

# A PLAN FOR MISDEMEANOR SENTENCING IN OHIO

## Volume 1 General Sentencing Proposals

A Report of the  
**Ohio Criminal Sentencing Commission**  
Chief Justice Thomas J. Moyer, Chair  
David J. Diroll, Executive Director, Editor

November 1, 1998

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## ACKNOWLEDGEMENTS

While the lists on the preceding pages are long, they fail to cover all those who contributed to the Commission's work. Many non-members round out the expertise of the Commission by serving on various subcommittees, particularly those dealing with traffic and fine revenue. Several of them are named in the relevant sections of these reports. Thank you.

Also, some of the Commission's best staff work is done by interns. Jen Boswell studied jails, surveyed mayor's courts and judges, and wondered about stuff. Before he took to writing minority reports, Mike Toman became one of the State's few experts on fine distribution. He also worked on our mayor's court and judges' surveys. Ray Johnson distilled Ohio's complex drug laws onto a card to be used by law enforcement and judges, studied counties' S.B. 2 plans, tinkered with our computers, and spoke one word of Latin. Melissa DiNovo collected data, studied county plans, summarized legislation, and quietly did every other boring job asked of her. Kyle Timkin added to our knowledge of which sanctions work best. His constitutional theories may someday form the bases of minority opinions. Katie Aldrich helped organize our juvenile study and pitched into projects with quick thoughts and good cheer. And Susan Anitas' unpretentious approach helped us gather data on misdemeanor sentencing and community corrections. Thank you and good luck as adults.

Some interns were with us for shorter terms, but still made valuable contributions, including Thomas Cloherty, Marilyn Corwin, Damien Davenport, Roger Decanio, Paul Disantis, Keith Eakins, Joe Hidy, Lisa Klaiber, Lisa McClure, Ward Miller, Chris Morris, David Orlandini, Tamie Snyder, Melissa Solyn, Kimberly Shy, and Jon Bradford Stanley. They deserve more than this cursory mention.

The Commission also thanks United States Department of Justice and the Ohio Office of Criminal Justice Services for Federal funding that furthers our research and training work. Finally, thanks to Jim Cohagan, Sandy Corletzi, Jackie Crowley, Rick Dove, Gina Mayer, Katie Merrill, Johnnie Patton, Doug Stephens, Vikki Wilson, Linda Wong, and others at the Supreme Court who help us in many ways.

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## INTRODUCTION

With this report, the Ohio Criminal Sentencing Commission proposes a new sentencing structure for adult misdemeanants, including traffic offenders. The report also contains the Commission's recommendations on the distribution of fines. And it suggests classifications for various unclassified offenses throughout the Revised Code.

The Commission began meeting in 1991. Chaired by Chief Justice Thomas Moyer, the full Commission meets monthly in Columbus. It holds many additional committee meetings around the State. Members serve without compensation.

The Commission submitted recommendations for adult felons to the General Assembly in 1993. These were adopted as Senate Bill 2 and Senate Bill 269, both effective July 1, 1996. The bills fostered truth in sentencing by eliminating unearned good time and parole releases for those sentenced under the new law. They codified a continuum of sanctions, guided judges in the use of prison and non-prison sanctions, solidified victims rights, simplified classes of felonies, and made other changes.

Since 1993, the Commission has looked at various misdemeanor sentencing issues. While a few points of contention will be noted, the basic plans in this report reflect a broad consensus from the judges, prosecuting and defense attorneys, law enforcement officers, victims, and other local and State officials who comprise the Commission.

In addition to its work at meetings, the Commission appears before constituent groups, discusses proposals, solicits input, and revises proposals based on this input.

## EXECUTIVE SUMMARY

- **Purposes and Principles** - The overriding purposes of misdemeanor sentencing would be to protect the public from future crime by the offender and others and to punish the offender.
- **Judicial Discretion** - Generally, the sentencing judge should have discretion to determine the most effective way to achieve the purposes and principles of sentencing.
- **Jail Terms** - The jail terms currently available for various levels of misdemeanors should not change.
  - The longest term would be for the worst forms of the offense or for offenders whose conduct and history show that the longest term is necessary.
  - Misdemeanor terms would not be automatically concurrent with felony terms. But, there would be guidance as to when consecutive jail terms are appropriate, with findings on the record.
  - The 18 month cap on consecutive jail terms for misdemeanants would only remain when the offenses arise out of the same incident.
  - When a court imposes consecutive terms that exceed 18 months, the offender would have a right to appeal. Otherwise, misdemeanor terms would not be subject to the S.B. 2-like appellate review.
  - Releases for work, training, education, treatment, and community service would be available from residential terms, when appropriate.
  - Mandatory jail terms would remain for drunken driving and for driving under OVI suspensions. No work release or good time would be permitted.
- **Continuum of Sanctions** - The law should contain a continuum of sanctions for misdemeanants:
  - Residential (jails, minimum security jails, halfway houses, and alternative facilities);
  - Nonresidential (e.g., day reporting, house arrest, community service, treatment, intensive supervision, electronic monitoring, basic monitoring, driver's license restrictions, victim-offender mediation);
  - Financial (e.g., restitution, fines, day fines, reimbursing the costs of jail and supervision, reinstatement fees).

- The State should continue to fund misdemeanor programs that help ease jail populations.
  - Judges could impose other unique sanctions to discourage the offender and others from committing a similar offense, provided the sanctions are reasonably related to the purposes of sentencing.
  - Rather than first impose a jail sentence only to suspend it, the judge would be able to sentence directly to sanctions. At sentencing, the judge would warn offenders that violations could mean longer terms under the sanction or more restrictive sanctions, including a specific jail term. Judges could still use suspended sentences when preferable.
  - The judge could reward success by shortening the time or shifting to a less restrictive sanction.
  - Allowable community service would increase from 200 to 500 hours for M-1s. It would not be limited to indigents. Up to 30 hours could be imposed on minor misdemeanants in lieu of a fine. Up to 200 hours could be imposed in lieu of, or in addition to, a fine for regulatory offenses.
- **Financial Sanctions** - Maximum fines do not change, except the cap for minor misdemeanors would increase to \$150.
    - A broader range of sanctions would be available for those who have a current or future ability to pay.
    - Penalties for minor misdemeanors and regulatory offenses would go beyond conventional fines to include restitution, day fines, and reimbursements.
    - Restitution would be broader (see Victims, below).
    - Able offenders should reimburse counties, municipalities, and others for the costs of various sanctions, including jail confinement up to \$10,000. The jail reimbursement law would be streamlined.
    - To aid collection:
      - The clerk or another would be able to contract with a public or private entity;
      - Payment by credit cards and other electronic means would be authorized and the clerk (or offender) would be allowed to absorb any fee;
      - A financial sanction would be a civil judgment;
      - Nothing would preclude a victim from bringing a civil action against the offender.
    - When an offender pays, the money would be allocated in the following priorities: (1) Local court costs (which pay to operate the court); (2) State fines (which pay for victims' reparations and public

defenders); (3) Victims' restitution; (4) Fines; (5) Reimbursements (for costs of confinement, supervision fees, etc.).

- An optional "day fine" system would better allow judges to tailor fines to offenders' actual incomes, potentially collecting more money from more people.
- **Classification Changes** - The five classes of misdemeanors would be kept, with only a few offenses reclassified.
  - A new "regulatory" class would cover offenses injurious to business, government, or safety when a fine, but no jail time, is authorized. Unlike minor misdemeanors, there would not be a maximum amount.
  - Duplicate and obsolete offenses would be eliminated. Many unclassified offenses would be classified.
- **Jury Trials** - The right to a jury trial would be modified to exclude offenses that do not carry a jail or prison term (regulatory offenses and minor misdemeanors).
- **Victims' Rights** - The expanded rights in Ch. 2930 now cover assaultive and threatening misdemeanors (this was done in S.B. 2 & S.B. 269, effective July 1, 1996).
  - Also, for *any* misdemeanor, the judge would have to consider a relevant statement made by the victim regarding sentencing.
  - Regarding restitution:
    - The broader definition of economic loss in S.B. 186 and S.B. 2 would apply to misdemeanors;
    - The victim and defendant could seek to modify restitution based on a substantial change in the offender's ability to pay;
    - The court could impose a surcharge of up to 5% on the offender to cover collection costs;
    - A restitution order would be a civil judgment in favor of the victim against the offender.
- **Mayor's Courts** - As a condition of holding court, mayor's courts would register with the Supreme Court and report data including cases filed, pending, and terminated.
- **Fine and Costs Distribution** - Now, fine revenue is distributed based on whether the offender is charged under State or local code. To more fairly apportion expenses and revenues, the entity that operates the law enforcement agency that makes an arrest or writes a ticket should receive fine revenue from those cited.

- The rule could be changed by agreement. The Municipal League proposal favoring contracts between municipalities (or townships) and counties should be adopted as a rule to govern who pays which misdemeanor operating costs.
  - Counties and municipalities (and, when relevant, townships) would have one year to enter into contracts to fairly apportion costs.
  - If no contract in a year, the allocation of costs would be resolved by binding arbitration.
- There would be an exception for cases begun by the Highway Patrol. 45% of the revenue would still go to the State, but the local share would go to counties, rather than to counties and municipalities, since municipalities do not incur expenses in these cases.
- There also would be exceptions for certain regulatory offenses, where enforcing agencies would continue to receive the fine revenue.
- Before distributing, the first \$25 of each fine would be earmarked as a "State fine" for public defense (\$11), victims' assistance (\$9), and law libraries (\$5). This replaces the current State court costs and law library funding mechanisms.
  - The judge could waive part or all of the fine if the judge also waived the local court cost.
  - In addition to the \$5 fine in each criminal case, a \$10 filing fee would be assessed in each civil case (\$5 in small claims court) for county law library associations.



## **MISDEMEANOR SENTENCING GENERALLY**

### **THE COMMISSION'S STATUTORY DUTIES**

The General Assembly instructed the Sentencing Commission to study Ohio's criminal offenses and its sentencing law (Revised Code §181.23). The Commission (now formally titled the "Sentencing Council" in the Revised Code) must recommend comprehensive sentencing structures to the General Assembly. The plan must (§181.24):

- Provide for proportionate sentences that carry uniform penalties;
- Foster judicial discretion, while remaining conscious of limited resources;
- Promote a full range of sentencing options, consistent with public safety; and
- Consider the need for appellate review of sentences.

The Commission must assist the legislature in implementing these plans and monitor them to see if they work (§181.25).

### **The Relevance of Senate Bill 2**

S.B. 2 made significant changes in the way felons are sentenced in Ohio. The Commission would make the process simpler for misdemeanants, given the higher volume and lower stakes of those cases. Yet, the plan would apply some S.B. 2 principles to misdemeanors. It would encourage direct sentencing in misdemeanor courts. It would make terminology more consistent between felony and misdemeanor courts.

