs, compared to 22% of those without.

State prisoners (30%) and local jail inmates (29%) who had a mental health problem had about the same rate of alcohol dependence. A quarter of Federal prisoners (25%) who had a mental problem were dependent on alcohol.

Over a third of inmates who had mental health problems had used drugs at the time of the offense

Over a third (37%) of State prisoners who had a mental health problem said they had used drugs at the time of the offense, compared to over a quarter (26%) of State prisoners without a mental problem (table 6). Also, over a third (34%) of local jail inmates who had a mental health problem said they had used drugs at the time of the offense, compared to a fifth (20%) of jail inmates who did not have a mental problem.

Marijuana or hashish was the most common drug inmates said they had used in the month before the offense (table 7). Among inmates who had a mental health problem, more than two-fifths of those in State prisons (46%), Federal prisons (41%), or local jails (43%) reported they had used marijuana or hashish in the month before the offense.

Almost a quarter of inmates in State prisons or local jails who had a mental health problem (24%) reported they had used cocaine or crack in the month before the offense. A smaller percentage of inmates who had a mental health problem had used methamphetamines in the month before the offense — 13% of State prisoners, 11% of Federal prisoners, and 12% of jail inmates.

Binge drinking prevalent among inmates who had mental problems

Inmates who had a mental health problem were more likely than inmates without a mental problem to report a

Table 6. Substance use among prison inmates and convicted jail inmates, by mental health status

Type of substance	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Alcohol or drugs						
Regular use ^a	87.1%	77.2%	82.3%	75.4%	89.9%	78.7%
In month before offense	80.3	70.4	75.8	68.1	81.6	69.6
At time of offense	53.2	42.5	41.1	30.6	53.8	42.8
Drugs						
Regular use ^a	75.5%	61.2%	71.0%	59.2%	78.1%	57.5%
In month before offense	62.8	49.1	57.1	45.2	62.1	41.7
At time of offense	37.5	25.8	31.1	23.0	34.0	19.8
Alcohol						
Regular use ^a	67.9%	58.3%	66.0%	58.2%	72.6%	61.8%
In month before offense	61.7	52.5	59.5	53.6	80.7	74.1
At time of offense	34.0	27.5	21.7	15.1	35.0	30.4
Binge drinking ^b	43.5	29.5	37.8	25.7	48.2	29.9

^aRegular alcohol use is defined as daily or almost daily or more than once a week for more than a month. Regular drug use is defined as once a week or more for at least one month.

^bBinge drinking is defined as having consumed a fifth of liquor in a single day, or the equivalent of 20 drinks, 3 bottles of wine, or 3 six-packs of beer.

Table 7. Drug use in the month before the offense among convicted prison and jail inmates, by mental health status

Types of drug used in month before offense	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Any drug	62.8%	49.1%	57.1%	45.2%	62.1%	41.7%
Marijuana or hashish	45.7%	33.3%	41.2%	32.0%	43.4%	27.1%
Cocaine or crack	24.4	17.9	21.1	15.5	24.2	14.7
Heroin/opiates	8.9	7.2	7.2	4.7	9.6	4.6
Depressants ^a	7.3	3.0	6.7	2.7	8.5	2.0
Methamphetamines	12.6	8.8	10.9	9.6	11.7	6.2
Other stimulants ^b	5.8	2.8	4.5	2.5	5.2	2.4
Hallucinogens ^c	8.0	3.4	9.3	3.0	7.5	2.9

^aInclude barbiturates, tranquilizers, and quaaludes.

^bInclude amphetamines.

^cInclude LSD, PCP, and ecstasy.

binge drinking experience. Among State prisoners who had a mental health problem, 43% said they had participated in binge drinking in the past, compared to 29% of State prisoners without mental problems.

Similarly, jail inmates who had mental problems (48%) had a much higher rate of binge drinking than jail inmates without mental problems (30%).

Inmates who had a mental problem were more likely than inmates without to have been using alcohol at the time of the offense (State prisoners, 34% compared to 27%; Federal prisoners, 22% compared to 15%; and jail inmates, 35% compared to 30%.)

Violent offenses common among State prisoners who had a mental health problem

Among State prisoners who had a mental health problem, nearly half (49%) had a violent offense as their most serious offense, followed by property (20%) and drug offenses (19%) (table 8). Among all types of offenses, robbery was the most common offense (14%), followed by drug trafficking (13%) and homicide (12%).

An estimated 46% of State prisoners without a mental health problem were held for a violent offense, including 13% for homicide and 11% for robbery.

About 24% of State prisoners without a mental problem were held for drug offenses, particularly drug trafficking (17%).

Almost an equal percentage of jail inmates who had a mental health problem were held for violent (26%) and property (27%) offenses. About 12% were held for aggravated assault. Jail inmates who had a mental health problem were two times more likely than jail inmates without a mental problem to be held for burglary (8% compared to 4%).

Use of a weapon did not vary by mental health status

Convicted violent offenders who had a mental health problem were as likely as those without to have used a weapon during the offense (table 9). An estimated 37% of both State prisoners who had a mental problem and those without said they had used a weapon during the offense.

By specific type of weapon, among convicted violent offenders in State prisons who had a mental health problem, slightly less than a quarter (24%) had used a firearm, while a tenth (10%) had used a knife or sharp object.

Violent criminal record more prevalent among inmates who had a mental health problem

State prisoners who had a mental health problem (61%) were more likely than State prisoners without (56%) to have a current or past violent offense.

Table 8. Most serious offense among prison and jail inmates, by mental health status

Most serious offense	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Total	100%	100%	100%	100%	100%	100%
Violent offenses	49.0%	46.5%	16.0%	13.2%	26.5%	23.7%
Homicide	11.6	12.9	2.5	2.3	2.6	2.5
Sexual assault*	11.0	10.4	1.1	0.7	3.4	3.6
Robbery	13.6	11.3	9.6	7.6	5.7	5.1
Assault	10.5	9.7	2.0	1.9	12.5	10.5
Property offenses	19.6%	17.7%	7.2%	6.1%	26.9%	19.7%
Burglary	8.6	7.7	0.7	0.3	7.9	4.2
Larceny/theft	4.2	3.5	0.5	0.4	7.7	5.6
Fraud	3.0	2.7	4.9	4.5	5.3	4.2
Drug offenses	19.3%	23.8%	51.3%	58.3%	23.4%	27.0%
Possession	5.7	6.3	2.0	3.8	10.1	12.3
Trafficking	12.9	17.0	47.7	52.6	11.6	12.9
Public-order offenses	11.9%	11.9%	22.3%	19.0%	22.6%	29.3%
Weapons	2.6	2.4	14.0	8.5	2.3	1.4
DWI/DUI	2.2	3.2	0.2	0.2	5.5	8.1

Note: Summary categories include offenses not shown.
*Includes rape and other sexual assault.

Table 9. Use of weapon, by mental health status of convicted violent State prison and local jail inmates

Use of weapons	Percent of inmates in —			
	State prison		Local jail	
	With mental problem	Without	With mental problem	Without
Any weapon	37.2%	36.9%	20.6%	21.2%
Firearm	24.4	27.5	12.3	13.1
Knife or sharp object	10.2	7.4	6.1	5.1
Other weapons*	3.7	2.7	2.8	4.0
No weapon	62.8%	63.1%	79.4%	78.8%
Number of violent inmates	328,670	242,524	60,787	34,305

Note: Details do not add to total because inmates may have used more than one weapon.
*Other weapons include blunt objects, stun guns, toy guns, or other specified weapons.

Violent criminal record	Percent of State prison inmates with violent criminal record	
	With mental problem	Without
Any violent offense	61%	56%
Current violent offense, no prior	13	17
Violent recidivist	47	39

Note: Details may not add to total due to rounding.

Among repeat offenders, an estimated 47% of State prisoners who had a mental health problem were violent recidivists, compared to 39% of State prisoners without a mental problem (table 10).

Nearly a third (32%) of local jail inmates who had a mental health problem were repeat violent offenders, while about a quarter (22%) of jail inmates without a mental problem were violent recidivists.

A larger proportion of inmates who had a mental health problem had served more prior sentences than inmates without a mental problem (table 11). An estimated 47% of State prisoners who had a mental health problem, compared to 39% of those without, had served 3 or more prior sentences to probation or incarceration. Among jail inmates, 42% of those with a mental health problem had served served 3 or more prior sentences to probation or incarceration, compared to 33% of jail inmates without a mental problem.

State prisoners who had mental health problems had longer sentences than prisoners without

Overall, State prisoners who had a mental health problem reported a mean maximum sentence that was 5 months longer than State prisoners without a mental problem (146 months compared to 141 months) (table 12). Among jail inmates, the mean sentence for those who had a mental problem was 5 months shorter than that for jail inmates without a mental problem (40 months compared to 45 months).

By most serious offense, excluding offenders sentenced to life or death, both violent State prisoners who had a mental health problem and those without had about the same mean sentence length. Violent State prisoners who had a mental health problem were sentenced to serve a mean maximum sentence length of 212 months and those without, 211 months.

Among prisoners sentenced to life or death, there was little variation in sentence length by mental health status (not shown in table). About 8% of State prisoners who had a mental health problem and 9% of those without were sentenced to life or death. Among Federal prisoners, 3% of both those who had a mental health problem and those without were sentenced to life or death.

Table 10. Criminal record of prison and jail inmates, by mental health status

Criminal record	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
No prior sentence	20.5%	27.0%	32.2%	36.9%	34.9%	43.3%
Current violent offense	13.4	16.9	5.1	4.9	12.1	13.8
Current drug offense	3.1	5.1	15.2	21.6	8.8	12.6
Current other offense	4.1	5.0	11.9	10.4	14.0	16.8
Violent recidivist	47.4%	39.2%	27.5%	23.8%	31.9%	22.4%
Current and prior violent	17.2	13.4	7.4	4.4	9.9	6.8
Current violent only	17.7	15.3	4.9	4.4	11.4	6.9
Prior violent only	12.5	10.4	15.3	15.0	10.5	8.7
Nonviolent recidivist	32.0%	33.8%	40.3%	39.2%	33.2%	34.3%
Prior drugs only	3.0	4.0	7.1	9.5	3.0	3.4
Other prior offenses	29.0	29.8	33.2	29.8	30.2	30.9

Note: Excludes inmates for whom offense and prior probation or incarceration sentences were unknown.

Table 11. Number of prior probation or incarceration sentences among prison and jail inmates, by mental health status

Number of prior sentences	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
0	22.1%	28.5%	34.1%	38.3%	24.5%	30.6%
1	15.3	16.1	14.9	16.5	16.8	18.9
2	15.5	16.8	15.6	14.9	16.7	17.2
3-5	26.3	24.0	21.3	20.1	22.8	20.3
6-10	13.9	10.6	10.0	7.1	12.4	8.6
11 or more	6.9	4.0	4.0	3.1	6.7	4.4

Note: Excludes inmates for whom prior probation or incarceration sentences were unknown.

Table 12. Mean maximum sentence length and mean total time expected to serve, by mental health status and offense

Most serious offense	Mean maximum sentence length ^a		Mean total time expected to serve until release ^b	
	With mental problem	Without	With mental problem	Without
State prison inmates				
All offenses ^c	146 mos	141 mos	93 mos	89 mos
Violent	212	211	139	138
Property	103	96	60	58
Drug	84	94	48	50
Public-order	81	66	51	40
Federal prison inmates				
All offenses ^c	128 mos	135 mos	99 mos	106 mos
Violent	174	202	119	131
Property	70	53	63	58
Drug	131	139	103	112
Public-order	102	100	87	83
Local jail inmates				
All offenses ^c	40 mos	45 mos	14 mos	18 mos
Violent	67	73	18	31
Property	41	36	16	14
Drug	40	59	18	25
Public-order	16	16	7	8

^aBased on the total maximum sentence for all consecutive sentences. Excludes inmates for whom offense was unknown.

^bBased on time served when interviewed and time to be served until the expected date of release. Excludes inmates for whom admission date or expected release date were unknown.

^cIncludes other offenses not shown.

State prisoners who had a mental health problem expected to serve 4 months longer than those without

Overall, the mean time State prisoners who had a mental health problem expected to serve was 4 months longer than State prisoners without a mental problem (93 months compared to 89 months). Among convicted jail inmates who expected to serve their time in a local jail, there was little variation by mental health status in the

Table 13. Mean time expected to be served by convicted local jail inmates sentenced to jail

Mean time expected to be served	Percent of convicted local jail inmates	
	With mental problem	Without
Less than 3 months	27.4%	26.8%
3 to 6 months	27.9	27.3
7 to 12 months	24.0	22.4
13 to 24 months	9.7	8.7
25 to 36 months	3.7	3.4
37 to 60 months	3.2	5.0
More than 5 years	4.0	6.4
Number of inmates	115,290	72,356

Note: Excludes inmates for whom admission date or expected release date were unknown.

amount of time expected to be served. About 55% of those who had a mental problem, and 54% of those without, expected to serve 6 months or less (table 13).

A third of State prisoners who had mental health problems had received treatment since admission

State prisoners who had a mental health problem (34%) had the highest rate of mental health treatment since admission, followed by Federal prisoners (24%) and local jail inmates (17%) (table 14).

All Federal prisons and most State prisons and jail jurisdictions, as a matter of policy, provide mental health services to inmates, including screening inmates at intake for mental health problems, providing therapy or counseling by trained mental health professionals, and distributing psychotropic medication.³

³See *Mental Health Treatment in State Prisons, 2000*, <<http://www.ojp.usdoj.gov/bjs/abstract/mhtsp00.htm>> and *Census of Jails, 1999*, <<http://www.ojp.usdoj.gov/bjs/abstract/cj99.htm>>.

More than a fifth of inmates (22%) in State prison who had a mental health problem had received mental health treatment during the year before their arrest, including 16% who had used prescribed medications, 11% who had professional therapy, and 6% who had stayed overnight in a hospital because of a mental or emotional problem.

Among jail inmates who had a mental health problem, an estimated 23% had received treatment during the year before their arrest: 17% had used medication, 12% had received professional therapy, and 7% had stayed overnight in a hospital because of a mental or emotional problem.

Taking a prescribed medication for a mental health problem was the most common type of treatment inmates who had a mental health problem had received since admission to prison or jail. About 27% of State prisoners, 19% of Federal prisoners, and 15% of jail inmates who had a mental problem had used prescribed medication for a mental problem since admission.

An overnight stay in a hospital was the least likely method of treatment inmates had received since admission. Among inmates who had a mental problem, about 5% of those in State prisons, 3% in Federal prisons, and 2% in local jails had stayed overnight in a hospital for a mental problem.

Use of medication for a mental health problem by State prisoners rose between 1997 and 2004

The proportion of State prisoners who had used prescribed medication for a mental health problem since admission to prison rose to 15% in 2004, up from 12% in 1997 (table 15). There was little change in the percentage of inmates who reported an overnight stay in a hospital since admission (around 3%), or in the percentage who had received professional mental health therapy (around 12%).

State prisoners who said they had ever used prescribed medication for a mental or emotional problem in the past rose to 24% in 2004, up from 19% in 1997. Overall, 31% of State prisoners said they had ever received mental health treatment in the past, up from 28% in 1997.

Table 14. Mental health treatment received by inmates who had a mental health problem

Type of mental health treatment	Percent of inmates who had a mental problem in —		
	State prison	Federal prison	Local jails
Ever received mental health treatment	49.3%	35.3%	42.7%
Had overnight hospital stay	20.0	9.5	18.0
Used prescribed medications	39.5	28.0	32.7
Had professional mental health therapy	35.4	25.6	31.1
Received treatment during year before arrest	22.3%	14.9%	22.6%
Had overnight hospital stay	5.8	3.2	6.6
Used prescribed medications	15.8	10.1	16.9
On prescribed medication at time of arrest	11.3	7.3	12.3
Had professional mental health therapy	11.5	8.0	12.3
Received treatment after admission	33.8%	24.0%	17.5%
Had overnight hospital stay	5.4	2.7	2.2
Used prescribed medications	26.8	19.5	14.8
Had professional mental health therapy	22.6	15.1	7.3

Note: Excludes other mental health treatment.

Table 15. Mental health treatment received by all State prison inmates, 2004 and 1997

Type of mental health treatment	Percent of State prison inmates	
	2004	1997
Ever any mental health treatment	31.2%	28.3%
Had overnight hospital stay	12.2	10.7
Used prescribed medications	23.9	18.9
Had professional mental health therapy	21.6	21.8
Had other mental health treatment	3.6	3.3
Received treatment after admission	19.3%	17.4%
Had overnight hospital stay	3.1	3.8
Used prescribed medications	15.1	12.3
Had professional mental health therapy	12.7	12.3
Had other mental health treatment	1.9	1.9
Number of inmates	1,226,171	1,059,607

Among jail inmates, in 2002 around 30% said they had received treatment for a mental health problem in the past, up from 25% in 1996. The proportion who had received treatment since admission (11%) was unchanged.

Mental health treatment	Percent of jail inmates	
	2002	1996
Ever any treatment	30%	25%
Overnight stay	12	10
Medication	22	17
Therapy	22	18
Other treatment	3	3
Since admission	11%	11%
Overnight stay	1	1
Medication	9	9
Therapy	5	4
Other treatment	1	--

--Less than 0.5%.

Rule violations and injuries from a fight more common among inmates who had a mental health problem

Prison or jail inmates who had a mental health problem were more likely than those without to have been charged with breaking facility rules since admission (table 16). Among State prisoners, 58% of those who had a mental health problem, compared to 43% of those without, had been charged with rule violations.

An estimated 24% of State prisoners who had a mental health problem, compared to 14% of those without, had been charged with a physical or verbal assault on correctional staff or another inmate. Among Federal prisoners who had a mental health problem, 15% had been charged with a physical or verbal assault on correctional staff or another inmate compared to 7% of those without a mental problem.

Jail inmates who had a mental health problem were twice as likely as those without to have been charged with

Three-quarters of female inmates in State prisons who had a mental health problem met criteria for substance dependence or abuse

Female State prisoners who had a mental health problem were more likely than those without to —

- meet criteria for substance dependence or abuse (74% compared to 54%),
- have a current or past violent offense (40% compared to 32%),
- have used cocaine or crack in the month before arrest (34% compared to 24%),
- have been homeless in the year before arrest (17% compared to 9%).

They were also more likely to report —

- 3 or more prior sentences to probation or incarceration (36% compared to 29%),
- past physical or sexual abuse (68% compared to 44%),
- parental abuse of alcohol or drugs (47% compared to 29%),
- a physical or verbal assault charge since admission (17% compared to 6%).

Characteristics of females in State prison, by mental health status

Selected characteristics	Percent of female inmates	
	With mental problem	Without
Criminal record		
Current or past violent offense	40.4%	32.2%
3 or more prior probations or incarcerations	35.9	28.7
Substance dependence or abuse	74.5%	53.6%
Alcohol	41.7	25.8
Drugs	65.5	45.6
Drug use in month before arrest*	63.7%	49.5%
Cocaine or crack	33.9	24.2
Methamphetamines	17.1	16.3
Family background		
Homeless in year before arrest	16.6%	9.5%
Past physical or sexual abuse	68.4	44.0
Parent abused alcohol or drugs	46.9	29.1
Charged with violating facility rules*	50.4%	30.6%
Physical or verbal assault	16.9	5.7
Injured in a fight since admission	10.3%	3.8%

*Includes items not shown.

facility rule violations (19% compared to 9%).

Inmates in local jails who had a mental health problem were also four times as likely as those without to have been charged with a physical or verbal assault on correctional staff or another inmate (8% compared to 2%).

A larger percentage of inmates who had a mental health problem had been injured in a fight since admission than those without a mental problem (State prisoners, 20% compared to 10%; Federal prisoners, 11% compared to 6%; jail inmates, 9% compared to 3%).

Table 16. Disciplinary problems among prison and jail inmates since admission, by mental health status

Type of disciplinary problem since admission	Percent of inmates in —					
	State prison		Federal prison		Local jail	
	With mental problem	Without	With mental problem	Without	With mental problem	Without
Charged with rule violations*	57.7%	43.2%	40.0%	27.7%	19.0%	9.1%
Assault	24.1	13.8	15.4	6.9	8.2	2.4
Physical assault	17.6	10.4	11.0	5.4	4.7	1.6
Verbal assault	15.2	6.7	7.9	2.4	5.2	0.9
Injured in a fight	20.4%	10.1%	11.4%	5.8%	9.3%	2.9%

*Includes violations not shown (for example: possession of a weapon, stolen property or contraband, drug law violations, work slowdowns, food strikes, setting fires or rioting, being out of place, disobeying orders, abusive language, horseplay, or failing to follow sanitary regulations).

Methodology

The findings in this report are based on data in the Survey of Inmates in State and Federal Correctional Facilities, 2004, and the Survey of Inmates in Local Jails, 2002. Conducted every 5 to 6 years since 1972, the BJS' inmate surveys are the only national source of detailed information on criminal offenders, particularly special populations such as drug and alcohol users and offenders who have mental health problems.

The survey design included a stratified two-stage sample where facilities were selected in the first stage and inmates to be interviewed in the second stage. In the second sampling stage, interviewers from the Census Bureau visited each selected facility and systematically selected a sample of inmates. Computer-assisted personal interviewing (CAPI) was used to conduct the interviews.

Survey of Inmates in State and Federal Correctional Facilities, 2004

The State prison sample was selected from a universe of 1,585 facilities. A total of 287 State prisons participated in the survey; 2 refused, 11 were closed or had no inmates to survey, and 1 was erroneously included in the universe. A total of 14,499 inmates in the State facilities were interviewed; 1,653 inmates refused to participate, resulting in a second-stage nonresponse rate of 10.2%.

The Federal prison sample was selected from 148 Federal prisons and satellite facilities. Thirty-nine of the 40 prisons selected participated in the survey. After the initial sample of inmates was drawn, a secondary sam-

ple of 1 in 3 drug offenders was selected. A total of 3,686 inmates in Federal facilities were interviewed and 567 refused to participate, resulting in a second-stage nonresponse rate of 13.3%.

Survey of Inmates in Local Jails, 2002

The local jail sample was selected from a universe of 3,365. Overall, 465 jails were selected, and interviews were held in 417 jails; 39 jails refused or were excluded for administrative reasons; and 9 were closed or had no inmates. A total of 6,982 inmates were interviewed; 768 inmates refused to participate, resulting in a second-stage nonresponse rate of 9.9%.

Accuracy of survey estimates

The accuracy of the survey estimates depends on sampling and measurement errors. Sampling errors occur by chance because a sample of inmates rather than all inmates were interviewed. Measurement error can be attributed to many sources, such as nonresponse, recall difficulties, differences in the interpretation of questions among inmates, and processing errors.

The sampling error, as measured by an estimated standard error, varies by the size of the estimate and the size of the base population. These standard errors may be used to construct confidence intervals around percentages. For example, the 95% confidence interval around the percentage of jail inmates in 2002 who had a mental health problem is approximately 64.2% plus or minus 1.96 times .83% (or 62.6% to 65.8%). Standard error tables for data in this report are provided in

the Appendix which is available in the electronic version of the report at <<http://www.ojp.usdoj.gov/bjs/abstract/mhppji.htm>>.

A detailed description of the methodology for the State and Federal Prison survey, including standard error tables and links to other reports or findings will be available at <<http://www.icpsr.umich.edu>> in Winter 2007. A detailed description of the methodology for the Survey of Inmates in Local Jails is available at <<http://webapp.icpsr.umich.edu/cocoon/NACJD-STUDY/04359.xml>>.

Measures of mental health problems in the general population

Caution should be used when making comparisons between prison and jail inmates and the general population based on the a 12-month DSM-IV structured interview. There are significant variations in the questionnaire design and data analysis. For example, questions on the severity or duration of symptoms and questions about whether symptoms are due to breavement, substance use, or a medical condition may vary from survey to survey.

For details on the methodology used in the National Epidemiologic Survey on Alcohol and Related Conditions, sponsored by the National Institute on Alcohol Abuse and Alcoholism, see the Data Reference Manual, <<http://niaaa.census.gov/>>. For additional information on the prevalence of mental disorders in the general population, see the National Survey on Drug Use and Health, sponsored by the Substance Abuse and Mental Health Services Administration, <<http://www.oas.samhsa.gov/nsduh.htm>>. Also, see the National Comorbidity Survey Replication Study, sponsored primarily by the National Institute of Mental Health, <<http://www.nimh.nih.gov/healthinformation/ncs-r.cfm>>.

References

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV), 1994.

Michael B. First, Robert, L. Spitzer, Miriam Gibbon, and Janet B.W. Williams, *User's Guide for the Structured Clinical Interview for DSM-IV Axis I Disorders*, American Psychiatric Publishing, Inc. Arlington, Va., March 2002.

U.S. Department of Health and Human Services, National Epidemiologic Survey on Alcohol and Related Conditions, 2002, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, Maryland.

U.S. Department of Health and Human Services, National Survey on Drug Use and Health, 2002, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, Rockville, Maryland.



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Contributors to the Survey of Inmates in Local Jails are listed in *Profile of Jail Inmates, 2002*, at <<http://www.ojp.usdoj.gov/bjs/abstract/pji02.htm>>.

September 2006, NCJ 213600

This report in portable document format and in ASCII and its related statistical data and tables— including appendix tables— are available at the BJS World Wide Web Internet site: <<http://www.ojp.usdoj.gov/bjs/mhppji.htm>>

Office of Justice Programs

Partnerships for Safer Communities
<http://www.ojp.usdoj.gov>

Ohio Department of Rehabilitation and Correction

2005 INTAKE STUDY

May 2006

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EXECUTIVE SUMMARY

Social and Demographic Characteristics

- Of the 3,447 offenders included in the study, 87.5% were male and 12.5% were female. [Table 1]
- The racial composition of the intake sample was: 47.6% African American, 52.0% Caucasian, 0.1% American Native, and 0.3% Other. [Table 2]
- The ten counties with the greatest numbers of offenders committed to Ohio prisons during the intake study period were: Cuyahoga (N=669; 19.4%), Hamilton (N=357; 10.4%), Franklin (N=285; 8.3%), Summit (N=227; 6.6%), Montgomery (N=185; 5.4%), Lucas (N=123; 3.6%), Stark (N=110; 3.2%), Butler (N=104; 3.0%), Lorain (N=77; 2.2%) and Clark (N=69; 2.0%). [Table 3]
- The average age of offenders in the intake study was 32.2 years and the median age was 31. Males had an average age of 32 and a median age of 30. Females had an average age of 34 and a median age of 34. [Table 4]
- At the time of arrest (for the current most serious commitment offense), roughly two-thirds (67.0%) of the offenders were single (never married), 10.6% were married and 22.4% were separated, widowed, or divorced. Men were more likely to have never been married (68.8%) than women (54.4%). [Table 5]
- At the time of arrest, 56% of the offenders were unemployed; 30.2% were employed full-time. Males were more likely to have been employed full time (31.7%) than females (19.3%). The possibility that more women were engaged in care for their children as a vocation complicates this comparison. [Table 6]
- At the time of arrest, the educational attainment of the males was as follows: 7.0% had a grade school education or less, 36.5% had some high school, 39.5% were high school graduates or the equivalent but had not attended college, and 16.9% had some college training or had graduated. The respective education rates for females were: 7.7%, 34.6%, 35.6% and 22.1%. [Table 7]
- The data collected from self admissions, social and criminal history records indicate that the female inmates in the sample had a much higher percentage of the following than their male counterparts:
 - ❖ Physical abuse as a child or adolescent (female = 24.3%; male = 8.6%); [Table 9]
 - ❖ Sexual abuse as a child or adolescent (female = 29.0%; male = 4.9%); [Table 10]
 - ❖ Mental health problems (female = 46.0%; male = 24.3%); [Table 11]
- In regard to the prevalence of inmates involved in recent drug abuse, female offender rates were higher than males (female = 81.4%; male = 76.7%).* [Table 12] Males were slightly more likely than females to have had a history of drug abuse (female = 85.4%; male = 85.5%) [Table 13] and markedly more likely to have had recent alcohol abuse (female =

* Recent drug or alcohol abuse is abuse that occurred within the 6-month period prior to arrest for the current commitment offense. A history of drug abuse is abuse that occurred more than 6 months prior to that arrest date. A-18

35.4%; male = 44.8%) [Table 14] and a history of alcohol abuse (female = 54.9%; male = 63.2%). [Table 15] The likelihood of having completed a substance abuse treatment program was greater for female offenders (female = 31.2%; male = 30.1%). [Table 16]

Current Most Serious Commitment Offense

- About a third of the males (31.7%) were incarcerated for committing a crime against persons (including sex offenses) as their most serious offense, with almost another third (31.3%) for committing a drug offense. Just over one-third (34.0%) of the females were incarcerated for committing a drug offense as their most serious offense, while just over one-fifth were incarcerated for a miscellaneous property offense (20.5%) and under one-sixth (15.6%) for committing crimes against persons (including sex offenses). [Table 19]
- The five offenses (most serious commitment offense) for which the male and female offenders in the sample were most often committed were: [Table 19]

<u>Males</u>		<u>Females</u>	
Drug Possession (previously Abuse)	18.4%	Drug Possession (Abuse)	21.4%
Drug Trafficking	10.5%	Theft	14.2%
Burglary	7.2%	Forgery	8.4%
Theft	5.4%	Drug Trafficking	7.4%
Receiving Stolen Property	4.7%	Receiving Stolen Property	5.1%

- Most offenders (97.4%) pled guilty to charges (female = 98.4%; male= 97.3%). [Table 22]
- Almost three-fifths (59.3%) of the males and just under three-fourths (74.4%) of the females in the study were incarcerated on a determinate sentence of between 6-12 months for the most serious conviction offense. [Table 24]
- All the offenders in this sample were entering prison for a new felony conviction and commitment from a county Court of Common Pleas. However, some were on supervision when they committed the actions for which they were sent to prison. Roughly two-fifths of the males (39.2%) and less than half of the females (47.0%) in the study were incarcerated on either a technical or new crime violation of felony probation or a new crime violation of parole. [Table 28]
- Weapons were involved, in some manner, in the conviction offense in 23.1% of the cases.* [Table 30]
- Close to half (46.2%) of the offenders were under the influence of drugs or alcohol at the time of at least one of the instant conviction offenses (female = 46.8%; male = 46.2%). [Table 32]

* "involved" includes situations where the offender feigned having a weapon or where a weapon was present but not used in the commitment offense, in addition to situations in which a weapon was used to threaten, injure, or kill.

Criminal History

- Roughly half of the offenders (49.2%) have never had a prior adult prison incarceration (male = 46.5%; female 67.8%). [Table 63] Men were more likely than women to have served at least one prior prison term (male = 53.5%; female = 32.2%) [Table 63], and at least one prior jail incarceration (male = 62.2%; female = 54.8%). [Table 56]
- The female offenders in the sample were slightly less likely than males to have at least one prior adult supervision term (female = 77.2%; male = 78.3%) [Table 64]. Women were slightly more likely to have at least one prior revocation of adult supervision (female = 54.8%; male = 53.3%). [Table 65]
- Three-fourths (75.9%) of the offenders had at least one prior adult conviction for a non-violent misdemeanor (female = 73.4%; male = 76.3%) [Table 52]. Approximately one third (32.0%) of the offenders had at least one prior adult conviction for a violent misdemeanor (female = 21.6%; male = 33.5%). [Table 54]
- More than six in ten offenders (63.7%) had at least one prior adult felony conviction (female = 51.1%; male = 65.5%). [Table 57]
- Over one-fourth (26.4%) of the offenders had at least one prior adult conviction for a violent (non-sex) felony (female = 9.2%; male = 28.9%). [Table 58]
- Over one-fifth (22.8%) of the offenders had at least one prior adult felony conviction for drug use or possession (female = 23.3%; male = 22.7%). [Table 60]
- Roughly one in six offenders (14.9%) had at least one prior adult felony conviction for drug sale or trafficking (female = 7.8%; male = 15.9%). [Table 61]
- Over one-fifth of the offenders (22.7%) have had at least one domestic violence conviction as an adult or juvenile (female = 9.0%; male 24.7%). [Table 55]
- Only a small portion (6.9 %) of offenders entering prison are in the highest risk group on admission to prison. [Table 68]

Assessment of SB2 Impact

- Only .06% of the inmates admitted during the Intake 2005 study period were exclusively under the pre-Senate Bill 2 law, 99.88 % were exclusively Senate Bill 2. The remaining .06% of the cases were pre and post-Senate Bill 2 offenses combined. [Table 25]
- The percentage of inmates admitted who were truly non-violent (TNV) was 29.65% in the 2005 Intake Study, continuing the rather steady decline since SB2. See Table A, below. In the 1992 and 1996 Intake Studies (which included only Pre-Senate Bill 2 inmates), the percentage of truly non-violent inmates was 44.4%. This figure declined to roughly 40 percent in the 1997 and 1998 Intake Studies, to 38.6% in the 2000 Intake Study, to 35.8% in the 2001 Intake Study, 33.9% in 2002, to 33.2% in the 2003 Intake Study and to 31.5% in the 2004 Intake Study. A TNV offender is one who has no violent current conviction or indictment offense, no prior felony conviction for a violent or sex offense, no gun time, and no weapon involvement in the current offense.

Table A-Proportion of Each Year's Intake Who were Truly Non Violent (TNV), in %

	Intake Study Year									
	1992	1996	1997	1998	2000	2001	2002	2003	2004	2005
% TNV	44.4	44.4	40.0	39.9	38.6	35.8	33.9	33.2	31.5	29.7

- In 2005, the percentage of TNV offenders who were supervision (parole or probation) violators remained nearly steady at 44.4%. This is down from the 53.3% and 53.6% of the 2002 and 2003 Intake Studies and very similar to the 44.2% of the 2004 Intake Study. See Table B below, titled "TNV Admissions", to follow the patterns since 1996.

Table B-Proportion of Each Year's TNV Intake Who were Supervision Violators, in %

TNV Admissions	Intake Study Year									
	1996	1997	1998	2000	2001	2002	2003	2004	2005	
% Supervision Violators	36	50	54	49.4	45.8	53.3	53.6	44.2	44.4	

- The percentage of all admissions that were probation violators (Table C, below) has generally followed a similar pattern as the percent of TNV offenders who were supervision violators. That group rose from approximately 30% in the 1996 Intake Study to 35% in the 1997 study and 39% in the 1998 study and then declined to roughly 37% in the 2000 study and 34% in the 2001 study. There was a slight increase in 2002 to 35.6% and the rate in the 2003 Intake Study dropped to 32.5%. The percentage moved very little in the 2004 Intake Study to 32.8%, despite the drop in the TNV supervision violators. In the 2005 Intake Study, the percentage of all admissions who were probation violators dropped to 30.5%.

Table C-Proportion of each Year's Total Intake Who were Probation Violators, in %

Intake Sample Population	Intake Study Year									
	1996	1997	1998	2000	2001	2002	2003	2004	2005	
% Probation Violators	30	35	39	36.6	33.6	35.6	32.5	32.8	30.5	

- The percentage of new admissions that had committed a new crime while on parole or post release control increased in the 2005 Intake Study to 9.8%. (Table D, below) This increase follows the first decline in 2004 since the inception of SB2. Even with the present increase the percentage is less than reported in the 2003 Intake Study. The rate in the 2005 Intake Study is over five times what it was in the 1996 study.

Table D-Proportion of Each Year's Total Intake Who were Parole/PRC Violators, in % Intake Sample Population

	Intake Study Year									
	1996	1997	1998	2000	2001	2002	2003	2004	2005	
% Parole/PRC Violators	1.8	2.5	3.1	4.3	7.9	8.5	10.3	8.6	9.8	

- All of these figures suggest that SB2, in terms of resulting in an intake population that contains a higher proportion of violent/more serious offenders and a smaller proportion of truly non-violent offenders, continues to affect the composition of the prison population to some degree. The smaller proportion of TNV offenders admitted into prison in 2005 suggests progress in the intended direction.

INTRODUCTION

The purpose of this report is to present a basic profile of newly committed inmates entering the Ohio Department of Rehabilitation and Correction (DRC) prison system during 2005. The profile of Intake 2005 inmates includes the following information: (1) demographic and social characteristics of the inmates (2) characteristics of the current commitment offense, and (3) the inmate's prior criminal history. These tables may be used to compare the characteristics of inmates entering the prison system across the years for which similar data have been collected (1985, 1992, 1996, 1997, 1998, 2000, 2001, 2002, 2003 and 2004).

Methodology

In general, data for intake studies are collected on all inmates who enter the DRC prison system during a two-month period. Information is obtained from five sources:

- (1) Interviews with inmates at reception centers;
- (2) Written investigations;
- (3) Microfiche from the records department to supplement partial or incomplete investigation reports;
- (4) The Onbase information system, with offender background reports available in digitized form; and
- (5) County web sites.