S.B. 2 guides judges on factors to consider and creates presumptions based on offense levels and criminal history, subject to appellate review. The misdemeanor plan contains a much simpler form of guidance. Judges are asked to consider a short list of items (shorter, in fact, than those in current misdemeanor law). Only one new appeal would be created. And that accompanies a change that broadens judges' discretion to sentence certain misdemeanants to consecutive terms longer than 18 months.

Most of the other guidance in S.B. 2 would not carry over to misdemeanor courts. The long lists of factors to consider in felony court would not apply to misdemeanors. Nor would presumptions by offense level. Other than the narrow appeal for sentences over 18 months, no new appellate remedies would be created. No formal sentencing

hearing would be required. The elements of crimes and their basic penalties remain the same.

Still, the changes proposed here may seem extensive. However, the draft would replace much longer and more complicated sections in current law.

## **THE DISCRETION AND DUTIES OF JUDGES**

### **Discretion**

The Commission's misdemeanor plan lets judges be judges. It clearly states that the judge has discretion to determine the most effective way to achieve the purposes and principles of sentencing. Unless a sanction is required or precluded, the judge may impose any lawful sanction or combination of sanctions. (Proposed §2929.22(A))

Ohio should not adopt the type of sentencing grid favored by the Federal sentencing guidelines and those in some states.

### **Sentencing Purposes and Principles**

Criminal sentencing is arguably a judge's most important duty. Yet, until S.B. 2, the law did not state clear purposes for imposing sentences. This plan would state purposes and sentencing principles for misdemeanor sentencing. As in felony law, the overriding purposes should be to protect the public from future crime by the offender and others and to punish the offender. To achieve these purposes, the judge should consider the impact of the crime on the victim and the need for changing the offender's behavior, rehabilitation, and restitution to the victim or the public. (Proposed §2929.21(A))

A sentence should be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim. It should be consistent with sentences for similar offenses and offenders. (Proposed §2929.21(B))

Improper prejudice has no place in sentencing. A judge should not base a sentence on the race, ethnicity, gender, or religion of the offender. (Proposed §2929.21(C))

### **Factors to Consider**

**Generally.** The draft simplifies factors for judges to consider in misdemeanor cases. Rather than the long lists of considerations in favor of, or against, a jail term,

fine, or probation in current §§2929.22, 2929.51, and 2951.02, the draft contains succinct instructions.

In determining the sentence, the court would consider the nature and circumstances of the offense or offenses, the offender's criminal history and character, and whether the offender is likely to commit future crimes. Other factors relevant to the seriousness of the offense or likelihood of recidivism may be considered. (Proposed §2929.22(B))

Judges would have to consider the burden a sentence imposes on local governmental resources. (Proposed §2929.22(A))

**Before Imposing a Jail Term.** To encourage optimum use of taxpayers' money, before imposing a jail term, the judge would be asked to consider imposing a nonresidential or financial sanction. The longest jail term should be reserved for the worst offenders and offenses. Also, the plan calls for special findings when consecutive sentences are imposed, particularly when the sentences exceed 18 months. (Proposed §§2929.22(C) & 2929.24(B), discussed in more detail under JAIL TERMS, below).

#### **Statements at Sentencing**

While a detailed sentencing hearing would not be required in misdemeanor court, the judge would have to consider any relevant oral or written statement made by the victim, defendant, defense attorney, or prosecutor regarding sentencing. (Proposed §2929.22(D))

#### **JAIL TERMS**

Local jails provide the ultimate penalty for misdemeanants. The plan allows for longer jail stays for selected chronic misdemeanants, while generally asking judges to carefully consider whether a sanction other than jail would satisfy the purposes of sentencing for most offenders.

Jails vary considerably from county to county in terms of age, capacity, crowding, waiting lists, etc. Many jails are crowded. Local practices, pretrial populations, and State policies (such as mandatory terms for drunken drivers and preferred arrest policies in domestic violence cases) contribute to jail crowding. Some jails have more than enough room for local criminals, often taking offenders from other jurisdictions. But, overall, the demand for jail beds is greater than the supply.

### **Length of Jail Terms**

The Commission found that the ranges of jail terms currently available for various misdemeanor levels are adequate and should not change. Those are: up to 180 days for a first degree misdemeanor (M-1); up to 90 days for an M-2; up to 60 days for an M-3; up to 30 days for an M-4; and no jail for a minor misdemeanor (MM). (Proposed §2929.24(A)) Since current law already calls for definite terms, there is no need to replace vague indefinite terms with more meaningful sentences as there was in felony law.

### **Mandatory Jail Terms; Discretion**

Mandatory jail terms should remain for drunken driving (OVI) and for driving under a license suspension related to OVI. No work release or good time would be permitted during a mandatory term. (Proposed §§2929.01(SS) & 4511.19) Otherwise, the judge would have discretion to determine whether a jail term or another sanction is appropriate. (Proposed §§2929.22(A), 2929.26(A), & 2929.27(A)) Also, when appropriate, the judge could impose another community control sanction in addition to a mandatory jail term. (Proposed §2929.25(A))

### **Promoting the Efficient Use of Jails**

As noted earlier (see Before Imposing a Jail Term, above), the plan gives judges some guidance to help assure that expensive jail terms are imposed on those who most need to be punished or deterred.

The proposal asks judges to consider using nonresidential or financial sanctions before imposing a jail term. The longest jail term should be reserved for those who commit the worst forms of the offense or whose conduct and response to prior sanctions show that the longest term is necessary to deter crime. (Proposed §2929.22(C))

Moreover, when consecutive sentences are contemplated, the plan calls for special findings, discussed below.

### **Consecutive Jail Terms**

**Loosening the Cap.** No matter how many misdemeanors a person commits, and no matter how important a judge feels it is for the person to serve consecutive sentences for the separate crimes, the maximum jail time available is 18 months under current §2929.41(B)(2).

Let us say an offender commits domestic violence two days after committing a simple assault in a bar. The offender also has three separate petty thefts, for which he

consistently failed to appear in court. The judge gives the offender six months in jail for each of the five offenses. Because of the offender's threatening conduct and chronic lawlessness, the judge orders that the jail terms be served consecutive to one another. In short, the judge orders the offender to serve two and one half years in jail. But, the cap automatically reduces the jail term to 18 months.

Truth in sentencing, initiated in Ohio when the Commission's felony plan (S.B. 2) was adopted, generally calls for the time imposed in open court to be the time served. Under the Commission's plan, the 18 month cap on consecutive jail terms for misdemeanants would only remain when the offenses arise out of the same incident (e.g., a bar fight). Otherwise, the cap would be lifted. (Proposed §2929.24(B)(2))

**Minority Report.** This part of the proposal is controversial. While otherwise supporting the Commission's recommendations, several members joined in a minority report on this issue and the related concurrent misdemeanor/felony issue, discussed below. The minority felt this proposal could lead some judges to abuse their discretion. It could crowd jails that are not well-suited to handle persons serving sentences longer than 18 months. (See Minority Report, below.)

Yet, the Commission's majority felt that when the punishment for unrelated crimes is artificially capped, it cheapens the harm to victims, hurts public trust in the system, and frustrates judges' efforts to impose appropriate punishments when resources are available. The cap makes the sentence less truthful and can effectively give the offender "free" crimes. That should not happen.

Few jails have inmates serving 18 months today, indicating that relatively few offenders are likely to be affected by the change. But, they would be among the worst offenders in misdemeanor courts. Admittedly, before S.B. 2 limited prison terms to felons, some of these multiple misdemeanants would find their way to prison (about 20 to 30 at any time). Now, the local jail is the appropriate place. Sentencing beyond 18 months would be an option if space were available, not a requirement.

**Appeal.** The Commission believes judges should not lightly sentence multiple misdemeanants to more than 18 months. With the cap lifted for crimes that do not arise

out of the same incident, judges sentencing misdemeanants to more than 18 months in jail would have to state on the record why such a long sentence is warranted. The defendant would have the right to appeal this decision (proposed §2929.24(C)), providing a check on judges' discretion.

Otherwise, misdemeanor sentences would not be subject to the new type of appellate review that is available under S.B. 2 for some felony sentences.

**Ending the Automatic Concurrent Sentence.** Another area where a misdemeanant can get a "free" crime is when the offender also commits a felony. Under current §2929.41(A), a sentence of incarceration for a misdemeanant must be served concurrently with a term imposed for a felony. That is, the misdemeanor jail term is swallowed by the felony prison term. That can trivialize the misdemeanor sentence, frustrating judges, prosecutors, and victims.

Under the Commission's plan, misdemeanor terms should not be automatically concurrent with felony terms. (That part of §2929.41(A) should be repealed.) Rather, judges should have discretion to decide when consecutive terms are appropriate.

When a judge believes that incarceration is warranted for both the felony and the misdemeanor, the judge would specify the order in which any jail and prison term, community control, and post-release control is to be served. A jail term would include any "good time" (see Jail Good Time, below). A prison term would include any bad time. The offender would continue to get credit for any time spent in jail awaiting trial or sentencing. (Proposed §2929.24(B)(3))

**Minority Report.** Ending the automatic concurrent felony/misdemeanor sentence is controversial. In the minority report, several Commission members fear this change could prove costly, since all misdemeanor sentences are subsumed into felony sentences today, and many misdemeanors are dismissed because of this.

The majority of Commission members note that consecutive felony/misdemeanor terms are not *mandated* by the draft. Most feel judges will still sentence many offenders with both misdemeanors and felonies concurrently. Under the plan, judges must make findings before imposing consecutive terms (described below) and, where judges have the choice

today, typically, they choose concurrent terms.

This said, there is little doubt that a significant number of misdemeanants would be given terms consecutive to felony sentences (and vice versa) if the Commission's recommendations become law. This would mean more jail terms than at present, which could be expensive to counties, since they bear most of the costs of running jails.

Nevertheless, most Commission members felt that misdemeanor convictions should not disappear simply because an offender also commits a felony. Rather, the judge in the second case should be able to select consecutive sentences, when appropriate.

**Findings for Consecutive Terms.** Since many jails are crowded and expensive, there should be guidance as to when consecutive jail terms are appropriate, with findings on the record. This is the one area in the draft where the findings are similar to those required of felony judges by S.B. 2. (Proposed §2929.24(B))

As now, the judge could impose consecutive terms on misdemeanants. However, before doing so, the judge would have to find, on the record, that (proposed §2929.24(B)(1)):

- Consecutive terms are necessary to protect the public from future crime or to punish the offender; or
- The crime's seriousness warrants consecutive terms; or
- The danger posed to the public by the offender is great enough to warrant consecutive terms.

If the court finds any of these, it should also find one of the following before imposing consecutive terms:

- The offender committed the multiple offenses while incarcerated, awaiting trial or sentencing, under community control, or under post-release control; or
- The harm was so great or unusual that no single jail term for any of the offenses occurring in a single course of conduct adequately reflects the conduct's seriousness.

#### **Jail Good Time**

With S.B. 2, the Commission stressed honest sentencing. One consequence was the elimination of sentence reductions for good behavior in prison ("good time"). The Commission

felt that good time had become too automatic, effectively reducing every prison inmate's sentence by about one-third. This confused the public and troubled victims.

Nevertheless, the Commission recommends that good time be retained for persons sentenced to local jails. Here is why. Misdemeanants are different from felons. Unlike prison good time, jail good time is *earned* by performing work in the jail that otherwise would cost taxpayers. (Current §2947.151 allows the sheriff, with the judge's consent, to award three, four, or five day reductions in jail terms each month for work done by inmates.) Also, unlike prison good time which was credited by unelected prison officials in private, jail good time is awarded by locally-elected officials. The policy is readily known to voters. And it is generally popular with sheriffs and county commissioners.

#### **Intermittent Terms and Work, Etc. Release**

The court could order that a jail term be served intermittently, as under current law. (Proposed §§2929.26(B)(1) & 2929.24(D)) Also, work release would be expanded to include releases specifically for treatment, education, training. (Proposed §2929.26(B)(2)) These options are discussed in the Continuum, below, under Residential Sanctions.

### **CONTINUUM OF SANCTIONS**

Sentencing discretion has little meaning without meaningful sentencing options. The options must hold offenders accountable while encouraging rehabilitation. Before S.B. 2, sanctions were stated almost randomly in the Revised Code, with little relationship to one another. Eligibility varied widely. S.B. 2 organized sanctions on a residential, nonresidential, and financial continuum, authorized new sanctions, standardized eligibility, and encouraged the State to help local governments pay for additional sanctions, including programs to ease jail crowding.

The continuum of sanctions would carry over to misdemeanor sentencing in this plan, with some modifications appropriate to misdemeanants. (Proposed §§2929.25-2929.28) The State should continue to play a financial role in making more sanctions available to more courts.

#### **Direct Sentencing Versus Suspended Sentencing**

Today, in sentencing an offender to probation, a court must first impose a jail term, then suspend it, then place the

offender on "probation" subject to various conditions. A jail term must be imposed even when the court does not intend that the offender be jailed, except as a punishment for violating probation. When offenders succeed on probation, as most do, the jail term is never served. In fact, even when the offender violates probation, the full suspended jail term is seldom ordered.

During its felony deliberations, the Commission concluded--and the General Assembly agreed--that suspended sentences can confuse defendants, victims, and the public. If we were creating a new justice system from scratch, it is unlikely we would start by imposing a jail term that we do not truly intend to have served.

By sentencing directly, the offender, victim, and public know exactly what is required. The probation department keeps the hammer it needs to make sure the defendant complies. The sentence does not flow from an often fictitious jail term. Honesty is the better policy.

Nevertheless, many municipal and county court judges favor the suspended sentence. They feel that, by stating a jail term first, they get the offender's attention better than if they impose non-jail sanctions followed by a warning of a possible jail term. They argue that this is especially true in misdemeanor courts that do not have probation officers.

Since the cooperation of judges is important in making this plan work, the Commission agreed--with some reluctance--to recommend that judges be given *both* options. That is, they can sentence directly as in felony courts under S.B. 2, or they can continue to use suspended sentences. The draft reflects this compromise. (Proposed §2929.25(A))

While both direct and suspended approaches would be available, the Commission encourages judges to use the direct approach. This is not meant to be radical. The process would be similar to current law, but in reverse order. Today, a judge might say, "six months in jail, suspended, and one year of probation, during which you must attend AA meetings and make \$200 restitution." Under direct sentencing, the judge might say, "One year of basic supervision, during which you must attend AA meetings and make \$200 restitution. If you violate these conditions, you face up to six months in jail."

The advantage of the suspended sentence--the threat of a jail term to motivate an offender to abide by conditions--

would be kept in the warning given with the sentence. The court would warn that it may impose a longer time under the sanction, a more restrictive sanction, or a specific jail term from the range allowed for the crime. In warning of a more restrictive sanction, the judge would not have to list all possible sanctions. (Proposed §2929.25(A))

Sentencing should not take much more time than it does now. No additional hearings would be required. Violators would be handled in a manner similar to probation violations today. Generally, the change to direct sentencing in felony courts has been smooth.

Terminology would change somewhat. "Probation" is seen as letting the offender off, when, in truth, it is often much more than that. Rather than use the term "probation", an offender would be under "community control". But, the new term is not critical. The goal is for judges to foster greater understanding by sentencing directly to particular sanctions. (Proposed §2929.25; repeal current §2929.51)

#### **Eligibility and Duration**

Any offender who does not face a mandatory jail term (e.g., for drunken driving) would be eligible for any lawful community control sanction. Judges could impose sanctions individually or in combination. The maximum period of community control in effect for any misdemeanor at one time would be five years. (Proposed §2929.25(A))

#### **Rewarding Success and Penalizing Violators**

An offender on any type of community control would be supervised by the probation department, if the court has one. For nonresidents, the court could request that the person be supervised by the probation department that serves the offender's residence. The court retains jurisdiction for the duration of the sanction. (Proposed §2929.25(A))

If an offender fulfills the conditions of community control in an exemplary manner for a significant time, the judge could reduce the period under a sanction, or shift to a less restrictive sanction. However, this would not relieve the offender of any restitution owed. (Proposed §2929.25(C))

Conversely, if conditions are violated, the violation would be reported to the court. The court could punish the violation by imposing a more restrictive sanction, including a jail term up to the maximum given in the

warning at sentencing. The court could credit any time successfully spent under a sanction against any punishment imposed for the violation. (Proposed §2929.25(B))

### **Residential Sanctions**

**Places.** A misdemeanor could be sentenced to these residential sanctions (proposed §2929.26(A)(1)-(3)):

- Up to 180 days in jail, depending on the offense level (see JAIL TERMS, above);
- Up to 180 days in a halfway house (with the maximum being the same as the longest jail term available for the degree of offense); or
- A term in an alternative residential facility (not to exceed the longest jail term available) for treatment, habilitation, seeking or maintaining employment, training, or similar purposes. The judge may specify the level of security needed.

The latter two terms would be new to misdemeanor law. No State prison term would be permitted for a misdemeanor. (Proposed §2929.26(C))

**Intermittent Terms.** To minimize the impact of a residential term on innocent people (such as the offender's family or employer), a judge may permit the offender to serve the term intermittently, overnight, on weekends, or at other times that allow the person to keep a job or care for a family. This essentially restates existing law. (Proposed §§2929.26(B)(1) & 2929.24(D))

**Work and Other Releases.** Similarly, the judge could permit work release for the offender, as in present law. To foster rehabilitation, the plan also would let judges authorize release not only for employment, but also for education, training, treatment, and community service work. The court could order that a reasonable part of the offender's income be applied to any financial sanction imposed. (Proposed §2929.26(B)(2)) Also, the current jail industry program would be retained. (Proposed §2929.24(E))

### **Nonresidential Sanctions**

**Options.** With narrow exceptions, the plan would apply S.B. 2's list of nonresidential sanctions to M-1s through M-4s. Thus, a misdemeanor judge could sentence an offender to these nonresidential community controls: day reporting, house arrest, electronic monitoring, community service, drug treatment (with level of security determined

by the court), intensive supervision, basic supervision, monitored time, curfew, victim-offender mediation, and/or to seek employment, education, or training. (Proposed §2929.27(A), incorporating current §2929.17(A) through (L) by reference)

There are a few changes from the felony continuum:

- Expanding community service for felons, from a maximum of 200 to 500 hours, would only carry over to M-1s. This is discussed in more detail below.
- Because traffic offenses account for many misdemeanor sentences, a misdemeanor court also could suspend the offender's driver's license, and, in some cases, immobilize or forfeit the vehicle, order the offender to obtain a valid license, etc. These were not in the list of nonresidential sanctions for felons.
- In many regulated professions, a felony conviction jeopardizes one's professional license. This is not usually the case with misdemeanors. Thus, this plan would not make professional license violation reports (in current §2929.17(M)) a specific misdemeanor sanction, but would not preclude such reports.

**Expanding Community Service.** Community service work may be underused as a sanction. In our survey (see Volume 3), over 90% of the judges supported expanding community service, with about three-quarters of them embracing its use even in minor misdemeanor cases.

In addition to encouraging the continued use of community service for offenders who are unable to pay a fine, court costs, or other financial sanction, the Commission's proposal would encourage greater use of community service in these ways:

- It makes clear that a limited period of community service could be ordered for minor misdemeanors and regulatory offenses. Currently, only a fine is available for such crimes. Because MMs are the lowest level misdemeanors, the amount of service would be capped at 30 hours. However, to better punish corporate wrongdoing, the cap should be 200 hours for regulatory offenses. (Proposed §§2929.27(C)(1) & (2) & 2929.28(C))
- It encourages courts to order offenders who are not indigent to perform community service, when appropriate, in lieu of, or in addition to, a financial sanction. (Proposed §§2929.28(B) & 2929.28(C))

- It expands the hours available for the most serious misdemeanants. S.B. 2 raised the maximum amount of community service from 200 to 500 hours. In the interest of proportionality, this plan would raise the maximum to 500 only for M-1s. Otherwise, the maximum would remain 200 hours for M-2s, M-3s, and M-4s. (Proposed §2929.27(A))
- As noted earlier, traditional work release from jails and other residential settings would be expanded to allow release for community service. (Proposed §2929.26(B))

Commission members felt that courts should expand the use of community service beyond indigent offenders, as a form of public restitution. The General Assembly may wish to look at modifying the limits on places where community service can be performed. Currently, the statute only allows community service work for a governmental entity or a nonprofit charity.

**Unique Sanctions.** The Commission wants to encourage judges to be reasonably creative. Ordering a slum landlord to stay in his or her substandard housing is an example. There was concern that eliminating probation's general language in favor of direct and specific sentences might curb judges' inventiveness. The plan would authorize judges to impose additional sanctions designed to discourage the offender and others from committing a similar offense, provided the sanctions are reasonably related to the overriding purposes of sentencing. (Proposed §2929.27(B))

There is concern that some judges will impose outlandish sanctions. But, most Commission members feel these abuses can be constrained by appellate courts and voters.

#### **Financial Sanctions**

Most misdemeanants are not sentenced to jail or nonresidential punishments other than basic probation. Rather, they are fined. The Commission's proposals try to make financial sanctions more meaningful and collectible.