The interviews with the inmates, conducted by DRC classification specialists, take place at DRC's three reception centers housed at the Lorain Correctional Institution, the Ohio Reformatory for Women, and the Correctional Reception Center. The emphasis is on social history information not consistently available in offender files. Bureau of Research Offender History staff code this information into the Intake database.

The DRC would like to prepare a full investigation (either a PSI – Pre-Sentence Investigation – for the sentencing judge, an OBI – Offender Background Investigation – a similar document prepared with a focus on DRC information needs or an OBI Summary Sheet – which is a shortened form of an OBI) for each new inmate admitted during 2005. Unfortunately, resource and administrative demands prevent that on a routine basis. Inmates who will be serving sentences less than 90 days frequently enter the system without such a report. Also, the investigations for offenders expected to spend longer than three but less than 12 months are reduced in scope. During the two-month study period, however, APA staff is requested to write investigation reports for all offenders entering Ohio's prisons in order to obtain an accurate representation of all inmates entering the prisons during the intake study period.

The investigation reports primarily consist of pre-sentence investigation and offender background information reports produced by Adult Parole Authority (APA) staff. Most reports are written by APA officers based in the jurisdiction where the offender committed his/her offense(s). The rest are prepared by the probation departments in the committing counties. The report is supplemented, if appropriate, with information on types and amounts of drugs and the value of the theft crimes. Central Office classification specialists then read through each investigation report, collect and code the information for the Intake Study and database.

With such a large data collection effort, it is inevitable that some of the necessary information on offenders will be missing from the investigation reports. When information is

missing, classification specialists must obtain microfiche records (or copies of documents available online in digitized form) on inmates from the records bureau at Central Office, read through the available information and attempt to retrieve the missing information.

Information was collected on all inmates who entered the DRC prison system between April 18, 2005 and June 6, 2005. The resulting data set contains information on a sample of 3,447 newly committed inmates received by DRC during this period. In the next few weeks, side-by-side county comparison tables for the ten highest committing counties are being produced, as well as individualized county profiles for those counties.

Caveats Regarding the Data

There are several limitations to the data of which the reader should be aware when assessing this information. First, the reader should bear in mind that the characteristics of the offense apply to the most serious conviction offense only. One should be cautious when trying to establish the proportion of offenders serving time for particular offenses. For example, an offender may have been convicted for felonious assault and domestic violence. The proportion of offenders currently entering prison for domestic violence will be underestimated when looking only at the proportion of offenders committed for domestic violence as the most serious offense.

A more accurate representation may be found by also considering offenders for whom domestic violence was the second most serious offense; however, we are not able to identify the number of offenders committed for domestic violence as a third or fourth most serious offense. While we believe that considering the most and second most serious offenses captures important offense characteristics for the majority of offenders entering prison for any given offense, estimates using this database must be considered conservative estimates. Similar precautions should be taken when estimating the various proportions of victim characteristics and other variables associated with particular offenses.¹ The database also does not contain information on the number of counts of offenses upon which the inmate was sentenced.

A second concern regards juvenile offense data. The availability of juvenile records continues to be problematic. Many county juvenile courts have a policy of refusing access to juvenile records; some will permit access only with a signed waiver from the inmate. Other juvenile courts routinely destroy juvenile records for individuals born before a specific date. As a result, the completeness of the juvenile record information remains questionable. Great care should be taken when attempting to draw conclusions from juvenile criminal history information contained in the intake databases.

Several limitations of adult criminal histories in general should be noted. The reader should be aware that the intake offense information is only for prior adult convictions. Few conclusions can be drawn regarding arrests from the data. An exception is that the number of arrests for five years prior to the instant offense is recorded. There is also no information recorded on indictment charges nor plea-bargaining for prior convictions. For example, it is possible that an inmate was, at some previous time, charged with a violent offense but agreed to plead guilty to a lesser, non-violent offense. As a result, there may be a number of individuals in the Intake database who are identified as having no prior convictions for violent offenses, but they actually do have a history of violent behavior.

¹ For inquiries that require a greater degree of specificity, please contact the Bureau of Research for additional analysis.

Representativeness of the Sample

It is important to note how representative this cohort of inmates is when compared to the inmates being admitted throughout the year. Consequently, the Intake 2005 sample should be comparable to inmates admitted during CY 2005. The information below, taken from a dataset of the CY 2005 Commitment Report, illustrates that the Intake 2005 sample closely resembles the year's intake on several basic features

	INTAKE 2005 %	COMM. CY 2005 %
<u>Sex</u>		
Female	12.0	12.4
Male	88.0	87.6
<u>Race</u>		
African American	47.6	47.6
Caucasian	52.0	52.0
<u>Counties of Commitment</u>		
Cuyahoga	19.4	19.7
Hamilton	10.4	11.1
Franklin	8.3	7.6
Summit	6.6	5.9
<u>Type of Offense</u>		
Crimes Against Persons	22.7	23.1
Sex Offenses	7.0	6.5
Burglary Offenses	7.8	7.8
Property Offenses	14.3	15.3
Drug Offenses	31.6	31.0
Motor Vehicle Offenses	1.7	1.7
Fraud Offenses	4.1	3.1
Weapons Offenses	3.2	3.9
Justice and Public Administration	7.7	7.8
Other Offenses	0.0	0.02
<u>Mean Age in Years</u>		
Female	33.9	33.7
Male	31.9	32.1

This comparison suggests strongly that the Intake 2005 sample is representative of all inmates admitted into ODRC's prisons in 2005.

Structure of the Report

This report is organized into four sections. The first section presents the demographic and social characteristics of the 2005 Intake sample. The second section provides information on the characteristics of the most serious current commitment offense. Information regarding the offender's prior criminal history is presented in section three. Reentry risk assessments, prepared by program staff in the institutions, are reported in section four.

In reviewing the tables, please be aware that due to rounding, percentages may not total exactly to 100%. This condition may be true for any table in this report.

DEMOGRAPHIC AND SOCIAL CHARACTERISTICS

TABLE 1: Gender

SEX	N	%
Male	3017	87.53
Female	430	12.47
TOTAL	3447	100.00

TABLE 2: Ethnicity

ETHNICITY	Males		Females		Total	
	N	%	N	%	N	%
African American	1485	49.22	156	36.28	1641	47.61
American Native	4	.13	0	0.00	4	.11
Other	8	.27	1	.23	9	.26
Caucasian	1520	50.38	273	63.49	1793	52.02
TOTAL	3017	100.00	430	100.00	3447	100.00

TABLE 3: County of Commitment

COUNTY	Males		Females		Total	
	N	%	N	%	N	%
Adams	4	.13	2	.47	6	.17
Allen	30	.99	4	.93	34	.99
Ashland	16	.53	1	.23	17	.49
Ashtabula	24	.80	3	.70	27	.78
Athens	5	.17	1	.23	6	.17
Auglaize	7	.23	2	.47	9	.26
Belmont	10	.33	2	.47	12	.35
Brown	10	.33	1	.23	11	.32
Butler	85	2.82	19	4.42	104	3.02
Carroll	6	.20	1	.23	7	.20
Champaign	3	.10	0	.00	3	.09
Clark	63	2.09	6	1.40	69	2.00
Clermont	35	1.16	10	2.33	45	1.31
Clinton	20	.66	6	1.40	26	.75
Columbiana	20	.66	1	.23	21	.61
Coshocton	10	.33	2	.47	12	.35
Crawford	9	.30	2	.47	11	.32
Cuyahoga	591	19.59	78	18.14	669	19.41
Darke	8	.27	0	.00	8	.23
Defiance	14	.46	7	1.63	21	.61
Delaware	18	.60	3	.70	21	.61
Erie	11	.36	3	.70	14	.41
Fairfield	21	.70	3	.70	24	.70
Fayette	18	.60	4	.93	22	.64
Franklin	257	8.52	28	6.51	285	8.27
Fulton	7	.23	2	.47	9	.26
Gallia	6	.20	1	.23	7	.20
Geauga	2	.07	0	.00	2	.06
Greene	46	1.52	10	2.33	56	1.62
Guernsey	8	.27	3	.70	11	.32

COUNTY	Males		Females		Total	
	N	%	N	%	N	%
Hamilton	329	10.90	28	6.51	357	10.36
Hancock	19	.63	1	.23	20	.58
Hardin	1	.03	1	.23	2	.06
Harrison	2	.07	0	.00	2	.06
Henry	11	.36	0	.00	11	.32
Highland	6	.20	1	.23	7	.20
Hocking	3	.10	1	.23	4	.12
Holmes	3	.10	0	.00	3	.09
Huron	13	.43	2	.47	15	.44
Jackson	14	.46	1	.23	15	.44
Jefferson	13	.43	1	.23	14	.41
Knox	14	.46	0	.00	14	.41
Lake	40	1.33	7	1.63	47	1.36
Lawrence	6	.20	0	.00	6	.17
Licking	34	1.13	5	1.16	39	1.13
Logan	11	.36	1	.23	12	.35
Lorain	63	2.09	14	3.26	77	2.23
Lucas	115	3.81	8	1.86	123	3.57
Madison	5	.17	2	.47	7	.20
Mahoning	44	1.46	4	.93	48	1.39
Marion	30	.99	4	.93	34	.99
Medina	17	.56	1	.23	18	.52
Meigs	3	.10	0	.00	3	.09
Mercer	1	.03	0	.00	1	.03
Miami	34	1.13	8	1.86	42	1.22
Monroe	5	.17	2	.47	7	.20
Montgomery	160	5.30	25	5.81	185	5.37
Morrow	4	.13	0	.00	4	.12
Muskingum	31	1.03	4	.93	35	1.02
Noble	0	.00	1	.23	1	.03
Ottawa	8	.27	0	.00	8	.23
Paulding	5	.17	2	.47	7	.20
Perry	3	.10	0	.00	3	.09
Pickaway	13	.43	4	.93	17	.49
Pike	1	.03	0	.00	1	.03
Portage	18	.60	2	.47	20	.58
Preble	7	.23	1	.23	8	.23
Putnam	3	.10	0	.00	3	.09
Richland	44	1.46	8	1.86	52	1.51
Ross	17	.56	2	.47	19	.55
Sandusky	11	.36	4	.93	15	.44
Scioto	35	1.16	4	.93	39	1.13
Seneca	10	.33	6	1.40	16	.46
Shelby	7	.23	0	.00	7	.20
Stark	93	3.08	17	3.95	110	3.19
Summit	193	6.40	34	7.91	227	6.59
Trumbull	33	1.09	3	.70	36	1.04
Tuscarawas	13	.43	2	.47	15	.44
Union	3	.10	0	.00	3	.09
Van Wert	6	.20	0	.00	6	.17
Vinton	3	.10	0	.00	3	.09
Warren	44	1.46	4	.93	48	1.39
Washington	5	.17	2	.47	7	.20
Wayne	9	.30	4	.93	13	.38
Williams	8	.27	2	.47	10	.29
Wood	28	.93	2	.47	30	.87
Wyandot	2	.07	0	.00	2	.06
TOTAL	3017	100.00	430	100.00	3447	100.00

TABLE 4: Age at Commitment

AGE	Males		Females		Total	
	N	%	N	%	N	%
Under 18	14	0.46	1	0.23	15	0.44
18	54	1.79	2	0.47	56	1.62
19	124	4.11	11	2.56	135	3.92
20	128	4.24	11	2.56	139	4.03
21	165	5.47	9	2.09	174	5.05
22	137	4.54	15	3.49	152	4.41
23	150	4.97	13	3.02	163	4.73
24	133	4.41	12	2.79	145	4.21
25	127	4.21	25	5.81	152	4.41
26	107	3.55	20	4.65	127	3.68
27	113	3.75	11	2.56	124	3.60
28	101	3.35	10	2.33	111	3.22
29	88	2.92	14	3.26	102	2.96
30	96	3.18	11	2.56	107	3.10
31	93	3.08	18	4.19	111	3.22
32	84	2.78	11	2.56	95	2.76
33	78	2.59	18	4.19	96	2.79
34	76	2.52	23	5.35	99	2.87
35	100	3.31	13	3.02	113	3.28
36	77	2.55	14	3.26	91	2.64
37	74	2.45	13	3.02	87	2.52
38	75	2.49	17	3.95	92	2.67
39	73	2.42	8	1.86	81	2.35
40	91	3.02	14	3.26	105	3.05
41-45	321	10.64	64	14.88	385	11.17
46-50	205	6.79	35	8.14	240	6.96
51-55	86	2.85	14	3.26	100	2.90
56-60	33	1.09	3	0.70	36	1.04
Over 60	14	0.46	0	0.00	14	0.41
TOTAL	3017	100.00	430	100.00	3447	100.00

Males
Mean = 31.98
Median = 30.00

Females
Mean = 33.99
Median = 34.00

Total
Mean = 32.23
Median = 31.00

TABLE 5: Marital Status at Arrest

Missing: 47

MARITAL STATUS	Males		Females		Total	
	N	%	N	%	N	%
Single (never married)	2049	68.78	229	54.39	2278	67.00
Married	319	10.71	41	9.74	360	10.59
Separated	210	7.05	51	12.11	261	7.68
Divorced	387	12.99	92	21.85	479	14.09
Widowed	14	0.47	8	1.90	22	0.65
TOTAL	2979	100.00	421	100.00	3400	100.00

TABLE 6: Employment Status at Arrest

Missing: 179

EMPLOYMENT STATUS	Males		Females		Total	
	N	%	N	%	N	%
Unemployed*	1535	53.71	295	71.95	1830	56.00
Employed Part-time	149	5.21	24	5.85	173	5.29
Employed Full-time	907	31.74	79	19.27	986	30.17
Self-Employed	139	4.86	4	0.98	143	4.38
Temporary Agency	107	3.74	8	1.95	115	3.52
Seasonal Employment	21	0.73	0	0.00	21	0.64
TOTAL	2858	100.00	410	100.00	3268	100.00

* Includes those who claim working under-the-table.

TABLE 7: Education Level at Arrest

Missing: 196

EDUCATION LEVEL	Males		Females		Total	
	N	%	N	%	N	%
No Education Completed	1	.04	0	.00	1	.03
1 st Grade	0	.00	2	.48	2	.06
2 nd Grade	1	.04	0	.00	1	.03
3 rd Grade	3	.11	0	.00	3	.09
4 th Grade	1	.04	0	.00	1	.03
5 th Grade	3	.11	3	.72	6	.18
6 th Grade	16	.56	1	.24	17	.52
7 th Grade	36	1.27	4	.96	40	1.23
8 th Grade	132	4.66	18	4.33	150	4.61
9 th Grade	235	8.29	35	8.41	270	8.31
10 th Grade	357	12.59	43	10.34	400	12.30
11 th Grade	387	13.65	56	13.46	443	13.63
High School Diploma	414	14.60	65	15.63	479	14.73
GED	458	16.16	42	10.10	500	15.38
GED + Vocational Training	77	2.72	13	3.13	90	2.77
Attended College	394	13.90	70	16.83	464	14.27
AA/AS Degree	52	1.83	16	3.85	68	2.09
BA/BS Degree	30	1.06	4	.96	34	1.05
MA/MS Degree	2	.07	2	.48	4	.12
Law Degree	1	.04	0	.00	1	.03
PhD	1	.04	0	.00	1	.03
High School Diploma + Vocational Training	165	5.82	28	6.73	193	5.94
Less than 8 th Grade + Vocational Training	1	.04	0	.00	1	.03
8 th Grade + Vocational Training	5	.18	4	.96	9	.28
9 th Grade + Vocational Training	6	.21	1	.24	7	.22
10 th Grade + Vocational Training	18	.63	1	.24	19	.58
11 th Grade + Vocational Training	33	1.16	8	1.92	41	1.26
High School Diploma + Some Vocational Training	6	.21	0	.00	6	.18
TOTAL	2835	100.00	416	100.00	3251	100.00

TABLE 8: Primary Living Arrangement from Birth to Age 18

Missing: 94

LIVING ARRANGEMENT	Males		Females		Total	
	N	%	N	%	N	%
Lived with Both Parents	1399	47.70	222	52.86	1621	48.34
Lived with Mother Only	1104	37.64	149	35.48	1253	37.37
Lived with Father Only	115	3.92	8	1.90	123	3.67
Lived with Foster Parents	47	1.60	6	1.43	53	1.58
Lived with Grandparents	210	7.16	25	5.95	235	7.01
Lived with Other Relatives	39	1.33	10	2.38	49	1.46
Lived in Juvenile Institution	19	0.65	0	0.00	19	0.57
TOTAL	2933	100.00	420	100.00	3353	100.00

TABLE 9: Indication of Physical Abuse as a Child or Adolescent

Missing: 90

EVIDENCE OF PHYSICAL ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No	2689	91.43	315	75.72	3004	89.48
Yes	252	8.57	101	24.28	353	10.52
TOTAL	2941	100.00	416	100.00	3357	100.00

TABLE 10: Indication of Sexual Abuse as a Child or Adolescent

Missing: 72

EVIDENCE OF SEXUAL ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No	2813	95.10	296	70.98	3109	92.12
Yes	145	4.90	121	29.02	266	7.88
TOTAL	2958	100.00	417	100.00	3375	100.00

TABLE 11: History of Mental Health Problems

Missing: 68

HISTORY OF MENTAL HEALTH PROBLEMS	Males		Females		Total	
	N	%	N	%	N	%
None	2241	75.66	225	53.96	2466	72.98
Self-Admission/Evidence	94	3.17	24	5.76	118	3.49
Diagnosed with Mental Illness	16	.54	1	.24	17	.50
Treated for Mental Illness	611	20.63	167	40.05	778	23.02
TOTAL	2962	100.00	417	100.00	3379	100.00

TABLE 12: Indication of Recent Drug Abuse

Missing: 58

INDICATION OF RECENT DRUG ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No Indication	691	23.31	79	18.59	770	22.72
Self Admission/Evidence	2203	74.33	325	76.47	2528	74.59
Diagnosis of Drug Abuse	2	.07	1	.24	3	.09
Treatment of Drug Abuse	68	2.29	20	4.71	88	2.60
TOTAL	2964	100.00	425	100.00	3389	100.00