**Ability to Pay.** These recommendations do not pretend that we will have a richer class of offenders in the future. Obviously, financial sanctions can be directed only at those able to pay them. However, with day fines and other options, judges may be able to impose penalties that almost every offender can afford.

Under the draft, the court has discretion to hold a

hearing, if necessary, to determine whether the offender can pay a sanction or is likely in the future to be able to pay it. (Proposed §2929.28(B))

**Options.** As with felons under S.B. 2, misdemeanants could be sentenced to provide restitution, pay a conventional fine, pay a "day" fine, pay court costs, and reimburse the costs of confinement and supervision by a probation department, etc. These could be imposed as stand-alone sanctions, or combined with residential and nonresidential terms. (Proposed §2929.28(A))

Only the day fine would be wholly new to misdemeanor law. "State fine" is a new term, but it largely covers the current assessments for victims and defenders.

**Conventional Fines.** The maximum amounts currently available for first through fourth degree misdemeanors are adequate and should remain the same (i.e., up to \$1000 for M-1s, up to \$750 for M-2s, up to \$500 for M-3s, and up to \$250 for M-4s). However, Commission felt that the \$100 cap on MMs, in existence since 1974, is too low. To better discourage misconduct, the maximum should increase at least to \$150. (Proposed §2929.28(A)(2)(b))

**"Day" Fines.** An alternative to conventional tariff fines, the day fine option was new to Ohio law with S.B. 2. It would be new to misdemeanor law with this plan. Day fines are based on a standard percentage of an offender's daily income over a period determined by the court based on the seriousness of the offense. They have the same maximums as conventional fines. (Proposed §2929.28(A)(2)(a))

Day fines better allow judges to tailor fines to an offender's actual income, potentially resulting in collection of more money from more people. They attempt to have an equal impact on rich and poor offenders by taking the same percentage of each person's daily income. While they can mean smaller fines for some offenders, day fines can produce more revenue because they are affordable, making offenders more likely to pay. However, day fines can be controversial since poorer defendants pay smaller amounts for the same offense than those with greater means.

**State Fines.** New to the fine category, but not new to law, are so-called "State" fines. These are the amounts that must be levied in every criminal case for the victims' reparations and indigent defense funds. They also would

include amounts for county law libraries under the fine proposals discussed later in this report. (Proposed §2929.28(A)2)(c))

**Restitution Refinements.** S.B. 2 broadened restitution to compensate more types of economic loss (e.g., loss of income, funeral expenses, etc.) by the victim. This plan would make other refinements, which should be added to felony restitution, too (proposed §2929.28(A)(1)):

- The court would not need to hold a hearing to set restitution, although it could, if the defendant or victim disputes the amount. The court could rely, without a hearing, on amounts recommended by the parties in a PSI, repair or replacement estimates, and the like;
- While generally payable through the clerk of courts to minimize unwanted contact between the parties, restitution also could be made directly to the victim in open court, when appropriate;
- The court would be able to impose a surcharge on the offender of up to 5% to cover the costs of collecting restitution;
- The victim would be able to ask the prosecutor to file a motion, or the defendant could move, to modify restitution based on a substantial change in the offender's ability to pay; and
- Restitution would not preclude civil remedies, but must be credited against a civil recovery.

**Reimbursement Refinements.** These are similar to current law, but simplified and clarified.

**For Sanctions.** The court could order an offender placed under some form of community control to repay all or part of the costs of implementing the sanction(s), including the costs of supervision under §2951.021. (Proposed §2929.28(A)(3)(a))

**For Confinement.** Current pay-for-stay law could cure insomnia. It appears that an offender can be *sentenced* to reimburse the costs of confinement in jail, ordered to reimburse these costs at a post-release hearing, or billed for the costs by the jurisdiction operating the jail. This complexity comes from the overlay of different approaches. The pay-for-stay law of the early Eighties was seldom used, so S.B. 2's direct approach was added for felons. Local officials also were frustrated with the law, so the General

Assembly tried to make it more meaningful with the direct bill approach of House Bill 480 (121<sup>st</sup> G.A., eff. 10-16-96).

Under H.B. 480, a judge can be ordered by local government to hold a hearing after the offender is released from a jail or other facility. (This raises constitutional issues about the respective roles of the branches of government.) However, H.B. 480's more significant contribution was adding the non-judicial, direct bill approach to pay-for-stay.

Counties and municipalities can present an offender, on release, with a bill for the costs of confinement. In addition, H.B. 480 contains two lists of reimbursable expenses. One is fairly general (room and board up to \$60 per day, medical and dental charges, recompense for damages to the facility). The other is more detailed (e.g., toothbrushes, feminine hygiene products, specific overtime costs). The bill also has a cumbersome hearing procedure, language regarding "billing coordinators", sliding scale rates, investigations, *et cetera*.

The Commission's plan is simpler. It would:

- Continue to allow the court to sentence offenders to pay the costs of confinement in a jail or another residential facility up to \$10,000 per year or the total the offender is able to pay (proposed §2929.28(A)(3)(b));
- In the spirit of H.B. 480, authorize local authorities (e.g., county commissioners and sheriffs, city councils, community-based correctional facility boards, etc.) to set a daily charge and bill able offenders for all or part of their jail costs, *if a judge did not first order the reimbursement* as part of the sentence (proposed §2929.71(A));
- Simply state that reimbursement can include a daily fee for room and board, medical and dental treatment, and repairing property damaged by the offender while confined (proposed §§2929.28(A)(3)(b) & 2929.71(A)); and
- Streamline the law--and avoid constitutional issues--by eliminating language that allows subdivisions to order judges to hold post-release hearings (repeal, e.g., current §307.93(D)(2)).

If a subdivision adopts a billing plan, the draft provides that each offender covered by the repayment policy would get a bill within 30 days of release. The policy could allow periodic payments and collection contracts with

public or private entities. As with H.B. 480, within 12 months of the offender's release, the prosecutor or a designee could file a civil action for unpaid amounts. The judgment could not be executed against the offender's homestead. Any repayments would be credited to the general fund of the subdivision. (Proposed §2929.71(B) & (C)) These collection methods also could be used if a court sentences an offender to reimburse expenses. (Proposed §2929.71(A)(3)(b)) The language in H.B. 480 that designated a reimbursement coordinator and specified certain duties would be eliminated in favor of more flexible language.

Together with the medical costs provisions, below, the changes would allow repeal of §§341.06 (jail prisoner reimbursement) and 2929.223 (misdemeanor confinement costs reimbursement). It also would allow removing long, less than literary, passages from §§307.93 (multijurisdictional jails), 341.21 (Federal prisoners), 341.23 (prisoners from places without a workhouse), 753.02 (local prison or station house commitments), 753.04 (municipal workhouse commitments), 753.16 (workhouse commitments from other places), 2301.56 (community-based correctional facilities), and 2947.19 (county prisoners in city workhouses).

**Medical Fees.** As noted above, pay-for-stay reimbursements could include medical and dental costs. (Proposed §2929.28(A)(3)(b)) As in H.B. 480, the draft also contains an independent medical fee provision. It is available if a jurisdiction does not seek, or include such expenses in, pay-for-stay repayments. For example, county commissioners could agree with the sheriff to require inmates to pay a reasonable fee for medical and dental services. As in current law, the fee could not exceed the actual cost of the service provided. An inmate could not be denied care because of inability to pay. (Proposed §2929.71(D)(1) & (3))

As now, once a medical or dental service is provided, the fee could be deducted from an inmate's account. The inmate could be billed for unpaid amounts once released. (Proposed §2929.71(D)(2))

**Distribution of Reimbursements.** Here is where the money would go:

- Reimbursements of the costs of confinement would be paid to the general fund of the subdivision that incurred the expenses (Proposed §§2929.28(G)(3) & 2929.71(C));
- As now, fees for medical and dental services would be

paid to the commissary fund of the facility, if any. If no commissary fund exists, fees would be paid to the treasurer of the subdivision that incurred the expenses. (Proposed §2929.71(D)(2));

- As now, supervision fees (up to \$50 per month) would be paid to the probation department or clerk of court. (Proposed §2929.28(G)(3) & current §2951.021);
- All other reimbursements would be paid to the Sanction Cost Reimbursement Fund in the treasury of the county or municipality that incurred the expense. (Proposed §2929.28(G)(1) & (2))

**Improving Collection.** The Commission recommends several refinements that should help collect financial sanctions. These are discussed under IMPROVING COLLECTION in the ALLOCATING REVENUES AND COSTS section, below. (Proposed §2929.28(D),(E), & (F))

**Order of Payment** The proposal would slightly modify the order in which an offender's payments are credited. This is discussed under ORDER OF PAYMENT in the ALLOCATING REVENUES AND COSTS section, below. (Proposed §2949.111).

**Community Service.** As now, community service work could be ordered in lieu of a financial sanction for indigent offenders. The proposal would also specifically authorize community service in lieu of back fines and other unpaid financial sanctions. And, the plan encourages community service in lieu of fines and the like for non-indigent offenders and for those convicted of minor misdemeanors and regulatory offenses (see Expanding Community Service, above). (Proposed §2929.28(C))

### **RIGHT TO A JURY TRIAL**

The Ohio Constitution provides an "inviolable" right to a jury trial (Art. I, §5). In any criminal case, the defendant has a right to "trial by an impartial jury" (Art. I, §10). Courts have interpreted this to grant the right in cases in which the defendant faces incarceration.

Nevertheless, statutory law gives a criminal defendant a right to a jury trial whenever the potential penalty exceeds \$100. While this precludes juries for minor misdemeanors, it allows defendants to ask for jury trials for many other fine-only offenses (e.g., truck weight violations and other regulatory offenses). This can delay justice and prove costly to the jurisdiction that operates the court.

The Commission recommends eliminating the monetary threshold for the right of trial by jury. Instead, the right would be limited to cases in which the offense carries a potential term of incarceration. (Proposed §2945.17)

### **SUPREME COURT RULES**

Changes made by S.B. 2 meant that the Revised Code and the Criminal Rules and Evidence Rules were not in synch. Similarly, the misdemeanor and traffic proposals in these reports will create some conflicts in terminology. The Commission asks the various rules committees of the Supreme Court to continue to review these bills with an eye toward making the language of the rules better track the statutes.

# MISDEMEANOR BILL DRAFT

## §2929.01 DEFINITIONS

[In addition to the definitions already in the felony plan]

\* \* \*

(SS) "MANDATORY JAIL TERM" MEANS THE TERM IN JAIL THAT SHALL BE IMPOSED AND NOT REDUCED UNDER SECTION 4511.19 OF THE REVISED CODE [OVI] OR FOR DRIVING UNDER AN OVI SUSPENSION IMPOSED UNDER SECTION 4510.13 [currently 4507.02(D)(2)] OF THE REVISED CODE.