TABLE 13: Indication of a History of Drug Abuse

Missing: 53

INDICATION OF HISTORY OF DRUG ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No Indication	430	14.48	62	14.59	492	14.50
Self Admission/Evidence	1412	47.56	200	47.06	1612	47.50
Diagnosis of Drug Abuse	2	.07	1	.24	3	.09
Treatment of Drug Abuse	1125	37.89	162	38.12	1287	37.92
TOTAL	2969	100.00	425	100.00	3394	100.00

TABLE 14: Indication of Recent Alcohol Abuse

Missing: 55

INDICATION OF RECENT ALCOHOL ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No Indication	1638	55.24	276	64.64	1914	56.43
Self Admission/Evidence	1291	43.54	146	34.19	1437	42.36
Diagnosis of Alcohol Abuse	1	.03	0	.00	1	.03
Treatment of Alcohol Abuse	35	1.18	5	1.17	40	1.18
TOTAL	2965	100.00	427	100.00	3392	100.00

TABLE 15: Indication of a History of Alcohol Abuse

Missing: 42

INDICATION OF HISTORY OF ALCOHOL ABUSE	Males		Females		Total	
	N	%	N	%	N	%
No Indication	1097	36.82	192	45.07	1289	37.86
Self Admission/Evidence	1098	36.86	148	34.74	1246	36.59
Diagnosis of Alcohol Abuse	2	.07	1	.23	3	.09
Treatment of Alcohol Abuse	782	26.25	85	19.95	867	25.46
TOTAL	2979	100.00	426	100.00	3405	100.00

TABLE 16: Indication of the Completion of Substance Abuse Treatment

Missing: 92

INDICATION OF TREATMENT PROGRAM COMPLETION	Males		Females		Total	
	N	%	N	%	N	%
No Indication of Completion	1404	47.89	163	38.53	1567	46.71
Failure to Comply with Court	329	11.22	56	13.24	385	11.48
Began Treatment/Compliance Unknown	96	3.27	6	1.42	102	3.04
In Treatment at Time of Arrest	5	.17	0	.00	5	.15
Completed Treatment	883	30.12	132	31.21	1015	30.25
Treatment After Arrest Only	215	7.33	66	15.60	281	8.38
TOTAL	2932	100.00	423	100.00	3355	100.00

TABLE 17: Living Arrangement at Time of Arrest

Missing: 177

LIVING ARRANGEMENT AT TIME OF ARREST	Males		Females		Total	
	N	%	N	%	N	%
Lived:						
Alone	438	15.27	42	10.45	480	14.68
w/Domestic Partner	353	12.31	72	17.91	425	13.00
w/Domestic Partner and Children	622	21.69	57	14.18	679	20.76
w/Dependent Children	35	1.22	96	23.88	131	4.01
w/Adult Children	13	.45	9	2.24	22	.67
w/Parent/Guardian	835	29.11	50	12.44	885	27.06
w/Adult Sibling	144	5.02	13	3.23	157	4.80
w/Grandparents	96	3.35	6	1.49	102	3.12
w/Other Relative	92	3.21	11	2.74	103	3.15
w/Friend/Roommate	156	5.44	28	6.97	184	5.63
Homeless	64	2.23	12	2.99	76	2.32
Supervised Setting	20	.70	6	1.49	26	.80
TOTAL	2868	100.00	402	100.00	3270	100.00

TABLE 18: Number of Dependent Children at Time of Arrest

Missing: 97

NUMBER OF DEPENDENT CHILDREN AT TIME OF ARREST	Males		Females		Total	
	N	%	N	%	N	%
0	2269	77.28	254	61.35	2523	75.31
1	237	8.07	65	15.70	302	9.01
2	233	7.94	59	14.25	292	8.72
3	116	3.95	19	4.59	135	4.03
4	49	1.67	14	3.38	63	1.88
5	16	.54	1	.24	17	.51
6 or more	16	.54	2	.48	18	.54
TOTAL	2936	100.00	414	100.00	3350	100.00

CHARACTERISTICS OF CURRENT COMMITMENT OFFENSE

TABLE 19: Most Serious Conviction Offense*

OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
CRIMES AGAINST PERSONS (excluding sex offenses)	721	23.90	61	14.19	782	22.69
Abduction	9	.30	0	.00	9	.26
Aggravated Arson	6	.20	2	.47	8	.23
Aggravated Assault	44	1.46	6	1.40	50	1.45
Aggravated Menacing	2	.07	0	.00	2	.06
Aggravated Murder	9	.30	0	.00	9	.26
Aggravated Robbery	104	3.45	4	.93	108	3.13
Aggravated Vehicular Assault	15	.50	5	1.16	20	.58
Aggravated Vehicular Homicide	11	.36	0	.00	11	.32
Assault	32	1.06	8	1.86	40	1.16
Contributing to/Nonsupport of Dependents	82	2.72	3	.70	85	2.47
Domestic Violence	101	3.35	1	.23	102	2.96
Endangering Children	12	.40	5	1.16	17	.49
Extortion	1	.03	0	.00	1	.03
Ethnic Intimidation	2	.07	0	.00	2	.06
Felonious Assault	112	3.71	11	2.56	123	3.57
Harassment by an Inmate	1	.03	1	.23	2	.06
Involuntary Manslaughter	15	.50	1	.23	16	.46
Interference with Custody	1	.03	0	.00	1	.03
Kidnapping	14	.46	0	.00	14	.41
Menacing by Stalking	1	.03	0	.00	1	.03
Murder	18	.60	2	.47	20	.58
Robbery	119	3.94	12	2.79	131	3.80
Telephone Harassment	3	.10	0	.00	3	.09
Voluntary Manslaughter	7	.23	0	.00	7	.20
SEX OFFENSES / REGISTRATION	237	7.84	6	1.39	243	7.05
Compelling Prostitution	1	.03	0	.00	1	.03
Disseminating Matter Harmful to Juveniles	1	.03	0	.00	1	.03
Duty to Register as a Sex Offender	6	.20	0	.00	6	.17
Felonious Sexual Penetration	1	.03	0	.00	1	.03
Gross Sexual Imposition	46	1.52	0	.00	46	1.33
Importuning	5	.17	0	.00	5	.15
Notice of Change of Address (Sex Offender)	25	.83	1	.23	26	.75
Pandering Obscenity Involving a Minor	7	.23	1	.23	8	.23
Periodic Verification of Address (Sex Offender)	13	.43	0	.00	13	.38
Promoting Prostitution	1	.03	0	.00	1	.03
Rape	68	2.25	1	.23	69	2.00
Sexual Battery	20	.66	0	.00	20	.58
Soliciting	0	.00	2	.47	2	.06
Unlawful Sexual Conduct with a Minor	43	1.43	1	.23	44	1.28
BURGLARY OFFENSES	245	8.12	22	5.12	267	7.75
Aggravated Burglary	29	.96	2	.47	31	.90
Burglary	216	7.16	20	4.65	236	6.85
MISCELLANEOUS PROPERTY CRIMES	406	13.47	88	20.48	494	14.34
Arson	2	.07	0	.00	2	.06
Breaking & Entering	69	2.29	1	.23	70	2.03
Disrupting Public Services	3	.10	0	.00	3	.09

*The characteristics of the committing offenses are based on the *most serious conviction offense* only. Some offenders may have been incarcerated for a number of offenses, but the characteristics reported to be associated with the commitment crime reflect the information as it relates to the most serious conviction offense only.

OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
Receiving Stolen Property	141	4.67	22	5.12	163	4.73
Safecracking	2	.07	2	.47	4	.12
Theft	162	5.37	61	14.19	223	6.47
Tampering with Coin Machine	3	.10	0	.00	3	.09
Unauthorized Use of Vehicle	8	.27	2	.47	10	.29
Vandalism	16	.53	0	.00	16	.46
DRUG OFFENSES	944	31.30	146	33.95	1090	31.62
Corrupting Another with Drugs	2	.07	1	.23	3	.09
Deception to Obtain Dangerous Drug	9	.30	8	1.86	17	.49
Drug Law Violation	0	.00	1	.23	1	.03
Drug Possession/ Abuse	554	18.36	92	21.40	646	18.74
Abusing Harmful Intoxicants	2	.07	0	.00	2	.06
Illegal Manufacture of Drug or Cultivation of Marihuana	44	1.46	4	.93	48	1.39
Illegal Processing of Drug Documents	6	.20	5	1.16	11	.32
Permitting Drug Abuse	2	.07	2	.47	4	.12
Possess Chemicals for Drug MFG	1	.03	0	.00	1	.03
Sale Counterfeit Drugs	6	.20	0	.00	6	.17
Tampering with Drugs	0	.00	1	.23	1	.03
Trafficking	318	10.54	32	7.44	350	10.15
MOTOR VEHICLE OFFENSES	51	1.68	7	1.63	58	1.69
Operating Motor Vehicle Under the Influence	49	1.62	6	1.40	55	1.60
Fail to Stop after Accident	0	.00	1	.23	1	.03
False Registration/ Conceal Identity	1	.03	0	.00	1	.03
Tamper with VIN	1	.03	0	.00	1	.03
FRAUD OFFENSES	85	2.82	56	13.02	141	4.1
Forgery	59	1.96	36	8.37	95	2.76
Criminal Simulation	1	.03	0	.00	1	.03
Medicaid Fraud	1	.03	0	.00	1	.03
Misuse of Credit Card	4	.13	5	1.16	9	.26
Passing Bad Checks	5	.17	3	.70	8	.23
Taking Identity of Another	6	.20	6	1.40	12	.35
Tampering with Records	7	.23	5	1.16	12	.35
Unlawful Use of Telecommunications Device	0	.00	1	.23	1	.03
Worker's Comp. Fraud	2	.07	0	.00	2	.06
WEAPONS OFFENSES	108	3.59	2	0.47	110	3.2
Carrying a Concealed Weapon	41	1.36	0	.00	41	1.19
Firearms Specification in Indictment	2	.07	0	.00	2	.06
Having a Weapon Under Disability	59	1.96	2	.47	61	1.77
Improper Handling of Firearm	4	.13	0	.00	4	.12
Unlawful Possession Dangerous Ordnance	2	.07	0	.00	2	.06
OFFENSES AGAINST JUSTICE/PUBLIC ADMINISTRATION	220	7.28	42	9.77	262	7.66
Attempt to Commit Offense	1	.03	0	.00	1	.03
Aggravated Rioting	1	.03	0	.00	1	.03
Bribery	0	.00	1	.23	1	.03
Engaging in Pattern of Corrupt Activity	13	.43	2	.47	15	.44
Escape	51	1.69	14	3.26	65	1.89
Failure to Comply with a Police Order	77	2.55	3	.70	80	2.32
Failure to File/ File Fraudulent Return	1	.03	0	.00	1	.03
Illegal Conveyance of Weapons/Prohibited Items Into Detention Facility or Institution	5	.17	5	1.16	10	.29
Inducing Panic	2	.07	0	.00	2	.06
Intimidation	4	.13	1	.23	5	.15
Intimidation of Atty./Victim/Witness in Crim. Case	3	.10	0	.00	3	.09
Making False Alarms	1	.03	0	.00	1	.03
Money Laundering	0	.00	1	.23	1	.03
Obstructing Justice	2	.07	2	.47	4	.12

OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
Obstructing Official Business	2	.07	0	.00	2	.06
Perjury	0	.00	1	.23	1	.03
Possessing Criminal Tools	6	.20	1	.23	7	.20
Release on Recognizance / Failure to Appear	14	.46	2	.47	16	.49
Retaliation	0	.00	1	.23	1	.03
Tampering with Evidence	22	.73	8	1.86	30	.87
Terroristic Threat	1	.03	0	.00	1	.03
Tobacco Trafficking / to Avoid Taxes	1	.03	0	.00	1	.03
Violating Protection Order	13	.43	0	.00	13	.38
TOTAL	3017	100.00	430	100.00	3447	100.00

Note: Attempted offenses are included in the primary categories.

TABLE 20: Felony Level-Most Serious Conviction Offense

FELONY LEVEL	Males		Females		Total	
	N	%	N	%	N	%
Felony 1	303	10.04	16	3.72	319	9.25
Felony 2	326	10.81	31	7.21	357	10.36
Felony 3	669	22.17	80	18.60	749	21.73
Felony 4	739	24.49	98	22.79	837	24.28
Felony 5	980	32.48	205	47.67	1185	34.38
TOTAL	3017	100.00	430	100.00	3447	100.00

TABLE 21: Felony Level-2nd Most Serious Conviction Offense

FELONY LEVEL 2ND MOST SERIOUS CONVICTION OFFENSE	Males		Females		Total	
	N	%	N	%	N	%
No Second Offense	2219	73.55	329	76.51	2548	73.92
Felony 1	50	1.66	0	.00	50	1.45
Felony 2	71	2.35	3	.70	74	2.15
Felony 3	117	3.88	12	2.79	129	3.74
Felony 4	180	5.97	12	2.79	192	5.57
Felony 5	367	12.16	70	16.28	437	12.68
Misdemeanor	10	.33	4	.93	14	.41
Judicial Sanction	3	.10	0	.00	3	.09
Total	3017	100.00	430	100.00	3447	100.00

TABLE 22: Adjudication of Offender's Case
Missing: 18

ADJUDICATION	Males		Females		Total	
	N	%	N	%	N	%
Guilty Plea	2920	97.30	421	98.36	3341	97.43
Convicted	81	2.70	7	1.64	88	2.57
TOTAL	3001	100.00	428	100.00	3429	100.00

TABLE 23: Gun Specifications in the Most Serious Conviction Offense

GUN SPECIFICATION IN CONVICTION	Males		Females		Total	
	N	%	N	%	N	%
None	2859	94.76	430	100.00	3289	95.42
1 Year	52	1.72	0	0.00	52	1.51
3 Year	104	3.45	0	0.00	104	3.02
5 Year	2	0.07	0	0.00	2	0.06
6 Year	0	0.00	0	0.00	0	0.00
TOTAL	3017	100.00	430	100.00	3447	100.00

TABLE 24: Determinate Sentence for Most Serious Conviction Offense

SENTENCE TERM (IN YEARS)	Males		Females		Total	
	N	%	N	%	N	%
Indeterminate Sentence*	28	0.93	1	0.23	29	0.84
0.16 Less than 2 Months	1	0.03	0	0.00	1	0.03
0.21 Less than 3 Months	0	0.00	1	0.23	1	0.03
0.33 Less than 4 Months	1	0.03	0	0.00	1	0.03
0.50	605	20.05	123	28.60	728	21.12
0.58	90	2.98	9	2.09	99	2.87
0.67	119	3.94	23	5.35	142	4.12
0.75	154	5.10	24	5.58	178	5.16
0.83	124	4.11	17	3.95	141	4.09
0.92	167	5.54	42	9.77	209	6.06
1.00	530	17.57	82	19.07	612	17.75
1.08	9	0.30	3	0.70	12	0.35
1.17	25	0.83	1	0.23	26	0.75
1.25	30	0.99	4	0.93	34	0.99
1.33	25	0.83	1	0.23	26	0.75
1.38	1	0.03	0	0.00	1	0.03
1.42	77	2.55	6	1.40	83	2.41
1.50	52	1.72	6	1.40	58	1.68
1.67	3	0.10	0	0.00	3	0.09
1.83	0	0.00	1	0.23	1	0.03
2.00	311	10.31	38	8.84	349	10.12
2.25	0	0.00	1	0.23	1	0.03
2.42	4	0.13	0	0.00	4	0.12
2.50	0	0.00	1	0.23	1	0.03
3.00	235	7.79	19	4.42	254	7.37
3.84	1	0.03	0	0.00	1	0.03
4.00	184	6.10	21	4.88	205	5.95
4.17	1	0.03	0	0.00	1	0.03
4.50	1	0.03	0	0.00	1	0.03
4.99	2	0.07	0	0.00	2	0.06
5.00	84	2.78	3	0.70	87	2.52
6.00	37	1.23	2	0.47	39	1.13
7.00	39	1.29	0	0.00	39	1.13
8.00	21	0.70	1	0.23	22	0.64
9.00	25	0.83	0	0.00	25	0.73
10.00	30	0.99	0	0.00	30	0.87
Full Life	1	0.03	0	0.00	1	0.03
TOTAL	3017	100.00	430	100.00	3447	100.00

*May include life sentences or "hybrid" commitments with combined pre-SB2 and SB2 sentence terms.