(TT) "REGULATORY OFFENSE" MEANS A CRIMINAL OFFENSE OTHER THAN A MINOR MISDEMEANOR INVOLVING CONDUCT INJURIOUS TO BUSINESS, GOVERNMENT, OR PUBLIC SAFETY WHERE ONLY A MONETARY PENALTY IS AUTHORIZED.

## §2929.21 MISDEMEANOR SENTENCING PURPOSES AND PRINCIPLES

[Current §2929.21 would be repealed.]

(A) **Overriding Purposes** A COURT THAT SENTENCES AN OFFENDER FOR A MISDEMEANOR, MINOR MISDEMEANOR, OR REGULATORY OFFENSE, SHALL BE GUIDED BY THE OVERRIDING PURPOSES OF MISDEMEANOR SENTENCING. THOSE PURPOSES ARE TO PROTECT THE PUBLIC FROM FUTURE CRIME BY THE OFFENDER AND OTHERS AND TO PUNISH THE OFFENDER. TO ACHIEVE THOSE PURPOSES, THE JUDGE SHALL CONSIDER THE IMPACT OF THE CRIME ON THE VICTIM AND THE NEED FOR CHANGING THE OFFENDER'S BEHAVIOR, REHABILITATING THE OFFENDER, AND MAKING RESTITUTION TO THE VICTIM OR THE PUBLIC.

(B) **Principles in Choosing a Sentence** A SENTENCE IMPOSED FOR A MISDEMEANOR, MINOR MISDEMEANOR, OR REGULATORY OFFENSE SHALL BE REASONABLY CALCULATED TO ACHIEVE THE OVERRIDING PURPOSES STATED IN DIVISION (A) OF THIS SECTION, COMMENSURATE WITH AND NOT DEMEANING TO THE SERIOUSNESS OF THE OFFENDER'S CONDUCT AND ITS IMPACT ON THE VICTIM, AND CONSISTENT WITH SENTENCES IMPOSED FOR SIMILAR CRIMES COMMITTED BY SIMILAR OFFENDERS.

(C) **Prohibited Sentencing Bases** THE JUDGE SHALL NOT BASE A SENTENCE ON THE RACE, ETHNIC BACKGROUND, GENDER, OR RELIGION OF THE OFFENDER.

## §2929.22 JUDICIAL DISCRETION; IMPOSING SENTENCES GENERALLY

[Current §2929.22 would be repealed.]

(A) **Discretion** UNLESS A MANDATORY JAIL TERM IS REQUIRED BY LAW, THE SENTENCING JUDGE HAS DISCRETION TO DETERMINE THE MOST EFFECTIVE WAY TO ACHIEVE THE PURPOSES AND PRINCIPLES OF SENTENCING UNDER SECTION 2929.21 OF THE REVISED CODE.

UNLESS A SPECIFIC SANCTION IS REQUIRED OR PRECLUDED BY LAW, THE SENTENCING JUDGE MAY IMPOSE ANY SANCTION OR COMBINATION OF SANCTIONS ON AN OFFENDER AUTHORIZED BY SECTIONS 2929.24 THROUGH 2929.28 OF THE REVISED CODE. THE JUDGE SHOULD CONSIDER THE BURDEN ON LOCAL GOVERNMENTAL RESOURCES IMPOSED BY THE SENTENCE.

(B) **General Guidance** [Streamlines and replaces current 2929.22.] IN DETERMINING THE APPROPRIATE SENTENCE FOR A MISDEMEANOR, IN ADDITION TO THE PURPOSES AND PRINCIPLES IN SECTION 2929.21 OF THE REVISED CODE, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING:

- (1) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE OR OFFENSES;
- (2) THE OFFENDER'S CRIMINAL HISTORY AND CHARACTER;
- (3) WHETHER THE OFFENDER IS LIKELY TO COMMIT FUTURE CRIMES.

THE COURT MAY CONSIDER ANY OTHER FACTORS RELEVANT TO THE SERIOUSNESS OF THE OFFENSE AND THE OFFENDER'S LIKELIHOOD OF RECIDIVISM.

(C) **Jail Term Guidance** BEFORE IMPOSING A JAIL TERM, THE JUDGE SHOULD CONSIDER IMPOSING A NONRESIDENTIAL OR FINANCIAL SANCTION UNDER SECTIONS 2929.27 OR 2929.28 OF THE REVISED CODE. THE LONGEST JAIL SENTENCE AUTHORIZED UNDER SECTION 2929.24 OF THE REVISED CODE SHALL BE IMPOSED ONLY UPON OFFENDERS WHO COMMITTED THE WORST FORMS OF THE OFFENSE OR WHOSE CONDUCT AND RESPONSE TO PRIOR SANCTIONS DEMONSTRATE THAT THE LONGEST SENTENCE IS NECESSARY TO DETER FUTURE CRIME.

(D) **Statements at Sentencing** THE JUDGE SHALL CONSIDER ANY RELEVANT ORAL OR WRITTEN STATEMENT MADE BY THE VICTIM, DEFENDANT, DEFENSE ATTORNEY, OR PROSECUTING AUTHORITY REGARDING SENTENCING. THIS DIVISION DOES NOT CREATE ANY RIGHTS TO NOTICE BEYOND THOSE AUTHORIZED BY CHAPTER 2930. OF THE REVISED CODE.

[§2929.23 would be left open, rather than renumber subsequent sections, so that those sections continue to parallel the felony law's numbering.]

## **§2929.24 IMPOSING JAIL TERMS**

(A) **Basic Ranges of Jail Terms** WHEN THE SENTENCING JUDGE ELECTS OR IS REQUIRED TO IMPOSE A JAIL TERM UNDER THIS CHAPTER, UNLESS ANOTHER TERM IS REQUIRED OR AUTHORIZED BY LAW [e.g., the one year OVI term], THE JUDGE SHALL IMPOSE ONE OF THE FOLLOWING:

- (1) FOR A FIRST DEGREE MISDEMEANOR, NOT MORE THAN ONE HUNDRED EIGHTY DAYS;
- (2) FOR A SECOND DEGREE MISDEMEANOR, NOT MORE THAN NINETY DAYS;
- (3) FOR A THIRD DEGREE MISDEMEANOR, NOT MORE THAN SIXTY DAYS;
- (4) FOR A FOURTH DEGREE MISDEMEANOR, NOT MORE THAN THIRTY DAYS.

(B) **Consecutive Jail Terms** [This would replace current §2929.41(B).]

- (1) **When Consecutive** IF MULTIPLE JAIL TERMS ARE IMPOSED ON AN OFFENDER FOR CONVICTIONS OF MULTIPLE OFFENSES, THE JUDGE MAY REQUIRE THAT THE OFFENDER SERVE THE TERMS CONSECUTIVELY IF THE JUDGE FINDS ON THE RECORD THAT CONSECUTIVE TERMS ARE NECESSARY TO PROTECT THE PUBLIC FROM FUTURE CRIME OR TO PUNISH THE OFFENDER, THAT THE SERIOUSNESS OF THE CRIME WARRANTS CONSECUTIVE TERMS, OR THAT THE DANGER POSED TO THE PUBLIC BY THE OFFENDER IS GREAT ENOUGH TO WARRANT CONSECUTIVE TERMS, AND IF THE COURT ALSO FINDS ON THE RECORD EITHER OF THE FOLLOWING:

(a) THE OFFENDER COMMITTED THE MULTIPLE OFFENSES WHILE INCARCERATED, AWAITING TRIAL OR SENTENCING, UNDER A COMMUNITY CONTROL SANCTION FOR AN EARLIER OFFENSE, OR UNDER POST-RELEASE CONTROL FOR A PRIOR OFFENSE;

(b) THE HARM CAUSED BY THE MULTIPLE OFFENSES WAS SO GREAT OR UNUSUAL THAT NO SINGLE JAIL TERM FOR ANY OF THE OFFENSES COMMITTED AS PART OF A SINGLE COURSE OF CONDUCT ADEQUATELY REFLECTS THE SERIOUSNESS OF THE OFFENDER'S CONDUCT.

(2) **Cap** CONSECUTIVE JAIL TERMS IMPOSED FOR MISDEMEANORS SHALL NOT EXCEED EIGHTEEN MONTHS FOR ALL OFFENSES ARISING OUT OF THE SAME INCIDENT. [Replaces current §2929.41(B)(2)]

(3) **Priority of Consecutive Felony/Misdemeanor Terms** [The last sentence of current §2929.41(A), making misdemeanor and felony terms concurrent, would be repealed.] WHEN A COURT ORDERS THAT ONE OR MORE FELONY TERMS SHALL BE SERVED CONSECUTIVELY TO ONE OR MORE MISDEMEANOR TERMS, OR ORDERS THAT ONE OR MORE MISDEMEANOR TERMS SHALL BE SERVED CONSECUTIVELY TO ONE OR MORE FELONY TERMS, THE COURT SHALL SPECIFY THE ORDER IN WHICH ANY JAIL TERM, PRISON TERM, COMMUNITY CONTROL, AND POST-RELEASE CONTROL SHALL BE SERVED. HOWEVER, IF THE OFFENDER HAS BEGUN SERVING A PRISON OR JAIL TERM IMPOSED FOR AN EARLIER OFFENSE, THE OFFENDER SHALL COMPLETE THE TERM AT THAT FACILITY BEFORE TRANSFERRING TO ANOTHER FACILITY. [A form of this should also appear in felony sentencing law (§2929.14).]

ANY JAIL TERM SHALL INCLUDE ANY GOOD TIME EARNED AND ANY PRISON TERM SHALL INCLUDE ANY BAD TIME IMPOSED. IF THE OFFENDER SERVED JAIL TIME AWAITING TRIAL OR SENTENCING, THE COURT SHALL SPECIFY WHICH TERM IS TO BE REDUCED BY THE JAIL TIME CREDIT.

(C) **Jail Terms Over 18 Months; Appeal** WHEN A COURT IMPOSES CONSECUTIVE JAIL TERMS THAT EXCEED EIGHTEEN MONTHS, UNLESS ALL THE JAIL TERMS ARE REQUIRED BY LAW, THE JUDGE SHALL STATE HIS OR HER FINDINGS UNDER DIVISION (B) OF THIS SECTION ON THE RECORD. THE OFFENDER MAY APPEAL THE SENTENCE AS A MATTER OF RIGHT.

(D) **Intermittent Confinement and Work, etc. Release** A JUDGE WHO SENTENCES AN OFFENDER TO JAIL UNDER THIS SECTION MAY PERMIT THE OFFENDER TO SERVE THE SENTENCE IN INTERMITTENT CONFINEMENT OR AUTHORIZE A LIMITED RELEASE AS PROVIDED IN DIVISION (B) OF SECTION 2929.26 OF THE REVISED CODE.

(E) **Jail Industry Program** IF THE COURT ASSIGNS AN OFFENDER TO A JAIL THAT HAS A JAIL INDUSTRY PROGRAM ESTABLISHED UNDER SECTION 5147.30 OF THE REVISED CODE, THE COURT SHALL SPECIFY, AS PART OF THE SENTENCE, WHETHER THE OFFENDER MAY BE CONSIDERED FOR PARTICIPATION IN THE PROGRAM. DURING THE OFFENDER'S TERM IN THE JAIL, THE COURT RETAINS JURISDICTION TO MODIFY ITS SPECIFICATION REGARDING THE OFFENDER'S PARTICIPATION IN THE PROGRAM. [This carries over the jail industry program in current law.]

## **§2929.25 SENTENCING TO COMMUNITY CONTROL**

**(A) Eligibility/Sentencing Approaches** IN IMPOSING SENTENCE FOR A MISDEMEANOR, OTHER THAN A MINOR MISDEMEANOR OR REGULATORY OFFENSE, THE SENTENCING JUDGE MAY DO EITHER OF THE FOLLOWING:

(1) **Direct Sentencing** SENTENCE THE OFFENDER DIRECTLY TO ANY COMMUNITY CONTROL SANCTION OR COMBINATION OF SANCTIONS AUTHORIZED BY SECTIONS 2929.26, 2929.27, AND 2929.28 OF THE REVISED CODE. IF THE JUDGE IMPOSES A MANDATORY JAIL TERM, THE JUDGE MAY IMPOSE ANY COMMUNITY CONTROL SANCTION OR SANCTIONS IN ADDITION TO THE MANDATORY TERM. [Current 2929.51 would be repealed.]

(2) **Suspended Sentencing** IMPOSE A JAIL TERM FROM THE RANGE AUTHORIZED BY SECTION 2929.24 OF THE REVISED CODE, THEN SUSPEND ALL OR PART OF THE TERM, AND PLACE THE OFFENDER UNDER A COMMUNITY CONTROL SANCTION OR SANCTIONS, OTHER THAN JAIL, UNDER SECTIONS 2929.26, 2929.27, OR 2929.28 OF THE REVISED CODE.

**Duration of Non-Jail Sanctions** THE DURATION OF ALL COMMUNITY CONTROL SANCTIONS OTHER THAN JAIL IN EFFECT FOR AN OFFENDER AT ANY TIME SHALL NOT EXCEED FIVE YEARS.

**Warning at Sentencing** AT SENTENCING, IF THE JUDGE IMPOSES ANY COMMUNITY CONTROL SANCTION OTHER THAN JAIL, THE JUDGE SHALL STATE THE DURATION OF THE SANCTION AND NOTIFY THE OFFENDER THAT, IF THE CONDITIONS OF THE SANCTION ARE VIOLATED, THE COURT MAY IMPOSE: A LONGER TIME UNDER THE SAME SANCTION, WITHIN THE TIME AUTHORIZED BY THIS SECTION; A MORE RESTRICTIVE SANCTION; OR A SPECIFIC JAIL TERM FROM THE RANGE PERMITTED FOR THE OFFENSE BY SECTION 2929.24 OF THE REVISED CODE. IN WARNING THAT A MORE RESTRICTIVE SANCTION MAY BE IMPOSED FOR A VIOLATION, THE JUDGE NEED NOT SPECIFY ANY PARTICULAR SANCTION OR SANCTIONS.

**Supervision** THE COURT SHALL PLACE THE OFFENDER UNDER THE GENERAL CONTROL AND SUPERVISION OF THE COURT OR OF THE PROBATION DEPARTMENT THAT SERVES THE COURT OR MAY REQUEST THAT THE OFFENDER BE PLACED UNDER THE GENERAL CONTROL AND SUPERVISION OF ANOTHER PROBATION DEPARTMENT THAT SERVES THE JURISDICTION IN WHICH THE OFFENDER RESIDES. THE SENTENCING COURT RETAINS JURISDICTION OVER OFFENDERS THAT IT SENTENCES FOR THE DURATION OF THE SANCTION.

**(B) Penalizing Violators** IF THE COURT SENTENCES THE OFFENDER TO A COMMUNITY CONTROL SANCTION AND IF THE SANCTION IS VIOLATED, THE PERSON OR ENTITY THAT ADMINISTERS THE SANCTION SHALL REPORT THE VIOLATION DIRECTLY TO THE SENTENCING COURT OR TO THE SUPERVISING PROBATION DEPARTMENT, WHICH SHALL REPORT THE VIOLATION TO THE COURT.

FOR THE VIOLATION, THE COURT MAY IMPOSE A LONGER TIME UNDER THE SAME SANCTION, PROVIDED THE TOTAL TIME DOES NOT EXCEED THE LIMIT SPECIFIED IN DIVISION **(A)** OF THIS SECTION, OR MAY IMPOSE A MORE RESTRICTIVE SANCTION OR COMBINATION OF SANCTIONS, INCLUDING A JAIL TERM. IF A JAIL TERM IS IMPOSED FOR THE VIOLATION, THE TOTAL TIME SPENT IN JAIL FOR THE OFFENSE AND VIOLATION SHALL NOT EXCEED THE MAXIMUM SPECIFIED AT SENTENCING. THE COURT MAY REDUCE THE LONGER PERIOD THAT THE OFFENDER IS REQUIRED TO SPEND FOR THE VIOLATION UNDER THE LONGER OR MORE RESTRICTIVE SANCTION BY ALL OR PART OF THE TIME SUCCESSFULLY SPENT UNDER THE SANCTION THAT WAS INITIALLY IMPOSED.

(C) **Rewarding Success** IF AN OFFENDER, FOR A SIGNIFICANT TIME, FULFILLS CONDITIONS OF A COMMUNITY CONTROL SANCTION IN AN EXEMPLARY MANNER, THE JUDGE MAY REDUCE THE TIME UNDER THE SANCTION OR IMPOSE A LESS RESTRICTIVE SANCTION. HOWEVER, FULFILLING THE CONDITIONS OF CONTROL DOES NOT RELIEVE THE OFFENDER OF A DUTY TO MAKE RESTITUTION. [The latter sentence should also be added to felony sentencing law.]

## **§2929.26 RESIDENTIAL SANCTIONS**

(A) **Residential Sanctions** THE JUDGE IMPOSING SENTENCE FOR A MISDEMEANOR, OTHER THAN A MINOR MISDEMEANOR OR REGULATORY OFFENSE, EXCEPT AS OTHERWISE PROVIDED BY LAW, MAY IMPOSE ANY COMMUNITY RESIDENTIAL SANCTION OR COMBINATION OF SANCTIONS AUTHORIZED BY THIS SECTION. COMMUNITY RESIDENTIAL SANCTIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) **Jail** A TERM OF UP TO ONE HUNDRED EIGHTY DAYS IN A JAIL [defined by S.B. 2 to include minimum security jails, workhouses, multijurisdictional jails, etc.] UNDER SECTION 2929.24 OF THE REVISED CODE;

(2) **Halfway House** A TERM OF UP TO ONE HUNDRED EIGHTY DAYS IN A HALFWAY HOUSE, OR A TERM IN A HALFWAY HOUSE NOT TO EXCEED THE LONGEST JAIL TERM AVAILABLE FOR THE DEGREE OF OFFENSE UNDER SECTION 2929.24 OF THE REVISED CODE, WHICHEVER IS SHORTER;

(3) **Other Treatment or Work Facility** A TERM OF UP TO ONE HUNDRED EIGHTY DAYS IN AN ALTERNATIVE RESIDENTIAL FACILITY FOR TREATMENT, HABILITATION, SEEKING OR MAINTAINING EMPLOYMENT, TRAINING, OR SIMILAR PURPOSES, OR A TERM IN SUCH A FACILITY NOT TO EXCEED THE LONGEST JAIL TERM AVAILABLE FOR THE DEGREE OF OFFENSE UNDER SECTION 2929.24 OF THE REVISED CODE, WHICHEVER IS SHORTER. THE JUDGE MAY SPECIFY THE LEVEL OF SECURITY NEEDED FOR THE OFFENDER.

(B) **Intermittent Confinement and Work, Etc. Release** THE JUDGE WHO SENTENCES AN OFFENDER TO A RESIDENTIAL SANCTION UNDER THIS SECTION MAY DO EITHER OR BOTH OF THE FOLLOWING DURING THE NON-MANDATORY PORTION OF THE TERM:

(1) PERMIT THE OFFENDER TO SERVE THE SENTENCE IN INTERMITTENT CONFINEMENT, OVERNIGHT, ON WEEKENDS, OR AT ANY OTHER TIME OR TIMES THAT WILL ALLOW THE OFFENDER TO CONTINUE AT THE OFFENDER'S OCCUPATION OR CARE FOR THE OFFENDER'S FAMILY;

(2) AUTHORIZE THE OFFENDER TO BE RELEASED SO THAT THE OFFENDER MAY SEEK OR MAINTAIN EMPLOYMENT, RECEIVE TRAINING OR EDUCATION, RECEIVE TREATMENT, OR PERFORM COMMUNITY SERVICE. THE COURT MAY ORDER THAT A REASONABLE PART OF ANY INCOME EARNED BE APPLIED TO ANY FINANCIAL SANCTION IMPOSED UNDER SECTION 2929.18 OR 2929.28 OF THE REVISED CODE.

(C) **No Prison** NO PERSON SHALL BE SENTENCED TO A PRISON TERM FOR A MISDEMEANOR, MINOR MISDEMEANOR, OR REGULATORY OFFENSE.

[The existing jail "good time" statute (2947.151) would remain.]

## §2929.27 NONRESIDENTIAL SANCTIONS

(A) **Misdemeanors, Generally** THE JUDGE IMPOSING SENTENCE FOR A MISDEMEANOR, OTHER THAN A MINOR MISDEMEANOR OR REGULATORY OFFENSE, EXCEPT AS OTHERWISE PROVIDED BY A SECTION THAT REQUIRES A MANDATORY JAIL TERM, MAY IMPOSE ANY NONRESIDENTIAL COMMUNITY SANCTION OR COMBINATION OF NONRESIDENTIAL SANCTIONS INCLUDING, BUT NOT LIMITED TO, THOSE AUTHORIZED BY DIVISIONS (A) THROUGH (L) OF SECTION 2929.17 OF THE REVISED CODE, EXCEPT THAT A TERM OF COMMUNITY SERVICE SHALL NOT EXCEED FIVE HUNDRED HOURS FOR A MISDEMEANOR OF THE FIRST DEGREE, AND TWO HUNDRED HOURS FOR A MISDEMEANOR OF THE SECOND, THIRD, OR FOURTH DEGREE. IN ADDITION, WHEN AUTHORIZED BY LAW, THE COURT MAY SUSPEND THE OFFENDER'S PRIVILEGE TO OPERATE A MOTOR VEHICLE, IMMOBILIZE OR FORFEIT THE VEHICLE, ORDER THE OFFENDER TO OBTAIN A VALID MOTOR VEHICLE OPERATOR'S LICENSE, OR IMPOSE OTHER RELATED SANCTIONS.