TABLE 25: Pre And Post Senate Bill Two Commitments

PRE AND POST SENATE BILL TWO COMMITMENTS	Males		Females		Total	
	N	%	N	%	N	%
Pre-Senate Bill Two	1	0.03	1	0.23	2	0.06
Post-Senate Bill Two	3015	99.93	428	99.53	3443	99.88
Pre and Post-Senate Bill Two	1	0.03	1	0.23	2	0.06
Total	3017	100.00	430	100.00	3447	100.00

TABLE 26: Type of Drug Involved in Any of the Instant Conviction Offenses

Missing: 22

TYPE OF DRUG	Males		Females		Total	
	N	%	N	%	N	%
No Drugs Involved	1882	62.73	255	60.00	2137	62.39
Drugs Present/Incident	25	.83	2	.47	27	.79
Cocaine, Crack	531	17.70	86	20.24	617	18.01
Cocaine, Powder	56	1.87	6	1.41	62	1.81
Cocaine, Unspecified	74	2.47	5	1.18	79	2.31
Heroin	57	1.90	10	2.35	67	1.96
Marijuana	95	3.17	6	1.41	101	2.95
LSD/Acid	6	.20	0	.00	6	.18
Crystal Meth/Ice	49	1.63	10	2.35	59	1.72
Amphetamines	7	.23	1	.24	8	.23
Pharmaceuticals	45	1.50	29	6.82	74	2.16
Counterfeit Drugs	4	.13	0	.00	4	.12
Chemical/Inhalant	8	.27	1	.24	9	.26
Drug Paraphernalia	6	.20	0	.00	6	.18
Drug Residue	36	1.20	8	1.88	44	1.28
Crack Cocaine + Marijuana	81	2.70	5	1.18	86	2.51
Powder Cocaine + Heroin	1	.03	0	.00	1	.03
Powder Cocaine + Marijuana	6	.20	0	.00	6	.18
Unspecified Cocaine + Heroin	2	.07	0	.00	2	.06
Unspecified Cocaine + Marijuana	7	.23	0	.00	7	.20
Crack Cocaine + Heroin	15	.50	1	.24	16	.47
Crack + Powder Cocaine	1	.03	0	.00	1	.03
Ecstasy	6	.20	0	.00	6	.18
TOTAL	3000	100.00	425	100.00	3425	100.00

TABLE 27: Offender's Legal Status at Arrest for the Conviction Offense

Missing: 9

LEGAL STATUS	Males		Females		Total	
	N	%	N	%	N	%
Free of CJ Supervision	1552	51.56	204	47.66	1756	51.08
Active Arrest Warrant	113	3.75	10	2.34	123	3.58
Released on Own Recognizance/Bond	146	4.85	10	2.34	156	4.54
On Probation	864	28.70	191	44.63	1055	30.69
On Parole	318	10.56	12	2.80	330	9.60
In Jail	10	.33	1	.23	11	.32
In Prison/DYS	5	.17	0	.00	5	.15
Escapee	2	.07	0	.00	2	.06
TOTAL	3010	100.00	428	100.00	3438	100.00

TABLE 28: Whether Offender Violated Felony Probation or Parole Conditions

Missing: 5

VIOLATION STATUS	Males		Females		Total	
	N	%	N	%	N	%
Offender was not a Violator	1833	60.86	228	53.02	2061	59.88
Technical Probation Violator	416	13.81	99	23.02	515	14.96
New Crime and Technical Violation/Returned to Prison on the Technical Violation	1	.03	0	.00	1	.03
New Crime Probation Violator	447	14.84	89	20.70	536	15.57
New Crime Parole/PRC Violator	315	10.46	14	3.26	329	9.56
TOTAL	3012	100.00	430	100.00	3442	100.00

TABLE 29: Role of the Offender and Others in the Most Serious Conviction Offense

Missing: 29

OFFENDER/OTHERS ROLE(S)	Males		Females		Total	
	N	%	N	%	N	%
Offender Acted Alone	2214	74.05	284	66.36	2498	73.08
Others Present, but Not Arrested	174	5.82	34	7.94	208	6.09
One or More Others Charged	187	6.25	38	8.88	225	6.58
One or More Others Went to Trial	35	1.17	6	1.40	41	1.20
One or More Others Convicted	14	.47	2	.47	16	.47
One or More Others Incarcerated	317	10.60	53	12.38	370	10.83
One or More Others Prob./Comm. Control	49	1.64	11	2.57	60	1.76
TOTAL	2990	100.00	428	100.00	3418	100.00

TABLE 30: Weapon Used/Possessed During Conviction Offense

Missing: 44

WEAPON USED/POSSESSED DURING CONVICTION OFFENSE	Males		Females		Total	
	N	%	N	%	N	%
No Weapon/Weapon Incidental to Crime	2243	75.34	373	87.56	2616	76.87
Weapon Present, but Not Used	104	3.49	3	0.70	107	3.14
Feigned Possession of Weapon	9	0.30	0	0.00	9	0.26
Used by Other Actor w/Offender	34	1.14	5	1.17	39	1.15
Offender Threatened Use	141	4.74	4	0.94	145	4.26
Used in Attempt to Injure	104	3.49	9	2.11	113	3.32
Used Weapon to Injure	305	10.25	30	7.04	335	9.84
Used Weapon to Kill	37	1.24	2	0.47	39	1.15
TOTAL	2977	100.00	426	100.00	3403	100.00

TABLE 31: Type of Weapon Used During Conviction Offense

Missing: 44

TYPE OF WEAPON USED DURING CONVICTION OFFENSE	Males		Females		Total	
	N	%	N	%	N	%
No Weapon/Incidental	2186	73.40	368	86.59	2554	75.05
Handgun	332	11.15	9	2.12	341	10.02
Rifle-Shotgun	30	1.01	2	.47	32	.94
Assault Weapon	4	.13	0	.00	4	.12
Sharp Instrument	85	2.85	16	3.76	101	2.97
Blunt Instrument	37	1.24	1	.24	38	1.12
Brute Force/Fists	256	8.60	17	4.00	273	8.02
Other	42	1.41	11	2.59	53	1.56
Multiple Weapons	6	.20	1	.24	7	.21
TOTAL	2978	100.00	425	100.00	3403	100.00

TABLE 32: Drugs/Alcohol Used During Conviction Offense

Missing: 132

DRUGS/ALCOHOL USED DURING CONVICTION OFFENSE	Males		Females		Total	
	N	%	N	%	N	%
No Indication	1561	53.83	221	53.25	1782	53.76
Drugs	603	20.79	132	31.81	735	22.17
Alcohol	330	11.38	33	7.95	363	10.95
Both	406	14.00	28	6.75	434	13.09
Yes Substance Not Specified	0	.00	1	.24	1	.03
TOTAL	2900	100.00	415	100.00	3315	100.00

TABLE 33: Primary Victim of the Most Serious Conviction Offense

Missing: 101

VICTIM RELATIONSHIP TO OFFENDER	Males		Females		Total	
	N	%	N	%	N	%
No Victim	1288	43.96	188	45.19	1476	44.11
Family Member	241	8.23	26	6.25	267	7.98
Friend or Acquaintance	518	17.68	56	13.46	574	17.15
Work or School Associate	7	0.24	5	1.20	12	0.36
Any Corrections or Law Enforcement Employee	83	2.83	15	3.61	98	2.93
Stranger	556	18.98	58	13.94	614	18.35
Non-Personal*	236	8.05	66	15.87	302	9.03
Other	1	0.03	2	0.48	3	0.09
TOTAL	2930	100.00	416	100.00	3346	100.00

*This category includes: business/place of employment, non-profit organization, and state or county government institution/property.

TABLE 34: Gender of Victim of the Most Serious Conviction Offense

Missing: 109

VICTIM GENDER	Males		Females		Total	
	N	%	N	%	N	%
Non Personal	1527	52.33	254	60.48	1781	53.36
Male	638	21.86	80	19.05	718	21.51
Female	753	25.81	86	20.48	839	25.13
TOTAL	2918	100.00	420	100.00	3338	100.00

TABLE 35: Victim Involvement in the Most Serious Conviction Offense

Missing: 64

VICTIM INVOLVEMENT	Males		Females		Total	
	N	%	N	%	N	%
No Personal Victim	1292	43.66	188	44.34	1480	43.75
No Victim Precipitation	1609	54.38	233	54.95	1842	54.45
Indication of Victim Precipitation	58	1.96	3	.71	61	1.80
TOTAL	2959	100.00	424	100.00	3383	100.00

TABLE 36: Extent of Victim Injury from the Most Serious Conviction Offense

Missing: 89

EXTENT OF VICTIM BODILY INJURY	Males		Females		Total	
	N	%	N	%	N	%
Not Applicable (non-personal crime)	1527	52.04	254	59.91	1781	53.04
No Bodily Injury to Victim	992	33.81	124	29.25	1116	33.23
Some Bodily Injury - No Treatment Required	135	4.60	16	3.77	151	4.50
Injury w/Medical Treatment Required at Scene Only	19	.65	1	.24	20	.60
Injury Requiring Out Patient Treatment	124	4.23	16	3.77	140	4.17
Injury Requiring In-Patient Hospitalization	80	2.73	10	2.36	90	2.68
Victim was Killed by Offender(s)	57	1.94	3	.71	60	1.79
TOTAL	2934	100.00	424	100.00	3358	100.00

TABLE 37: Extent of Victim Psychological Harm from the Most Serious Conviction Offense

Missing: 1067

EXTENT OF VICTIM PSYCHOLOGICAL HARM	Males		Females		Total	
	N	%	N	%	N	%
Not Applicable (non-personal crime)	1527	73.45	255	84.72	1782	74.87
Not Applicable Because Victim Died	56	2.69	3	1.00	59	2.48
No Psychological Harm was Indicated by the Victim	229	11.01	27	8.97	256	10.76
Victim Sustained Some Psychological Harm/Fear	241	11.59	14	4.65	255	10.71
Victim Sustained Psych. Harm/Required Treatment	26	1.25	2	.66	28	1.18
TOTAL	2079	100.00	301	100.00	2380	100.00

PRIOR CRIMINAL HISTORY

TABLE 38: Age at First Arrest

Missing: 5

AGE AT FIRST ARREST	Males		Females		Total	
	N	%	N	%	N	%
Younger than 10	38	1.26	1	0.23	39	1.13
10-14	659	21.86	41	9.58	700	20.34
15-19	1413	46.88	135	31.54	1548	44.97
20-24	516	17.12	111	25.93	627	18.22
25-29	183	6.07	64	14.95	247	7.18
30-34	106	3.52	34	7.94	140	4.07
35-39	45	1.49	28	6.54	73	2.12
40-44	27	0.90	7	1.64	34	0.99
45-49	15	0.50	5	1.17	20	0.58
50 or Older	12	0.40	2	0.47	14	0.41
TOTAL	3014	100.00	428	100.00	3442	100.00

<u>Males</u>	<u>Females</u>	<u>Total</u>
Mean = 18.74	Mean = 22.83	Mean = 19.25
Median = 18.00	Median = 21.00	Median = 18.00

***Table 39: Age at Arrest for First Violent Offense**

Missing: 9

AGE AT ARREST FOR FIRST VIOLENT OFFENSE	Males		Females		Total	
	N	%	N.	%	N	%
No Violent Arrest	566	18.80	206	48.13	772	22.45
Younger than 10	13	0.43	0	0.00	13	0.38
10-14	344	11.43	20	4.67	364	10.59
15-19	883	29.34	49	11.45	932	27.11
20-24	597	19.83	53	12.38	650	18.91
25-29	260	8.64	36	8.41	296	8.61
30-34	168	5.58	24	5.61	192	5.58
35-39	93	3.09	25	5.84	118	3.43
40-44	48	1.59	13	3.04	61	1.77
45-49	22	0.73	2	0.47	24	0.70
50 or Older	16	0.53	0	0.00	16	0.47
TOTAL	3010	100.00	428	100.00	3438	100.00

*For those who have a violent arrest

<u>Males</u>	<u>Females</u>	<u>Total</u>
Mean = 17.43	Mean = 12.90	Mean = 16.86
Median = 18.00	Median = 13.00	Median = 18.00

TABLE 40: Age at First Arrest Leading to a Delinquency Adjudication or Adult Felony Conviction

Missing: 7

AGE AT FIRST CONVICTION	Males		Females		Total	
	N	%	N	%	N	%
Younger than 10	24	0.80	0	0.00	24	0.70
10-14	594	19.72	37	8.64	631	18.34
15-19	999	33.17	68	15.89	1067	31.02
20-24	559	18.56	91	21.26	650	18.90
25-29	308	10.23	80	18.69	388	11.28
30-34	204	6.77	60	14.02	264	7.67
35-39	150	4.98	55	12.85	205	5.96
40-44	83	2.76	20	4.67	103	2.99
45-49	53	1.76	12	2.80	65	1.89
50 or Older	38	1.26	5	1.17	43	1.25
TOTAL	3012	100.00	428	100.00	3440	100.00

<u>Males</u>	<u>Females</u>	<u>Total</u>
Mean =	Mean = 26.64	Mean = 22.27
Median =	Median = 25.50	Median = 19.00

TABLE 41: Number of Juvenile Violent (Non-Sex) Offenses

Missing: 377

NUMBER OF JUVENILE VIOLENT (NON-SEX) OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	2029	75.88	362	91.41	2391	77.88
1	388	14.51	26	6.57	414	13.49
2	149	5.57	3	0.76	152	4.95
3 or more	108	4.04	5	1.26	113	3.68
TOTAL	2674	100.00	396	100.00	3070	100.00

TABLE 42: Number of Juvenile Sex Offenses

Missing: 377

NUMBER OF JUVENILE SEX OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	2615	97.76	394	99.75	3009	98.01
1	50	1.87	1	0.25	51	1.66
2	6	0.22	0	0.00	6	0.20
3 or more	4	0.15	0	0.00	4	0.13
TOTAL	2675	100.00	395	100.00	3070	100.00

TABLE 43: Number of Juvenile Drug Use/Possession Offenses

Missing: 378

NUMBER OF JUVENILE DRUG USE/POSSESSION OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	2426	90.73	389	98.48	2815	91.72
1	184	6.88	5	1.27	189	6.16
2	44	1.65	1	0.25	45	1.47
3 or more	20	0.75	0	0.00	20	0.65
TOTAL	2674	100.00	395	100.00	3069	100.00

TABLE 44: Number of Juvenile Drug Sale/Trafficking Offenses

Missing: 378

NUMBER OF JUVENILE DRUG SALE/TRAFFICKING OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	2616	97.83	393	99.49	3009	98.04
1	47	1.76	1	0.25	48	1.56
2	9	0.34	1	0.25	10	0.33
3 or more	2	0.07	0	0.00	2	0.07
TOTAL	2674	100.00	395	100.00	3069	100.00

TABLE 45: Number of Juvenile DUI/OMVI Offenses

Missing: 378

NUMBER OF JUVENILE DUI/OMVI OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	2655	99.29	393	99.49	3048	99.32
1	15	.56	2	.51	17	.55
2	3	.11	0	.00	3	.10
3 or more	1	.04	0	.00	1	.03
TOTAL	2674	100.00	395	100.00	3069	100.00

TABLE 46: Number of Juvenile Property Offenses

Missing: 375

NUMBER OF JUVENILE PROPERTY OFFENSES	Males		Females		Total	
	N	%	N	%	N	%
0	1878	70.18	353	89.14	2231	72.62
1	347	12.97	30	7.58	377	12.27
2	212	7.92	8	2.02	220	7.16
3	116	4.33	5	1.26	121	3.94
4	58	2.17	0	0.00	58	1.89
5	65	2.43	0	0.00	65	2.12
TOTAL	2676	100.00	396	100.00	3072	100.00

TABLE 47: Number of Juvenile Social Service Placements

Missing: 391

NUMBER OF JUVENILE SOCIAL SERVICE PLACEMENTS	Males		Females		Total	
	N	%	N	%	N	%
0	2110	79.29	359	90.89	2469	80.79
1	263	9.88	17	4.30	280	9.16
2	110	4.13	8	2.03	118	3.86
3	80	3.01	4	1.01	84	2.75
4	40	1.50	1	0.25	41	1.34
5	22	0.83	3	0.76	25	0.82
6 or more	36	1.35	3	0.76	39	1.28
TOTAL	2661	100.00	395	100.00	3056	100.00

TABLE 48: Number of Commitments to Department of Youth Services

Missing: 390

NUMBER OF COMMITMENTS TO THE DEPARTMENT OF YOUTH SERVICES	Males		Females		Total	
	N	%	N	%	N	%
0	2196	82.49	385	97.47	2581	84.43
1	277	10.41	7	1.77	284	9.29
2	117	4.40	3	0.76	120	3.93
3	36	1.35	0	0.00	36	1.18
4	23	0.86	0	0.00	23	0.75
5	8	0.30	0	0.00	8	0.26
6 or more	5	0.19	0	0.00	5	0.16
TOTAL	2662	100.00	395	100.00	3057	100.00

TABLE 49: Number of Juvenile Supervision Terms

Missing: 393

NUMBER OF JUVENILE SUPERVISION TERMS	Males		Females		Total	
	N	%	N	%	N	%
0	1688	63.48	332	84.05	2020	66.14
1	531	19.97	49	12.41	580	18.99
2	273	10.27	9	2.28	282	9.23
3	105	3.95	3	0.76	108	3.54
4	40	1.50	1	0.25	41	1.34
5	11	0.41	1	0.25	12	0.39
6 or more	11	0.41	0	0.00	11	0.36
TOTAL	2659	100.00	395	100.00	3054	100.00

TABLE 50: Number of Juvenile Probation Continuance Terms

Missing: 396

NUMBER OF JUVENILE PROBATION TERMS CONTINUED	Males		Females		Total	
	N	%	N	%	N	%
0	2170	81.70	365	92.41	2535	83.09
1	196	7.38	12	3.04	208	6.82
2	109	4.10	9	2.28	118	3.87
3	77	2.90	2	0.51	79	2.59
4	35	1.32	5	1.27	40	1.31
5	16	0.60	2	0.51	18	0.59
6 or more	53	2.00	0	0.00	53	1.74
TOTAL	2656	100.00	395	100.00	3051	100.00

TABLE 51: Number of Revocations of Juvenile Supervision

Missing: 394

NUMBER OF REVOCATIONS OF JUVENILE SUPERVISION TERMS	Males		Females		Total	
	N	%	N	%	N	%
0	2468	92.85	393	99.49	2861	93.71
1	126	4.74	2	0.51	128	4.19
2	37	1.39	0	0.00	37	1.21
3 or more	27	1.02	0	0.00	27	0.88
TOTAL	2658	100.00	395	100.00	3053	100.00

TABLE 52: Number of Prior Adult Non-Violent Misdemeanor Convictions

Missing: 34

NUMBER OF PRIOR ADULT NON- VIOLENT MISDEMEANOR CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	709	23.73	113	26.59	822	24.08
1	484	16.20	84	19.76	568	16.64
2	399	13.35	55	12.94	454	13.30
3	284	9.50	36	8.47	320	9.38
4	225	7.53	26	6.12	251	7.35
5	159	5.32	22	5.18	181	5.30
6-10	486	16.27	53	12.47	539	15.79
More than 10	242	8.10	36	8.47	278	8.15
TOTAL	2988	100.00	425	100.00	3413	100.00

TABLE 53: Number of Prior Adult DUI/OMVI Convictions

Missing: 28

NUMBER OF PRIOR ADULT DUI/OMVI CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2337	78.06	343	80.71	2680	78.39
1	334	11.16	45	10.59	379	11.09
2	138	4.61	21	4.94	159	4.65
3	66	2.20	7	1.65	73	2.14
4	41	1.37	3	0.71	44	1.29
5	42	1.40	3	0.71	45	1.32
6 or more	36	1.20	3	0.71	39	1.14
TOTAL	2994	100.00	425	100.00	3419	100.00

TABLE 54: Number of Prior Adult Violent Misdemeanor Convictions

Missing: 23

NUMBER OF PRIOR ADULT VIOLENT MISDEMEANOR CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	1993	66.48	334	78.40	2327	67.96
1	593	19.78	75	17.61	668	19.51
2	227	7.57	11	2.58	238	6.95
3	93	3.10	5	1.17	98	2.86
4	42	1.40	0	0.00	42	1.23
5	25	0.83	0	0.00	25	0.73
6 or more	25	0.83	1	0.23	26	0.76
TOTAL	2998	100.00	426	100.00	3424	100.00