(B) **Unique Sanctions** IN ADDITION TO THE SANCTIONS AUTHORIZED BY DIVISION (A) OF THIS SECTION, THE COURT MAY IMPOSE ANOTHER SANCTION THAT IS INTENDED TO DISCOURAGE THE OFFENDER OR OTHERS FROM COMMITTING A SIMILAR OFFENSE, IF THE SANCTION IS REASONABLY RELATED TO THE OVERRIDING PURPOSES OF SENTENCING.

(C) **Community Service for MMs and Regulatory Offenses**

(1) **MMs** THE JUDGE IMPOSING SENTENCE FOR A MINOR MISDEMEANOR MAY IMPOSE A TERM OF COMMUNITY SERVICE IN LIEU OF ALL OR PART OF A FINE. THE TERM OF COMMUNITY SERVICE SHALL NOT EXCEED THIRTY HOURS.

(2) **Regulatory Offenses** THE JUDGE IMPOSING SENTENCE FOR A REGULATORY OFFENSE MAY IMPOSE A TERM OF COMMUNITY SERVICE IN LIEU OF OR IN ADDITION TO ALL OR PART OF A FINE. THE TERM OF COMMUNITY SERVICE SHALL NOT EXCEED TWO HUNDRED HOURS.

## §2929.28 FINANCIAL SANCTIONS

(A) THE JUDGE IMPOSING SENTENCE FOR A MISDEMEANOR, INCLUDING A MINOR MISDEMEANOR OR REGULATORY OFFENSE, MAY SENTENCE THE OFFENDER TO ANY FINANCIAL SANCTION OR COMBINATION OF FINANCIAL SANCTIONS UNDER THIS SECTION.

FINANCIAL SANCTIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) **Restitution** RESTITUTION BY THE OFFENDER TO THE VICTIM OF THE OFFENDER'S CRIME, OR ANY SURVIVOR OF THE VICTIM, IN AN AMOUNT BASED ON THE VICTIM'S ECONOMIC LOSS [defined in the felony plan to include loss of income, property loss, medical expenses, funeral expenses, etc.]. RESTITUTION SHALL BE MADE DIRECTLY TO THE VICTIM IN OPEN COURT [add to felony law, too] OR TO THE PROBATION DEPARTMENT THAT SERVES THE JURISDICTION OR TO THE CLERK OF COURTS ON BEHALF OF THE VICTIM. IT MAY INCLUDE REIMBURSEMENT TO THIRD PARTIES, OTHER THAN THE DEFENDANT'S INSURER, FOR AMOUNTS PAID TO THE VICTIM OR TO ANY SURVIVOR OF THE VICTIM FOR ECONOMIC LOSS RESULTING FROM THE OFFENSE. IF REIMBURSEMENT TO A THIRD PARTY IS REQUIRED, IT SHALL BE MADE TO ANY GOVERNMENTAL AGENCY TO REPAY ANY AMOUNTS PAID BY THE AGENCY TO

THE VICTIM OR SURVIVOR BEFORE ANY REIMBURSEMENT IS MADE TO ANY OTHER PERSON.

THE COURT MAY BASE RESTITUTION ON AN AMOUNT RECOMMENDED BY THE VICTIM, THE DEFENDANT, A PRESENTENCE INVESTIGATION REPORT, ESTIMATES OR RECEIPTS INDICATING THE COST OF REPAIRING OR REPLACING PROPERTY, AND OTHER INFORMATION. A HEARING SHALL BE HELD ON RESTITUTION IF THE AMOUNT IS DISPUTED BY THE DEFENDANT OR VICTIM. [Add to felony restitution, too.]

THE JUDGE SHALL DETERMINE, OR ORDER DETERMINED, THE AMOUNT OF RESTITUTION TO BE PAID BY THE OFFENDER. ALL RESTITUTION PAYMENTS SHALL BE CREDITED AGAINST ANY RECOVERY OF ECONOMIC LOSS IN A CIVIL ACTION BROUGHT BY OR ON BEHALF OF THE VICTIM AGAINST THE OFFENDER.

THE JUDGE MAY ORDER THAT THE OFFENDER PAY A SURCHARGE, OF UP TO FIVE PER CENT OF THE AMOUNT OF RESTITUTION OTHERWISE ORDERED, TO THE ENTITY RESPONSIBLE FOR COLLECTING AND PROCESSING RESTITUTION PAYMENTS. [Add to felony restitution, too.]

THE VICTIM MAY REQUEST THAT THE PROSECUTING AUTHORITY FILE A MOTION, OR THE OFFENDER MAY FILE A MOTION, FOR MODIFICATION OF THE PAYMENT TERMS OF ANY RESTITUTION ORDERED BASED ON A SUBSTANTIAL CHANGE IN THE OFFENDER'S ABILITY TO PAY. [Add to felony restitution, too.]

(2) **Fines** PAYMENT BY THE OFFENDER OF THE FOLLOWING TYPES OF FINE PAYABLE TO THE APPROPRIATE ENTITY AS REQUIRED BY LAW:

(a) **Day Fine** A DAY FINE BASED ON A STANDARD PERCENTAGE OF THE OFFENDER'S DAILY INCOME OVER A TIME DETERMINED BY THE COURT BASED SERIOUSNESS OF THE OFFENSE. A DAY FINE SHALL NOT EXCEED THE MAXIMUM FINE AVAILABLE FOR THE LEVEL OF OFFENSE UNDER DIVISION (A)(2)(b) OF THIS SECTION. PAYMENT OF A DAY FINE PRECLUDES IMPOSING A CONVENTIONAL FINE UNDER DIVISION (A)(2)(b) OF THIS SECTION.

(b) **Conventional Fine** A CONVENTIONAL FINE, WHICH PRECLUDES IMPOSING A DAY FINE UNDER DIVISION (A)(2)(a) OF THIS SECTION, IMPOSED AS FOLLOWS:

(i) FOR A FIRST DEGREE MISDEMEANOR, NOT MORE THAN ONE THOUSAND DOLLARS;

(ii) FOR A SECOND DEGREE MISDEMEANOR, NOT MORE SEVEN HUNDRED FIFTY DOLLARS;

(iii) FOR A THIRD DEGREE MISDEMEANOR, NOT MORE THAN FIVE HUNDRED DOLLARS;

(iv) FOR A FOURTH DEGREE MISDEMEANOR, NOT MORE THAN TWO HUNDRED FIFTY DOLLARS;

(v) FOR A MINOR MISDEMEANOR, NOT MORE THAN ONE HUNDRED FIFTY DOLLARS;

(vi) FOR A REGULATORY OFFENSE, THE FINE SPECIFIED BY STATUTE FOR THE OFFENSE.

(c) **State Fines** FINES ASSESSED AS REQUIRED BY THE STATE FOR VICTIM REPARATIONS, INDIGENT DEFENSE, AND COUNTY LAW LIBRARIES.

(3) **Reimbursement** REIMBURSEMENT BY THE OFFENDER OF ANY OR ALL OF THE COSTS OF SANCTIONS INCURRED, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING [parallel changes should be made to §2929.18]:

(a) **For Sanctions** ALL OR PART OF THE COSTS OF IMPLEMENTING ANY COMMUNITY CONTROL SANCTION, INCLUDING A SUPERVISION FEE UNDER SECTION 2951.021 OF THE REVISED CODE;

(b) **For Confinement** ALL OR PART OF THE COSTS OF CONFINEMENT IN A JAIL OR OTHER RESIDENTIAL FACILITY, INCLUDING, BUT NOT LIMITED TO, A PER DIEM FEE FOR ROOM AND BOARD, THE COSTS OF MEDICAL AND DENTAL TREATMENT, AND THE COSTS OF REPAIRING PROPERTY DAMAGED BY THE OFFENDER WHILE CONFINED. THE AMOUNT OF REIMBURSEMENT ORDERED UNDER THIS SECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS PER YEAR OR THE TOTAL AMOUNT OF REIMBURSEMENT THE OFFENDER IS ABLE TO PAY.

ANY AMOUNT ORDERED UNDER THIS DIVISION MAY BE COLLECTED BY THE COURT. IF THE COURT DOES NOT ORDER REIMBURSEMENT, CONFINEMENT COSTS MAY BE ASSESSED PURSUANT TO SUCH A REPAYMENT POLICY ADOPTED UNDER SECTION 2929.71 OF THE REVISED CODE.

(4) **Costs** COURT COSTS.

(B) **Ability to Pay Hearing** THE COURT MAY HOLD A HEARING IF NECESSARY TO DETERMINE WHETHER THE OFFENDER IS ABLE TO PAY THE SANCTION OR IS LIKELY IN THE FUTURE TO BE ABLE TO PAY IT.

(C) **Community Service Options** IF THE OFFENDER IS INDIGENT, THE COURT SHALL CONSIDER IMPOSING A TERM OF COMMUNITY SERVICE, UNDER DIVISION (A) OF SECTION 2929.27 OF THE REVISED CODE, IN LIEU OF IMPOSING A FINANCIAL SANCTION. IF THE OFFENDER IS NOT INDIGENT, THE COURT MAY IMPOSE A TERM OF COMMUNITY SERVICE, IN LIEU OF, OR IN ADDITION TO, IMPOSING A FINANCIAL SANCTION UNDER THIS SECTION. THE COURT MAY ORDER COMMUNITY SERVICE FOR A MINOR MISDEMEANOR OR REGULATORY OFFENSE PURSUANT TO DIVISION (C) OF SECTION 2929.27 OF THE REVISED CODE.

IF A PERSON FAILS TO PAY A FINANCIAL SANCTION, THE COURT MAY ORDER COMMUNITY SERVICE IN LIEU OF THE SANCTION.

(D) **Judgment** A FINANCIAL SANCTION IMPOSED UNDER THIS SECTION, OTHER THAN REIMBURSEMENT OR RESTITUTION, IS A JUDGMENT IN FAVOR OF THE STATE OR POLITICAL SUBDIVISION THAT OPERATES THE COURT THAT IMPOSED THE FINANCIAL SANCTION. REIMBURSEMENT IS A JUDGMENT IN FAVOR OF THE ENTITY THAT OPERATES THE SANCTION. RESTITUTION IS A JUDGMENT IN FAVOR OF THE VICTIM OF THE CRIME. THE OFFENDER SUBJECT TO THE SANCTION IS THE JUDGMENT DEBTOR.