TABLE 55: Number of Domestic Violence Convictions*

Missing: 237

NUMBER OF DOMESTIC VIOLENCE CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2109	75.32	373	90.98	2482	77.32
1	421	15.04	33	8.05	454	14.14
2	145	5.18	3	0.73	148	4.61
3	67	2.39	1	0.24	68	2.12
4	36	1.29	0	0.00	36	1.12
5	8	0.29	0	0.00	8	0.25
6 or more	14	0.50	0	0.00	14	0.44
TOTAL	2800	100.00	410	100.00	3210	100.00

*Includes both adult and juvenile domestic violence convictions

TABLE 56: Number of Prior Adult Jail Incarcerations

Missing: 26

NUMBER OF PRIOR ADULT JAIL INCARCERATIONS	Males		Females		Total	
	N	%	N	%	N	%
0	1133	37.82	192	45.18	1325	38.73
1	570	19.03	88	20.71	658	19.23
2	385	12.85	38	8.94	423	12.36
3	265	8.85	23	5.41	288	8.42
4	179	5.97	24	5.65	203	5.93
5	115	3.84	15	3.53	130	3.80
6 or more	349	11.65	45	10.59	394	11.52
TOTAL	2996	100.00	425	100.00	3421	100.00

TABLE 57: Number of Prior Adult Felony Convictions [Total]

Missing: 26

NUMBER OF PRIOR ADULT FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	1034	34.49	207	48.94	1241	36.28
1	688	22.95	92	21.75	780	22.80
2	467	15.58	56	13.24	523	15.29
3	305	10.17	29	6.86	334	9.76
4	181	6.04	13	3.07	194	5.67
5	119	3.97	8	1.89	127	3.71
6 or More	204	6.80	18	4.26	222	6.49
TOTAL	2998	100.00	423	100.00	3421	100.00

TABLE 58: Number of Prior Adult Violent (Non-Sex) Felony Convictions

Missing: 22

NUMBER OF PRIOR ADULT VIOLENT (NON-SEX) FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2133	71.10	386	90.82	2519	73.55
1	596	19.87	31	7.29	627	18.31
2	191	6.37	8	1.88	199	5.81
3	53	1.77	0	.00	53	1.55
4	21	.70	0	.00	21	.61
5	6	.20	0	.00	6	.18
TOTAL	3000	100.00	425	100.00	3425	100.00

TABLE 59: Number of Prior Adult Sex Felony Convictions

Missing: 22

NUMBER OF PRIOR ADULT SEX FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2875	95.83	424	99.76	3299	96.32
1	120	4.00	1	.24	121	3.53
2	4	.13	0	.00	4	.12
3	1	.03	0	.00	1	.03
TOTAL	3000	100.00	425	100.00	3425	100.00

TABLE 60: Number of Prior Adult Drug Use/Possession Felony Convictions

Missing: 24

NUMBER OF PRIOR ADULT DRUG USE/ POSSESSION FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2317	77.28	326	76.71	2643	77.21
1	458	15.28	60	14.12	518	15.13
2	140	4.67	22	5.18	162	4.73
3	43	1.43	5	1.18	48	1.40
4	14	0.47	5	1.18	19	0.56
5	15	0.50	2	0.47	17	0.50
6 or More	11	0.37	5	1.18	16	0.47
TOTAL	2998	100.00	425	100.00	3423	100.00

TABLE 61: Number of Prior Adult Drug Sale/Trafficking Felony Convictions

Missing: 24

NUMBER OF PRIOR ADULT DRUG SALE/ TRAFFICKING FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2522	84.09	391	92.22	2913	85.10
1	359	11.97	28	6.60	387	11.31
2	86	2.87	4	.94	90	2.63
3	26	.87	1	.24	27	.79
4	3	.10	0	.00	3	.09
5 or More	3	.10	0	.00	3	.09
TOTAL	2999	100.00	424	100.00	3423	100.00

TABLE 62: Number of Adult Property Felony Convictions

Missing: 23

NUMBER OF PRIOR ADULT PROPERTY FELONY CONVICTIONS	Males		Females		Total	
	N	%	N	%	N	%
0	2053	68.43	308	72.64	2361	68.95
1	527	17.57	64	15.09	591	17.26
2	193	6.43	29	6.84	222	6.48
3	107	3.57	10	2.36	117	3.42
4	52	1.73	5	1.18	57	1.66
5	31	1.03	3	0.71	34	0.99
6 or More	37	1.23	5	1.18	42	1.23
TOTAL	3000	100.00	424	100.00	3424	100.00

TABLE 63: Number of Prior Adult Prison Incarcerations

Missing: 25

NUMBER OF PRIOR ADULT PRISON INCARCERATIONS	Males		Females		Total	
	N	%	N	%	N	%
0	1394	46.51	288	67.76	1682	49.15
1	594	19.82	69	16.24	663	19.37
2	384	12.81	35	8.24	419	12.24
3	246	8.21	15	3.53	261	7.63
4	133	4.44	8	1.88	141	4.12
5	91	3.04	1	0.24	92	2.69
6 or more	155	5.17	9	2.12	164	4.79
TOTAL	2997	100.00	425	100.00	3422	100.00

TABLE 64: Number of Prior Adult Supervision Terms

Missing: 30

NUMBER OF PRIOR ADULT SUPERVISION TERMS	Males		Females		Total	
	N	%	N	%	N	%
0	648	21.66	97	22.82	745	21.80
1	793	26.50	139	32.71	932	27.28
2	568	18.98	70	16.47	638	18.67
3	358	11.97	44	10.35	402	11.76
4	218	7.29	28	6.59	246	7.20
5	145	4.85	16	3.76	161	4.71
6 or more	262	8.76	31	7.29	293	8.57
TOTAL	2992	100.00	425	100.00	3417	100.00

TABLE 65: Number of Prior Revocations of Adult Supervision Terms

Missing: 41

NUMBER OF PRIOR REVOCATIONS OF ADULT SUPERVISION TERMS	Males		Females		Total	
	N	%	N	%	N	%
0	1393	46.73	192	45.18	1585	46.54
1	967	32.44	163	38.35	1130	33.18
2	322	10.80	48	11.29	370	10.86
3	162	5.43	13	3.06	175	5.14
4	70	2.35	3	0.71	73	2.14
5	31	1.04	2	0.47	33	0.97
6 or More	36	1.21	4	0.94	40	1.17
TOTAL	2981	100.00	425	100.00	3406	100.00

TABLE 66: Indication of an Escape History

Missing: 11

INDICATION OF AN ESCAPE HISTORY	Males		Females		Total	
	N	%	N	%	N	%
No	2689	89.39	387	90.42	3076	89.52
Yes	319	10.61	41	9.58	360	10.48
TOTAL	3008	100.00	428	100.00	3436	100.00

REENTRY ASSESSMENT RISK

TABLE: 67 Rap Static Assessment Total Score

Missing: 75

RAP STATIC ASSESSMENT TOTAL SCORE	Males		Females		Total	
	N	%	N	%	N	%
0	576	19.55	60	14.12	636	18.86
1	453	15.37	77	18.12	530	15.72
2	538	18.26	90	21.18	628	18.62
3	491	16.66	91	21.41	582	17.26
4	381	12.93	59	13.88	440	13.05
5	293	9.94	30	7.06	323	9.58
6	151	5.12	14	3.29	165	4.89
7	50	1.70	3	.71	53	1.57
8	14	.48	1	.24	15	.44
Total	2947	100.00	425	100.00	3372	100.00

TABLE: 68 Rap Static Assessment Level

Missing: 75

RAP STATIC ASSESSMENT LEVEL	Males		Females		Total	
	N	%	N	%	N	%
Basic Level	2732	92.70	407	95.76	3139	93.09
Intensive Level	215	7.30	18	4.24	233	6.91
Total	2947	100.00	425	100.00	3372	100.00

DRC Policy 24-CAS-02 (formerly 103-12) Cashier's Manual Policy, IV G

G. MULTIPLE DEBTS-PRIORITY OF PAYMENT

The DRC has statutory and rule authority to collect inmate debts from his/her personal account due to medical co-pay, RIB restitution, federal and state civil and appeals litigation, child support and other court orders. Questions frequently arise involving an inmate with more than one type of debt as to the order/priority of paying those debts. This writing sets forth the priority for paying multiple debts.

Inmates who are disciplined through the RIB process may be required to pay restitution for any damage to or loss of property belonging to DRC, its employees, or another inmate, as well as for failure to maintain their living quarters. With the Warden's approval, restitution for such property damage/loss or for an unclean living area may result in a reduction of the inmate's state pay or OPI earnings up to one-half of his/her compensation. This type of debt shall be processed before all others as a result of the mechanics of paying the debt. TIE/OPI payroll systems pay into the personal account the non-reduced compensation; therefore, the cashier shall immediately deduct the restitution amount from the inmate's account. That amount shall not be counted as monthly income for purposes of calculating any other debt payments. At the end of each month, the total amount of RIB restitution collected is deducted from the payroll invoice sent to Central Office.

Medical co-payments have the second priority of debt payment. An inmate who requests healthcare/receives emergency evaluation/treatment is charged a \$3 co-payment fee unless exempted/waived by DRC Policy 68-MED-15. The cashier shall process the fee pursuant to that policy and AR 5120-5-13. If the inmate has one of the below listed debts which requires a \$10 per month exemption then the medical co-pay is taken from that exempt amount.

Another form of restitution is given the third priority of payment. Whether or not the RIB process is involved, with the Warden's approval, an inmate may sign a cash slip for the total/partial value of any damage/loss of any property belonging to DRC, its employees, or another inmate, that he/she causes. After RIB reduction of earning and/or medical copayments have been paid, until the cash slip is paid in full, all remaining funds shall be deducted from the inmate's account and paid to DRC, the employee, or inmate who suffered the property loss/damage. If applicable, the twenty-five percent child support deduction would reduce state pay before the restitution pay out.

Current or non-arrearage, child support is given the fourth priority of payment. Twenty-five percent of an inmate's monthly state pay/OPI earnings shall be deducted for such support.

This payment shall be processed pursuant to DRC policies 24-CAS-06 and 24-CAS-02

(Cashier's Manual-Child Support section). For example, if an inmate receives \$20 in state pay and has both an RIB reduction in payment order (for half the pay, or \$10) and a current child support order, the child support payment is \$2.50, which is 25% of the \$10 that is actually considered income.

Child support arrearages are given the fifth priority of payment. This debt is for a lump-sum amount of back support. Payment of this form is pursuant to A.R. 5120-5-03 and DRC policies 24-CAS-07 and 24-CAS-02 (Cashier's Manual-Miscellaneous Court Orders section). Pursuant to that authority, the inmate has a \$10 exemption (not accumulative) per month, so all monies in his/her personal account in excess of \$10 shall be used to pay this debt. This \$10 exemption can be used by the inmate to make authorized purchases of his/her choosing (e.g., stamps, mail orders, commissary and other voluntary signing of cash slips).

A civil judgment in favor of a victim of crime is given the sixth priority of payment. Typically, the victim is murdered, and the estate sues the inmate resulting in a civil judgment. Then the attorney of the estate requests collection of that judgment. Payment of this debt is pursuant to A.R. 5120-5-03 and DRC policies 24-CAS-07 and 24-CAS-02 (Cashier Manual-Miscellaneous Court Orders section). The \$10 exemption applies to this debt.

A civil judgment in favor of the Attorney General is given the seventh priority of payment. This debt results from the AG suing an inmate to recoup monies paid to the victim for personal/property loss/damage from the Ohio Court of Claims Crime Victim Fund. The payment of this debt is pursuant to A.R. 5120-5-03 and DRC policies DRC policies 24-CAS-07 and 24-CAS-02 (Cashier Manual-Miscellaneous Court Orders section). The \$10 exemption applies to this debt.

The last priority of payment relates to all other external debts generated by the federal and state civil and appeal litigation laws and other court orders, particularly sentencing entries, which assess criminal court costs, fines, and restitution for the prosecution of the defendant/inmate. These debts shall be given priority on the first-in first-out theory of accounting; those debt requests received first at the institution are given priority of payment before those received at a later date. The payment of federal/state filing fees, costs and attorney fees is governed by the DRC Policy 24-CAS-02 (Cashier Manual-Federal Civil and Appeals/PLRA and State Civil and Appeals/ICAA sections). The payment of prosecution costs, criminal fines/restitution, and child support arrearages governed by AR 5120-5-03 and DRC policies DRC policies 24-CAS-07 and 24-CAS-02 (Cashier's Manual-Miscellaneous Court Orders section). The \$10 exemption applies to these debts except when paying in full the initial partial filing fee for federal complaints or appeals.

If you have any questions regarding priority of paying inmate debts, please contact Stephen Young at Central Office, Legal Services.

Attachments: None

References:

AR 5120-5-03 Court Order for Payment of Funds from Inmate's Account

AR 5120-5-13 Correctional Healthcare Services Co-payment

DRC Policy 24-CAS-02 (formerly 103-12) Cashier's Manual Policy

DRC Policy 24-CAS-06 (formerly 103-30) Collection Process for Support Orders

DRC Policy 24-CAS-07 (formerly 103-31) Collection Process for a Court Order to Pay a Stated Obligation

DRC Policy 68-MED-15 (formerly 321-02) Correctional Healthcare Services Co-Payment

LEXSEE 2004 OHIO 2277

STATE OF OHIO, Plaintiff-Appellee, vs. MATTHEW LEHRFELD, Defendant-Appellant.

APPEAL NO. C-030390

COURT OF APPEALS OF OHIO, FIRST APPELLATE DISTRICT, HAMILTON COUNTY

2004 Ohio 2277; 2004 Ohio App. LEXIS 2025

May 7, 2004, Date of Judgment Entry on Appeal

NOTICE: **[**1]** THESE ARE NOT OFFICIAL HEADNOTES OR SYLLABI AND ARE NEITHER APPROVED IN ADVANCE NOR ENDORSED BY THE COURT. PLEASE REVIEW THE CASE IN FULL.

PRIOR HISTORY: Criminal Appeal From: Hamilton County Court of Common Pleas. TRIAL NO. B-9900433.

DISPOSITION: Affirmed.

HEADNOTES: PROCEDURE/RULES

SYLLABUS: The common pleas court properly overruled a *Civ.R. 60(B)* motion under which the defendant had sought relief from the prison term imposed for his community-control violation on the ground that the community-control sanction had been imposed in contravention of *R.C. 2929.19(B)(5)* due to the failure to advise him of the specific prison term that would be imposed for a violation: *Crim.R. 57(B)* did not permit the defendant to seek relief from the sentence under *Civ.R. 60(B)*, when the defendant could have raised the *R.C. 2929.19(B)(5)* violation in his direct appeal.

A court may not recast a criminal defendant's *Civ.R. 60(B)* motion as an *R.C. 2953.21* petition for postconviction relief, and then review the motion under the standards applicable to a postconviction petition, when the defendant has unambiguously invoked *Civ.R. 60(B)* in seeking relief from his sentence.

COUNSEL: Michael **[**2]** K. Allen, Hamilton County Prosecuting Attorney, and Scott M. Heenan, Assistant Prosecuting Attorney, for Plaintiff-Appellee.

Matt Lehrfeld, Pro se.

JUDGES: WINKLER, P.J., DOAN and GORMAN, JJ., CONCUR.

OPINION: DECISION.

Per Curiam.

[*P1] Defendant-appellant Matthew Lehrfeld appeals from the judgment of the common pleas court overruling his *Civ.R. 60(B)* motion for relief from judgment. Upon our determination that *Civ.R. 60(B)* did not afford Lehrfeld an avenue for relief, we affirm the judgment of the court below.

I

[*P2] In June of 1999, Lehrfeld was found guilty in a bench trial of burglary. The trial court sentenced him to three years' community control. Lehrfeld appealed. In August of 1999, while his appeal was pending, Lehrfeld violated his community control. On September 28, 1999, the trial court found him guilty of violating his community control and sentenced him to six years in prison. Lehrfeld again appealed, and we consolidated his appeal from the community-control violation with his appeal from the June 1999 burglary conviction. On appeal, Lehrfeld challenged his trial counsel's effectiveness and the weight and sufficiency of the evidence to support **[**3]** his conviction. Finding no merit to any aspect of the challenges presented on appeal, we affirmed the judgments of conviction. See *State v. Lehrfeld* (June 28, 2000), 1st Dist. Nos. C-990754 and C-990501 .

[*P3] In October of 2002, Lehrfeld filed with the common pleas court the first of three motions seeking relief under *Civ.R. 60(B)* from the September 1999 judgment of conviction, on the ground that the trial court, when it had sentenced him to community control for burglary in June of 1999, had failed to advise him of the

specific prison term that would be imposed as a sanction for violating his community control. From the entry denying the third of these motions, Lehrfeld has appealed.

II

[*P4] On appeal, Lehrfeld advances two assignments of error. The assignments of error, when reduced to their essence, challenge the denial of his *Civ.R. 60(B)* motion. This challenge is untenable.

A.

[*P5] The state contends that the court below properly overruled Lehrfeld's *Civ.R. 60(B)* motion, because *Civ.R. 60(B)* does not apply to criminal proceedings, and because, to the extent that the motion may be cognizable as a postconviction petition, the claim was barred under [**4] the doctrine of *res judicata*.

[*P6] We reject at the outset the state's suggestion that Lehrfeld's *Civ.R. 60(B)* motion may be reviewed as an *R.C. 2953.21* petition for postconviction relief. Only "an irregular 'no-name' motion[]," i.e., a motion that "fails to delineate specifically" the statute or rule under which relief is sought, may be "classified" or "categorized by a court in order for the court to know the criteria by which the motion should be judged." *State v. Bush*, 96 Ohio St.3d 235, 2002 Ohio 3993, 773 N.E.2d 522, at P10. In the proceedings below, Lehrfeld unambiguously invoked *Civ.R. 60(B)* in seeking relief from the prison sentence imposed for his community-control violation. Therefore, Lehrfeld's motion may not be recast as, or reviewed under the standards applicable to, a postconviction petition. *Contra State v. Szerlip*, 5th Dist. No. 02CA45, 2003 Ohio 6954; *State v. Palmer*, 2nd Dist. No. 18778, 2001 Ohio 1393.

[*P7] We also reject the proposition that *Civ.R. 60(B)* cannot afford a criminal defendant relief from a judgment of conviction. *Crim.R. 57(B)* provides that "if no procedure [**5] is specifically prescribed by rule, [a] court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists." (Emphasis added.) Thus, the criminal rules contemplate resort to the civil rules for procedures not anticipated by the criminal rules. See *State v. Plassman*, 6th Dist. No. F-03-017, 2004 Ohio 279; *State v. Scruggs*, 10th Dist. No. 02AP-621, 2003 Ohio 2019; *State v. Riggs* (Oct. 4, 1993), 4th Dist. Nos. 503 and 506, 1993 Ohio App. LEXIS 5063. *Contra State v. Bluford*, 8th Dist. No. 83112, 2003 Ohio 6181; *State v. Szerlip*, *supra*; *State v. Palmer*, *supra*.

B.

[*P8] In the proceedings below, Lehrfeld sought relief under *Civ.R. 60(B)* from the six-year prison term imposed in September of 1999 for his violation of the conditions of his community control. He argued in support of his motion that the trial court could not have imposed a prison term for his community-control violation, because the court, when it had sentenced him to community control in June of 1999, had failed, in contravention [**6] of *R.C. 2929.19(B)(5)*, to advise him of the specific prison term that it would impose if he violated the conditions of his community control.

[*P9] *R.C. 2929.19(B)(5)* requires a trial court, when sentencing a defendant to community control, to notify the defendant of "the specific prison term that may be imposed as a sanction for [a] violation" of a condition of his community control. In *State v. Mynhier* (2001), 146 Ohio App. 3d 217, 765 N.E.2d 917, we relied, in part, upon our decision in *State v. Craig* (1998), 130 Ohio App.3d 639, 720 N.E.2d 966, to hold that the sentencing court had satisfied *R.C. 2929.19(B)(5)*, when the court, in sentencing Mynhier to community control, had explained to the defendant the maximum sentence of imprisonment that could be imposed for a violation of a condition of his community control. The rule of substantial compliance set down in *Mynhier* was overturned a year later in *State v. Giles*, 1st Dist. No. C-010582, 2002 Ohio 3297. In *Giles*, we demanded "literal compliance with *R.C. 2929.19(B)(5)* * * * as [**7] a precondition to imposing a prison sentence for a violation of [a] community-control sanction[]." n1 Thus, we held that *R.C. 2929.19(B)(5)* precluded the trial court from sentencing Giles to prison for violating her community control, because the court had failed, when imposing the community-control sanction, to indicate the "specific prison term" that it would impose if she violated a condition of her community control.

n1 A conflict on this issue among the appellate districts has been certified to the Ohio Supreme Court. See *State v. Brooks*, 100 Ohio St.3d 1407, 796 N.E.2d 535, 2003 Ohio 4948.

[*P10] The court below, in sentencing Lehrfeld to community control, offered nothing in the way of an explanation of the consequences to Lehrfeld of his violation of the conditions of his community control. Not only did the court not "literally" comply with *R.C. 2929.19(B)(5)*, as *Giles* now requires, it did not even substantially comply with [**8] the statute, as contemplated by our earlier decisions in *Craig* and *Mynhier*.

[*P11] The statutory violation upon which Lehrfeld based his *Civ.R. 60(B)* motion was thus manifest on the record. Therefore, Lehrfeld could have raised the matter

in his consolidated appeals from his June 1999 burglary conviction and his September 1999 community-control violation. Consequently, *Crim.R. 57(B)* did not operate to permit Lehrfeld to seek relief from the September 1999 sentence under *Civ.R. 60(B)*.

III

[*P12] We, therefore, hold that the common pleas court properly overruled Lehrfeld's *Civ.R. 60(B)* motion. Accordingly, we overrule the assignments of error and affirm the judgment of the court below.

JUDGMENT AFFIRMED.

WINKLER, P.J., DOAN and GORMAN, JJ., CONCUR.

LEXSTAT 18 USC 2255

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*** CURRENT THROUGH 109TH CONGRESS 2ND SESSION ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
 PART I. CRIMES
 CHAPTER 110. SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Go to Code Archive Directory for this Jurisdiction

18 USCS § 2255

§ 2255. Civil remedy for personal injuries

(a) In general. Any person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title [*18 USCS § 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423*] and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$ 150,000 in value.

(b) Statute of limitations. Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability[.]

HISTORY:

(Added Oct. 18, 1986, P.L. 99-500, Title I, § 101(b), 100 Stat. 1783-74, and Oct. 30, 1986, P.L. 99-591, Title I, § 101(b), 100 Stat. 3341-74.)

(As amended Oct 30, 1998, P.L. 105-314, Title VI, § 605, 112 Stat. 2984; July 27, 2006, P.L. 109-248, Title VII, § 707(b), (c), 120 Stat. 650.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 2255 was redesignated and now appears as *18 USCS § 2256*.

P.L. 99-500 (H.J. Res. 738) was signed by the President on October 18, 1986. Subsequently, it was discovered that certain provisions had been omitted from the bill, and a corrected version thereof was signed by the President on October 30, 1986, as P.L. 99-591.

The bracketed period has been added at the end of subsec. (b) to indicate the probable intent of Congress to include such punctuation.

Amendments:

18 USCS § 2255

1998. Act Oct. 30, 1998, in subsec. (a), substituted "2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423" for "2251 or 2252".

2006. Act July 27, 2006, in subsec. (a), substituted "(a) In general. Any person who, while a minor, was" for "(a) Any minor who is", inserted ", regardless of whether the injury occurred while such person was a minor," substituted "such person" for "such minor", substituted "Any person" for "Any minor", and substituted "\$ 150,000" for "\$ 50,000"; and, in subsec. (b), substituted "(b) Statute of limitations. Any action" for "(b) Any action".

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 16 REDRESS FOR INJURY; DUE PROCESS

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

*HISTORY: 1912 constitutional convention, am. eff. 1-1-13
1851 constitutional convention, adopted eff. 9-1-1851*

CONSTITUTION OF THE STATE OF OHIO

ARTICLE IV. JUDICIAL

O CONST IV § 5 POWERS AND DUTIES OF SUPREME COURT; SUPERINTENDENCE OF COURTS; RULES

(A) (1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FEBRUARY 2, 2007 ***
*** WITH THE EXCEPTION OF HB 694 (FILE 181), HB 468 (FILE 191) AND HB 403 (FILE 195) ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2007 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 ***

TITLE 1. STATE GOVERNMENT
CHAPTER 120. PUBLIC DEFENDERS
OHIO PUBLIC DEFENDER COMMISSION

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 120.06 (2006)

§ 120.06. State public defender to provide representation to indigents; defense of malpractice and similar actions

(A) (1) The state public defender, when designated by the court or requested by a county public defender or joint county public defender, may provide legal representation in all courts throughout the state to indigent adults and juveniles who are charged with the commission of an offense or act for which the penalty or any possible adjudication includes the potential loss of liberty.

(2) The state public defender may provide legal representation to any indigent person who, while incarcerated in any state correctional institution, is charged with a felony offense, for which the penalty or any possible adjudication that may be imposed by a court upon conviction includes the potential loss of liberty.

(3) The state public defender may provide legal representation to any person incarcerated in any correctional institution of the state, in any matter in which the person asserts the person is unlawfully imprisoned or detained.

(4) The state public defender, in any case in which the state public defender has provided legal representation or is requested to do so by a county public defender or joint county public defender, may provide legal representation on appeal.

(5) The state public defender, when designated by the court or requested by a county public defender, joint county public defender, or the director of rehabilitation and correction, shall provide legal representation in parole and probation revocation matters or matters relating to the revocation of community control or post-release control under a community control sanction or post-release control sanction, unless the state public defender finds that the alleged parole or probation violator or alleged violator of a community control sanction or post-release control sanction has the financial capacity to retain the alleged violator's own counsel.

(6) If the state public defender contracts with a county public defender commission, a joint county public defender commission, or a board of county commissioners for the provision of services, under authority of division (C)(7) of section 120.04 of the Revised Code, the state public defender shall provide legal representation in accordance with the contract.

(B) The state public defender shall not be required to prosecute any appeal, postconviction remedy, or other proceeding pursuant to division (A)(3), (4), or (5) of this section, unless the state public defender first is satisfied that there is arguable merit to the proceeding.

(C) A court may appoint counsel or allow an indigent person to select the indigent's own personal counsel to assist the state public defender as co-counsel when the interests of justice so require. When co-counsel is appointed to assist the state public defender, the co-counsel shall receive any compensation that the court may approve, not to exceed the amounts provided for in *section 2941.51 of the Revised Code*.

(D) (1) When the state public defender is designated by the court or requested by a county public defender or joint county public defender to provide legal representation for an indigent person in any case, other than pursuant to a contract entered into under authority of division (C)(7) of *section 120.04 of the Revised Code*, the state public defender shall send to the county in which the case is filed a bill detailing the actual cost of the representation that separately itemizes legal fees and expenses. The county, upon receipt of an itemized bill from the state public defender pursuant to this division, shall pay the state public defender each of the following amounts:

(a) For the amount identified as legal fees in the itemized bill, one hundred per cent of the amount identified as legal fees less the state reimbursement rate as calculated by the state public defender pursuant to *section 120.34 of the Revised Code* for the month the case terminated, as set forth in the itemized bill;

(b) For the amount identified as expenses in the itemized bill, one hundred per cent.

(2) Upon payment of the itemized bill under division (D)(1) of this section, the county may submit the cost of the expenses, excluding legal fees, to the state public defender for reimbursement pursuant to *section 120.33 of the Revised Code*.

(3) When the state public defender provides investigation or mitigation services to private appointed counsel or to a county or joint county public defender as approved by the appointing court, other than pursuant to a contract entered into under authority of division (C)(7) of *section 120.04 of the Revised Code*, the state public defender shall send to the county in which the case is filed a bill itemizing the actual cost of the services provided. The county, upon receipt of an itemized bill from the state public defender pursuant to this division, shall pay one hundred per cent of the amount as set forth in the itemized bill. Upon payment of the itemized bill received pursuant to this division, the county may submit the cost of the investigation and mitigation services to the state public defender for reimbursement pursuant to *section 120.33 of the Revised Code*.

(4) There is hereby created in the state treasury the county representation fund for the deposit of moneys received from counties under this division. All moneys credited to the fund shall be used by the state public defender to provide legal representation for indigent persons when designated by the court or requested by a county or joint county public defender or to provide investigation or mitigation services, including investigation or mitigation services to private appointed counsel or a county or joint county public defender, as approved by the court.

(E) (1) Notwithstanding any contrary provision of *sections 109.02, 109.07, 109.361 [109.36.1] to 109.366 [109.36.6]*, and *120.03 of the Revised Code* that pertains to representation by the attorney general, an assistant attorney general, or special counsel of an officer or employee, as defined in *section 109.36 of the Revised Code*, or of an entity of state government, the state public defender may elect to contract with, and to have the state pay pursuant to division (E)(2) of this section for the services of, private legal counsel to represent the Ohio public defender commission, the state public defender, assistant state public defenders, other employees of the commission or the state public defender, and attorneys described in division (C) of *section 120.41 of the Revised Code* in a malpractice or other civil action or proceeding that arises from alleged actions or omissions related to responsibilities derived pursuant to this chapter, or in a civil action that is based upon alleged violations of the constitution or statutes of the United States, including section 1983 of Title 42 of the United States Code, 93 Stat. 1284 (1979), *42 U.S.C.A. 1983*, as amended, and that arises from alleged actions or omissions related to responsibilities derived pursuant to this chapter, if the state public defender determines, in good faith, that the defendant in the civil action or proceeding did not act manifestly outside the scope of the defendant's employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner. If the state public defender elects not to contract pursuant to this division for private legal counsel in a civil action or proceeding, then, in accordance with *sections 109.02, 109.07, 109.361 [109.36.1] to 109.366 [109.36.6]*, and *120.03 of the Revised Code*, the attorney general shall represent or provide for the representation of the Ohio public defender commission, the state public defender, assistant state public defenders, other employees of the commission or the state public defender, or attorneys described in division (C) of *section 120.41 of the Revised Code* in the civil action or proceeding.

(2) (a) Subject to division (E)(2)(b) of this section, payment from the state treasury for the services of private legal counsel with whom the state public defender has contracted pursuant to division (E)(1) of this section shall be accomplished only through the following procedure:

(i) The private legal counsel shall file with the attorney general a copy of the contract; a request for an award of legal fees, court costs, and expenses earned or incurred in connection with the defense of the Ohio public defender commission, the state public defender, an assistant state public defender, an employee, or an attorney in a specified civil action or proceeding; a written itemization of those fees, costs, and expenses, including the signature of the state public defender and the state public defender's attestation that the fees, costs, and expenses were earned or incurred pursuant to division (E)(1) of this section to the best of the state public defender's knowledge and information; a written statement whether the fees, costs, and expenses are for all legal services to be rendered in connection with that defense, are only for legal services rendered to the date of the request and additional legal services likely will have to be provided in connection with that defense, or are for the final legal services rendered in connection with that defense; a written statement indicating whether the private legal counsel previously submitted a request for an award under division (E)(2) of this section in connection with that defense and, if so, the date and the amount of each award granted; and, if the fees, costs, and expenses are for all legal services to be rendered in connection with that defense or are for the final legal services rendered in connection with that defense, a certified copy of any judgment entry in the civil action or proceeding or a signed copy of any settlement agreement entered into between the parties to the civil action or proceeding.

(ii) Upon receipt of a request for an award of legal fees, court costs, and expenses and the requisite supportive documentation described in division (E)(2)(a)(i) of this section, the attorney general shall review the request and documentation; determine whether any of the limitations specified in division (E)(2)(b) of this section apply to the request; and, if an award of legal fees, court costs, or expenses is permissible after applying the limitations, prepare a document awarding legal fees, court costs, or expenses to the private legal counsel. The document shall name the private legal counsel as the recipient of the award; specify the total amount of the award as determined by the attorney general; itemize the portions of the award that represent legal fees, court costs, and expenses; specify any limitation applied pursuant to division (E)(2)(b) of this section to reduce the amount of the award sought by the private legal counsel; state that the award is payable from the state treasury pursuant to division (E)(2)(a)(iii) of this section; and be approved by the inclusion of the signatures of the attorney general, the state public defender, and the private legal counsel.

(iii) The attorney general shall forward a copy of the document prepared pursuant to division (E)(2)(a)(ii) of this section to the director of budget and management. The award of legal fees, court costs, or expenses shall be paid out of the state public defender's appropriations, to the extent there is a sufficient available balance in those appropriations. If the state public defender does not have a sufficient available balance in the state public defender's appropriations to pay the entire award of legal fees, court costs, or expenses, the director shall make application for a transfer of appropriations out of the emergency purposes account or any other appropriation for emergencies or contingencies in an amount equal to the portion of the award that exceeds the sufficient available balance in the state public defender's appropriations. A transfer of appropriations out of the emergency purposes account or any other appropriation for emergencies or contingencies shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes account requests, or requests for releases from the other appropriation. If a transfer of appropriations out of the emergency purposes account or other appropriation for emergencies or contingencies is made to pay an amount equal to the portion of the award that exceeds the sufficient available balance in the state public defender's appropriations, the director shall cause the payment to be made to the private legal counsel. If sufficient moneys do not exist in the emergency purposes account or other appropriation for emergencies or contingencies to pay an amount equal to the portion of the award that exceeds the sufficient available balance in the state public defender's appropriations, the private legal counsel shall request the general assembly to make an appropriation sufficient to pay an amount equal to the portion of the award that exceeds the sufficient available balance in the state public defender's appropriations, and no payment in that amount shall be made until the appropriation has been made. The private legal counsel shall make the request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

(b) An award of legal fees, court costs, and expenses pursuant to division (E) of this section is subject to the following limitations:

(i) The maximum award or maximum aggregate of a series of awards of legal fees, court costs, and expenses to the private legal counsel in connection with the defense of the Ohio public defender commission, the state public defender, an assistant state public defender, an employee, or an attorney in a specified civil action or proceeding shall not exceed fifty thousand dollars.

(ii) The private legal counsel shall not be awarded legal fees, court costs, or expenses to the extent the fees, costs, or expenses are covered by a policy of malpractice or other insurance.

(iii) The private legal counsel shall be awarded legal fees and expenses only to the extent that the fees and expenses are reasonable in light of the legal services rendered by the private legal counsel in connection with the defense of the Ohio public defender commission, the state public defender, an assistant state public defender, an employee, or an attorney in a specified civil action or proceeding.

(c) If, pursuant to division (E)(2)(a) of this section, the attorney general denies a request for an award of legal fees, court costs, or expenses to private legal counsel because of the application of a limitation specified in division (E)(2)(b) of this section, the attorney general shall notify the private legal counsel in writing of the denial and of the limitation applied.

(d) If, pursuant to division (E)(2)(c) of this section, a private legal counsel receives a denial of an award notification or if a private legal counsel refuses to approve a document under division (E)(2)(a)(ii) of this section because of the proposed application of a limitation specified in division (E)(2)(b) of this section, the private legal counsel may commence a civil action against the attorney general in the court of claims to prove the private legal counsel's entitlement to the award sought, to prove that division (E)(2)(b) of this section does not prohibit or otherwise limit the award sought, and to recover a judgment for the amount of the award sought. A civil action under division (E)(2)(d) of this section shall be commenced no later than two years after receipt of a denial of award notification or, if the private legal counsel refused to approve a document under division (E)(2)(a)(ii) of this section because of the proposed application of a limitation specified in division (E)(2)(b) of this section, no later than two years after the refusal. Any judgment of the court of claims in favor of the private legal counsel shall be paid from the state treasury in accordance with division (E)(2)(a) of this section.

(F) If a court appoints the office of the state public defender to represent a petitioner in a postconviction relief proceeding under *section 2953.21 of the Revised Code*, the petitioner has received a sentence of death, and the proceeding relates to that sentence, all of the attorneys who represent the petitioner in the proceeding pursuant to the appointment, whether an assistant state public defender, the state public defender, or another attorney, shall be certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.

(G) As used in this section:

(1) "Community control sanction" has the same meaning as in *section 2929.01 of the Revised Code*.

(2) "Post-release control sanction" has the same meaning as in *section 2967.01 of the Revised Code*.

HISTORY:

136 v H 164 (Eff 1-13-76); 138 v H 204 (Eff 7-30-79); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v S 271 (Eff 9-26-84); 141 v H 201 (Eff 7-1-85); 144 v H 210 (Eff 5-1-92); 145 v H 571 (Eff 10-6-94); 146 v S 258 (Eff 10-16-96); 148 v H 283 (Eff 9-29-99); 149 v H 94, Eff 9-5-2001; 149 v H 490, § 1, eff. 1-1-04; 151 v H 66, § 101.01, eff. 9-29-05.

LEXSTAT ORC 2953.21

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* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY *
 * AND FILED WITH THE SECRETARY OF STATE THROUGH JANUARY 2, 2007 *
 * AND SB 260 (FILE 172), AND SB 171 (FILE 182), FILED 1/3/07; SB 281 (FILE 189), FILED 1/4/07, AND HB 251
 (FILE 190), FILED 1/5/07 *
 * ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 *
 * OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 *

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
 POSTCONVICTION REMEDIES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 2953.21 (2006)

§ 2953.21. Petition for postconviction relief

(A) (1) (a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under *sections 2953.71 to 2953.81 of the Revised Code* or under *section 2953.82 of the Revised Code* and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of *section 2953.74 of the Revised Code* provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(b) As used in division (A)(1)(a) of this section, "actual innocence" means that, had the results of the DNA testing conducted under *sections 2953.71 to 2953.81 of the Revised Code* or under *section 2953.82 of the Revised Code* been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of *section 2953.74 of the Revised Code* no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

(2) Except as otherwise provided in *section 2953.23 of the Revised Code*, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in *section 2953.23 of the Revised Code*, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

(3) In a petition filed under division (A) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death.

(4) A petitioner shall state in the original or amended petition filed under division (A) of this section all grounds for relief claimed by the petitioner. Except as provided in *section 2953.23 of the Revised Code*, any ground for relief that is not so stated in the petition is waived.

(5) If the petitioner in a petition filed under division (A) of this section was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion. If the supreme court adopts a rule requiring a court of common pleas to maintain information with regard to an offender's race, gender, ethnic background, or religion, the supporting evidence for the petition shall include, but shall not be limited to, a copy of that type of information relative to the petitioner's sentence and copies of that type of information relative to sentences that the same judge imposed upon other persons.

(B) The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. The clerk of the court in which the petition is filed immediately shall forward a copy of the petition to the prosecuting attorney of that county.

(C) The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

(D) Within ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

(F) At any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings. The petitioner may amend the petition with leave of court at any time thereafter.

(G) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division (E) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, shall discharge or resentence the petitioner or grant a new trial as the court determines appropriate. The court also may make supplementary orders to the relief granted, concerning such matters as rearraignment, retrial, custody, and bail. If the trial court's order granting the petition is reversed on appeal and if the direct appeal of the case has been remanded from an appellate court pursuant to a request under division (E) of this section, the appellate court reversing the order granting the petition shall notify the appellate court in which the direct appeal of the case was pending at the time of the remand of the reversal and remand of the trial court's order. Upon the reversal and remand of the trial court's order granting the petition, regardless of whether notice is sent or received, the direct appeal of the case that was remanded is reinstated.

(H) Upon the filing of a petition pursuant to division (A) of this section by a person sentenced to death, only the supreme court may stay execution of the sentence of death.

(I) (1) If a person sentenced to death intends to file a petition under this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

(2) The court shall not appoint as counsel under division (I)(1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division (I)(1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal.

(3) Division (I) of this section does not preclude attorneys who represent the state of Ohio from invoking the provisions of 28 U.S.C. 154 with respect to capital cases that were pending in federal habeas corpus proceedings prior to July 1, 1996, insofar as the petitioners in those cases were represented in proceedings under this section by one or more counsel appointed by the court under this section or *section 120.06, 120.16, 120.26, or 120.33 of the Revised Code* and those appointed counsel meet the requirements of division (I)(2) of this section.

(J) Subject to the appeal of a sentence for a felony that is authorized by *section 2953.08 of the Revised Code*, the remedy set forth in this section is the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if committed by an adult or the validity of a related order of disposition.

HISTORY:

131 v 684 (Eff 7-21-65); 132 v H 742 (Eff 12-9-67); 141 v H 412 (Eff 3-17-87); 145 v H 571 (Eff 10-6-94); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v S 258 (Eff 10-16-96); 149 v H 94. Eff 9-5-2001; 150 v S 11, § 1, eff. 10-29-03; 151 v S 262, § 1, eff. 7-11-06.

LEXSTAT ORC 2953.23

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* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY *
 * AND FILED WITH THE SECRETARY OF STATE THROUGH JANUARY 2, 2007 *
 * AND SB 260 (FILE 172), AND SB 171 (FILE 182), FILED 1/3/07; SB 281 (FILE 189), FILED 1/4/07, AND HB 251
 (FILE 190), FILED 1/5/07 *
 * ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 *
 * OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JANUARY 23, 2007 *

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2953. APPEALS; OTHER POSTCONVICTION REMEDIES
 POSTCONVICTION REMEDIES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 2953.23 (2006)

§ 2953.23. Time for filing petition; appeals

(A) Whether a hearing is or is not held on a petition filed pursuant to *section 2953.21 of the Revised Code*, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of *section 2953.21 of the Revised Code* or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an inmate for whom DNA testing was performed under *sections 2953.71 to 2953.81 of the Revised Code* or under *section 2953.82 of the Revised Code* and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of *section 2953.74 of the Revised Code*, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

As used in this division, "actual innocence" has the same meaning as in division (A)(1)(b) of *section 2953.21 of the Revised Code*.

(B) An order awarding or denying relief sought in a petition filed pursuant to *section 2953.21 of the Revised Code* is a final judgment and may be appealed pursuant to Chapter 2953. of the Revised Code.

HISTORY:

132 v H 742 (Eff 12-9-67); 146 v S 4. Eff 9-21-95; 150 v S 11, § 1, eff. 10-29-03; 151 v S 262, § 1, eff. 7-11-06.

LEXSTAT FED R CIV P 60

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*** CURRENT THROUGH CHANGES RECEIVED DECEMBER 2006 ***

FEDERAL RULES OF CIVIL PROCEDURE
VII. JUDGMENT

USCS Fed Rules Civ Proc R 60

Review Court Orders which may amend this Rule.
Review expert commentary from The National Institute for Trial Advocacy

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.
THIS IS PART 1.
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in *Title 28, U.S.C., § 1655*, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

HISTORY:

(Amended March 19, 1948; Oct. 20, 1949; Aug. 1, 1987.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Notes of Advisory Committee. *Note to Subdivision (a).* See former Equity Rule 72 (Correction of Clerical Mistakes in Orders and Decrees); Mich. Court Rules Ann. (Searl, 1933) Rule 48, § 3; 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 464(3); Wyo. Rev. Stat. Ann. (Courtright, 1931) § 89-2301(3). For an example of a very liberal provision for the correction of clerical errors and for amendment after judgment, see Va. Code Ann. (Michie, 1936) § § 6329, 6333.

Note to Subdivision (b). Application to the court under this subdivision does not extend the time for taking an appeal, as distinguished from the motion for new trial. This section is based upon Calif. Code Civ. Proc. (Deering, 1937) § 473. See also N.Y.C.P.A. (1937) § 108; 2 Minn. Stat. (Mason, 1927) § 9283.

For the independent action to relieve against mistake, etc., see Dobie, Federal Procedure, pages 760-765, compare 639; and Simkins, Federal Practice, ch CXXI (pp 820-830) and ch. CXXII (pp 831-834), compare § 214.

Notes of Advisory Committee on 1946 amendments. *Note to Subdivision (a).* The amendment incorporates the view expressed in *Perlman v. 322 West Seventy-Second Street Co., Inc.*, 127 F.2d 716 (2d Cir. 1942); 3 Moore's Federal Practice, 1938, 3276, and further permits correction after docketing, with leave of the appellate court. Some courts have thought that upon the taking of an appeal the district court lost its power to act. See *Schram v. Safety Investment Co.*, 45 F. Supp. 636 (E.D. Mich. 1942); also *Miller v. United States*, 114 F.2d 267 (7th Cir. 1940).

Note to Subdivision (b). When promulgated, the rules contained a number of provisions, including those found in Rule 60(b), describing the practice by a motion to obtain relief from judgments, and these rules, coupled with the reservation in Rule 60(b) of the right to entertain a new action to relieve a party from a judgment, were generally supposed to cover the field. Since the rules have been in force, decisions have been rendered that the use of bills of review, coram nobis, or audita querela, to obtain relief from final judgments is still proper, and that various remedies of this kind still exist although they are not mentioned in the rules and the practice is not prescribed in the rules. It is obvious that the rules should be complete in this respect and define the practice with respect to any existing rights or remedies to obtain relief from final judgments. For extended discussion of the old common law writs and equitable remedies, the interpretation of Rule 60, and proposals for change, see Moore and Rogers, Federal Relief from Civil Judgments, 1946, 55 *Yale L. J.* 623. See also 3 Moore's Federal Practice, 1938, 3254 et seq.; *Commentary, Effect of Rule 60b on Other Methods of Relief From Judgment*, 1941, 4 *Fed. Rules Serv.* 942, 945; *Wallace v. United States*, 142 F.2d 240 (2d Cir. 1944), cert. denied, 323 U.S. 712, 89 L. Ed. 573, 65 S. Ct. 37 (1944).

The reconstruction of Rule 60(b) has for one of its purposes a clarification of this situation. Two types of procedure to obtain relief from judgments are specified in the rules as it is proposed to amend them. One procedure is by motion in the court and in the action in which the judgment was rendered. The other procedure is by a new or independent action to obtain relief from a judgment, which action may or may not be begun in the court which rendered the judgment. Various rules, such as the one dealing with a motion for new trial and for amendment of judgments, Rule 59, one for amended findings, Rule 52, and one for judgment notwithstanding the verdict, Rule 50(b), and including the provisions of Rule 60(b) as amended, prescribe the various types of cases in which the practice by motion is permitted. In each case there is a limit upon the time within which resort to a motion is permitted, and this time limit may not be enlarged under Rule 6(b). If the right to make a motion is lost by the expiration of the time limits fixed in these rules, the only other procedural remedy is by a new or independent action to set aside a judgment upon those principles which have heretofore been applied in such an action. Where the independent action is resorted to, the limitations of time are those of laches or statutes of limitations. The Committee has endeavored to ascertain all the remedies and types of relief heretofore available by coram nobis, coram vobis, audita querela, bill of review, or bill in the nature of a bill of review. See Moore and Rogers, Federal Relief from Civil Judgments, 1946, 55 *Yale L. J.* 623, 659-682. It endeavored then to amend the rules to permit, either by motion or by independent action, the granting of various kinds of relief from judgments which were permitted in the federal courts prior to the adoption of these rules, and the amendment concludes with a provision abolishing the use of bills of review and the other common law writs referred to, and requiring the practice to be by motion or by independent action.

To illustrate the operation of the amendment, it will be noted that under Rule 59(b) as it now stands, without amendment, a motion for new trial on the ground of newly discovered evidence is permitted within ten days after the entry of the judgment, or after that time upon leave of the court. It is proposed to amend Rule 59(b) by providing that under that rule a motion for new trial shall be served not later than ten days after the entry of the judgment, whatever the ground be for the motion, whether error by the court or newly discovered evidence. On the other hand, one of the purposes of the bill of review in equity was to afford relief on the ground of newly discovered evidence long after the entry of the judgment. Therefore, to permit relief by a motion similar to that heretofore obtained on bill of review. Rule 60(b) as amended permits an application for relief to be made by motion, on the ground of newly discovered evidence, within one year after judgment. Such a motion under Rule 60(b) does not affect the finality of the judgment, but a motion under Rule 59, made within 10 days, does affect finality and the running of the time for appeal.

If these various amendments, including principally those to Rule 60(b), accomplish the purpose for which they are intended, the federal rules will deal with the practice in every sort of case in which relief from final judgments is asked, and prescribe the practice. With reference to the question whether, as the rules now exist, relief by coram nobis, bills of review, and so forth, is permissible, the generally accepted view is that the remedies are still available, although the precise relief obtained in a particular case by use of these ancillary remedies is shrouded in ancient lore and mystery. See *Wallace v. United States*, 142 F.2d 240 (2d Cir. 1944), cert. denied, 323 U.S. 712, 89 L. Ed. 573, 65 S. Ct. 37 (1944); *Fraser v. Doing*, 130 F.2d 617 (D.C. Cir. 1942); *Jones v. Watts*, 142 F.2d 575 (5th Cir. 1944); *Preveden v. Hahn*, 36 F. Supp. 952 (S.D.N.Y. 1941); *Cavallo v. Agwilines, Inc.*, 6 Fed. Rules Serv. 60b.31, Case 2, 2 F.R.D. 526 (S.D.N.Y. 1942); *McGinn v. United States*, 6 Fed. Rules Serv. 60b.51, Case 3, 2 F.R.D. 562 (D. Mass. 1942); *City of Shattuck, Oklahoma ex rel. Versluis v. Oliver*, 8 Fed. Rules Serv. 60b.31, Case 3 (W. D. Okla. 1945); Moore and Rogers, Federal Relief from Civil Judgments, 1946, 55 *Yale L. J.* 623, 631-653; 3 Moore's Federal Practice, 1938, 3254 et seq.; Commentary, Effect of Rule 60b on Other Methods of Relief from Judgment, op cit supra. Cf. *Norris v. Camp*, 144 F.2d 1 (10th Cir. 1944); *Reed v. South Atlantic Steamship Co. of Delaware*, 2 F.R.D. 475, 6 Fed. Rules Serv. 60b.31, Case 1 (D. Del. 1942); *Laughlin v. Berens*, 8 Fed. Rules Serv. 60b.51, Case 1, 73 *W.L.R.* 209 (D. D.C. 1945)

The transposition of the words "the court" and the addition of the word "and" at the beginning of the first sentence are merely verbal changes. The addition of the qualifying word "final" emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief; and hence interlocutory judgments are not brought within the restrictions of the rule, but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice requires.

The qualifying pronoun "his" has been eliminated on the basis that it is too restrictive, and that the subdivision should include the mistake or neglect of others which may be just as material and call just as much for supervisory jurisdiction as where the judgment is taken against the party through his mistake, inadvertence, etc.

Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b). There is no sound reason for their exclusion. The incorporation of fraud and the like within the scope of the rule also removes confusion as to the proper procedure. It has been held that relief from a judgment obtained by extrinsic fraud could be secured by motion within a "reasonable time," which might be after the time stated in the rule had run. *Fiske v. Buder*, 125 F.2d 841 (8th Cir. 1942); see also inferentially *Bucy v. Nevada Construction Co.*, 125 F.2d 213 (9th Cir. 1942). On the other hand, it has been suggested that in view of the fact that fraud was omitted from original Rule 60(b) as a ground for relief, an independent action was the only proper remedy. Commentary, Effect of Rule 60(b) on *Other Methods of Relief From Judgment*, 1941, 4 *Fed Rules Serv* 942, 945. The amendment settles this problem by making fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a basis for relief by independent action insofar as established doctrine permits. See Moore and Rogers, Federal Relief from Civil Judgments, 1946, 55 *Yale L. J.* 623, 653-659; 3 Moore's Federal Practice, 1938, 3267 et seq. And the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. As an illustration of this situation, see *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 88 L. Ed. 1250, 64 S. Ct. 997 (1944).

The time limit for relief by motion in the court and in the action in which the judgment was rendered has been enlarged from six months to one year.

It should be noted that Rule 60(b) does not assume to define the substantive law as to the grounds for vacating judgments, but merely prescribes the practice in proceedings to obtain relief. It should also be noted that under § 200(4) of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix, § § 501 et seq. [§ 520(4)], a judgment rendered in any action or proceeding governed by the section may be vacated under certain specified circumstances upon proper application to the court.

Notes of Advisory Committee on 1948 amendments. The amendment substituted the reference to "Title 28, U.S.C., § 1655" in the next to the last sentence of subdivision (b), for the reference to "Section 57 of the Judicial Code, U.S.C., Title 28, § 118."

Notes of Advisory Committee on 1987 amendments. The amendment is technical. No substantive change is intended.

LEXSTAT OHIO CRIM. R. 32.1

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*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 ***

OHIO RULES OF CRIMINAL PROCEDURE

Ohio Crim. R. 32.1 (2006)

Rule 32.1. WITHDRAWAL OF GUILTY PLEA

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

HISTORY: Amended, eff 7-1-98

LEXSTAT OHIO CRIM R 33

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OHIO RULES OF CRIMINAL PROCEDURE

Ohio Crim. R. 33 (2006)

Rule 33. NEW TRIAL

(A) *Grounds.* --A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict is not sustained by sufficient evidence or is contrary to law. If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

(B) *Motion for new trial; form, time.* --Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

(C) *Affidavits required.* --The causes enumerated in subsection (A)(2) and (3) must be sustained by affidavit showing their truth, and may be controverted by affidavit.

(D) *Procedure when new trial granted.* --When a new trial is granted by the trial court, or when a new trial is awarded on appeal, the accused shall stand trial upon the charge or charges of which he was convicted.

(E) *Invalid grounds for new trial.* --No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of:

(1) An inaccuracy or imperfection in the indictment, information, or complaint, provided that the charge is sufficient to fairly and reasonably inform the defendant of all the essential elements of the charge against him.

(2) A variance between the allegations and the proof thereof, unless the defendant is misled or prejudiced thereby;

(3) The admission or rejection of any evidence offered against or for the defendant, unless the defendant was or may have been prejudiced thereby;

(4) A misdirection of the jury, unless the defendant was or may have been prejudiced thereby;

(5) Any other cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial.

(F) *Motion for new trial not a condition for appellate review.* --A motion for a new trial is not a prerequisite to obtain appellate review.

LEXSTAT OHIO CRIM. R. 34

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OHIO RULES OF CRIMINAL PROCEDURE

Ohio Crim. R. 34 (2006)

Rule 34. ARREST OF JUDGMENT

The court on motion of the defendant shall arrest judgment if the indictment, information, or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fourteen days after verdict, or finding of guilty, or after plea of guilty or no contest, or within such further time as the court may fix during the fourteen day period.

When the judgment is arrested, the defendant shall be discharged, and his position with respect to the prosecution is as if the indictment, information, or complaint had not been returned or filed.

LEXSTAT OHIO CRIM R 57

OHIO RULES OF COURT SERVICE
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*** RULES CURRENT THROUGH UPDATES RECEIVED NOVEMBER 28, 2006 ***
*** ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 ***

OHIO RULES OF CRIMINAL PROCEDURE

Ohio Crim. R. 57 (2006)

Rule 57. RULE OF COURT; PROCEDURE NOT OTHERWISE SPECIFIED

(A) *Rule of court.*

(1) The expression "rule of court" as used in these rules means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and is filed with the Supreme Court.

(2) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(B) *Procedure not otherwise specified.* --If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

HISTORY: Amended, eff 7-1-94