ONCE THE SANCTION IS IMPOSED AS A JUDGMENT, THE VICTIM, STATE, OR POLITICAL SUBDIVISION, MAY BRING AN ACTION IN . . . [ execution, attachment, garnishment, etc.]. CIVIL REMEDIES SUPPLEMENT, BUT DO NOT PRECLUDE, ENFORCEMENT OF THE

CRIMINAL SENTENCE.

(E) **Collection of Financial Sanctions** THE CLERK, OR ANOTHER PERSON AUTHORIZED BY LAW OR THE COURT TO COLLECT A FINANCIAL SANCTION, MAY DO THE FOLLOWING [felony law should parallel this]:

(1) ENTER INTO CONTRACTS WITH ONE OR MORE PUBLIC AGENCIES OR PRIVATE VENDORS FOR THE COLLECTION OF AMOUNTS DUE UNDER THE SANCTION;

(2) PERMIT PAYMENT OF ALL OR ANY PORTION OF THE SANCTION IN INSTALLMENTS, BY CREDIT OR DEBIT CARD, BY ANOTHER ELECTRONIC TRANSFER, OR BY ANY OTHER REASONABLE METHOD, IN ANY TIME, AND ON ANY TERMS THAT THE COURT CONSIDERS JUST, EXCEPT THAT THE MAXIMUM TIME PERMITTED FOR PAYMENT SHALL NOT EXCEED FIVE YEARS. THE CLERK MAY PAY ANY FEE ASSOCIATED WITH PROCESSING AN ELECTRONIC TRANSFER OUT OF PUBLIC MONEY, OR THE FEE MAY BE CHARGED TO THE OFFENDER. [Current §2929.51(C) would be repealed.]

(3) **Payment Plan Fee** TO DEFRAY ADMINISTRATIVE COSTS, CHARGE A REASONABLE FEE TO AN OFFENDER WHO ELECTS A PAYMENT PLAN RATHER THAN LUMP SUM PAYMENT OF ANY FINANCIAL SANCTION.

(E) **Victim's Civil Remedies** NO FINANCIAL SANCTION IMPOSED UNDER THIS SECTION SHALL PRECLUDE A VICTIM FROM BRINGING A CIVIL ACTION AGAINST THE OFFENDER.

(G) **Distribution of Reimbursements** [See §2949.111, below, for priorities.]

(1) REIMBURSEMENT IMPOSED UNDER THIS SECTION TO PAY COSTS INCURRED BY A COUNTY, OTHER THAN THE COSTS OF CONFINEMENT IMPOSED UNDER DIVISION (A)(3)(b) OF THIS SECTION AND ANY SUPERVISION FEE IMPOSED UNDER DIVISION (A)(3)(a) OF THIS SECTION, SHALL BE PAID TO THE COUNTY TREASURY AND DEPOSITED IN THE SANCTION COST REIMBURSEMENT FUND THAT IS CREATED FOR THAT PURPOSE. THE FUND SHALL BE USED TO PAY THE COSTS INCURRED BY THE COUNTY IN ADMINISTERING THE SANCTIONS.

(2) REIMBURSEMENT IMPOSED UNDER THIS SECTION TO PAY COSTS INCURRED BY A MUNICIPAL CORPORATION, OTHER THAN THE COSTS OF CONFINEMENT IMPOSED UNDER DIVISION (A)(3)(b) OF THIS SECTION AND ANY SUPERVISION FEE IMPOSED UNDER DIVISION (A)(3)(a) OF THIS SECTION, SHALL BE PAID TO THE MUNICIPAL TREASURY AND DEPOSITED IN THE SANCTION COST REIMBURSEMENT FUND THAT IS HEREBY CREATED. THE FUND SHALL BE USED TO PAY THE COSTS INCURRED BY THE MUNICIPALITY IN ADMINISTERING THE SANCTIONS.

(3) REIMBURSEMENT IMPOSED UNDER DIVISION (A)(3)(b) OF THIS SECTION SHALL BE PAID TO THE GENERAL FUND OF THE SUBDIVISION THAT INCURRED THE EXPENSES OF THE OFFENDER'S CONFINEMENT. REIMBURSEMENT FOR A SUPERVISION FEE UNDER DIVISION (A)(3)(a) OF THIS SECTION SHALL BE PAID IN ACCORDANCE WITH SECTION 2951.021 OF THE REVISED CODE.

**§2929.71 PRISONER REPAYMENT POLICY; MEDICAL FEES**

(A) **Pay-for-Stay Policy; Limitation** A BOARD OF COUNTY COMMISSIONERS IN AN AGREEMENT WITH THE SHERIFF, A LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, A CORRECTIONS COMMISSION, A JUDICIAL CORRECTIONS BOARD, OR ANY OTHER PUBLIC OR PRIVATE ENTITY THAT OPERATES A JAIL OR RESIDENTIAL FACILITY THAT CONFINES OR RECEIVES PRISONERS, PURSUANT TO SECTIONS 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, AND 2947.19 OF THE REVISED CODE, MAY ADOPT A POLICY THAT REQUIRES OFFENDERS TO PAY ALL OR PART OF THE COSTS OF CONFINEMENT IN A JAIL OR OTHER RESIDENTIAL FACILITY.

THE COSTS MAY INCLUDE, BUT ARE NOT LIMITED TO, A PER DIEM FEE FOR ROOM AND BOARD, MEDICAL AND DENTAL TREATMENT COSTS, MINUS ANY FEES DEDUCTED UNDER DIVISION (D) OF THIS SECTION, AND THE COSTS OF REPAIRING PROPERTY DAMAGED BY THE INMATE WHILE CONFINED. THE POLICY, IF ADOPTED, SHALL BE USED WHEN A COURT DOES NOT ORDER REIMBURSEMENT FOR CONFINEMENT COSTS AS PROVIDED IN SECTION 2929.28 OF THE REVISED CODE. THE AMOUNT ASSESSED UNDER THIS SECTION SHALL NOT EXCEED TEN THOUSAND DOLLARS OR THE TOTAL AMOUNT OF THE ASSESSMENT THAT THE OFFENDER IS ABLE TO PAY.

(B) **Billing; Payments; Collection** EACH OFFENDER COVERED BY THE REPAYMENT POLICY UNDER THIS SECTION SHALL RECEIVE A BILLING STATEMENT WITHIN THIRTY DAYS AFTER RELEASE FROM CONFINEMENT. THE POLICY SHALL ALLOW PERIODIC PAYMENTS ON A SCHEDULE TO BE IMPLEMENTED UPON AN OFFENDER'S RELEASE. THE POLICY MAY AUTHORIZE ENTERING INTO A CONTRACT WITH ONE OR MORE PUBLIC AGENCIES OR PRIVATE VENDORS TO COLLECT UNPAID AMOUNTS.

WITHIN TWELVE MONTHS AFTER OFFENDER'S RELEASE, THE PROSECUTING ATTORNEY OR A PERSON DESIGNATED IN THE REPAYMENT POLICY MAY FILE A CIVIL ACTION TO SEEK REPAYMENT FROM THAT PERSON FOR ANY AMOUNT BILLED UNDER THIS SECTION THAT REMAINS UNPAID. HOWEVER, NO JUDGMENT SHALL BE EXECUTED AGAINST THE PERSON'S HOMESTEAD. AS USED IN THIS SECTION, "HOMESTEAD" HAS THE SAME MEANING AS IN DIVISION (A) OF SECTION 323.151 OF THE REVISED CODE.

(C) **To General Fund** EXCEPT AS PROVIDED IN DIVISION (D) OF THIS SECTION, ANY REPAYMENT RECEIVED UNDER THIS SECTION SHALL BE CREDITED TO THE GENERAL FUND OF THE ENTITY THAT INCURRED THE EXPENSES.

(D) **Medical & Dental Expenses**

(1) A BOARD OF COUNTY COMMISSIONERS IN AN AGREEMENT WITH THE SHERIFF, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, CORRECTIONS COMMISSION, JUDICIAL CORRECTIONS BOARD, OR ANOTHER PUBLIC OR PRIVATE ENTITY THAT OPERATES A JAIL OR CORRECTIONAL FACILITY AS SPECIFIED IN DIVISION (A) OF THIS SECTION MAY ESTABLISH A POLICY THAT REQUIRES ANY PERSON AND WHO IS CONFINED IN THE JAIL OR RESIDENTIAL FACILITY TO PAY A REASONABLE FEE FOR ANY MEDICAL OR DENTAL TREATMENT OR SERVICE REQUESTED BY, AND PROVIDED TO, THAT PERSON. THE FEE SHALL NOT EXCEED THE ACTUAL COST OF THE TREATMENT OR SERVICE PROVIDED. NO PERSON WHO IS CONFINED TO THE JAIL OR RESIDENTIAL FACILITY SHALL BE DENIED ANY NECESSARY MEDICAL CARE BECAUSE OF INABILITY TO PAY THE FEES.

(2) UPON PROVISION OF REQUESTED MEDICAL TREATMENT OR SERVICE BY AN INMATE, PAYMENT OF THE REQUIRED FEE MAY BE AUTOMATICALLY DEDUCTED FROM AN INMATE'S ACCOUNT RECORD IN THE BUSINESS OFFICE

OF THE FACILITY. IF THERE IS NO MONEY IN THE INMATE'S ACCOUNT, A DEDUCTION MAY BE MADE AT A LATER DATE DURING THE INMATE'S CONFINEMENT IF MONEY BECOMES AVAILABLE IN THE ACCOUNT. IF, AFTER RELEASE, THE INMATE HAS AN UNPAID BALANCE OF THESE FEES, THE SHERIFF, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, CORRECTIONS COMMISSION, JUDICIAL CORRECTIONS BOARD, OR OTHER PUBLIC OR PRIVATE ENTITY THAT OPERATES THE FACILITY MAY BILL THE PERSON FOR PAYMENT OF THE UNPAID FEES. FEES RECEIVED FOR MEDICAL OR DENTAL TREATMENT OR SERVICES SHALL BE PAID TO THE COMMISSARY FUND, IF ONE EXISTS FOR THE FACILITY, OR IF NO SUCH FUND EXISTS, TO THE TREASURIES OF THE POLITICAL SUBDIVISIONS THAT INCURRED THE EXPENSES, IN THE SAME PROPORTION AS THOSE EXPENSES WERE BORNE BY THE POLITICAL SUBDIVISIONS.

(3) ANY FEE PAID BY AN INMATE UNDER DIVISIONS (D)(1) AND (2) OF THIS SECTION SHALL BE DEDUCTED FROM ANY MEDICAL OR DENTAL COSTS THAT THE INMATE IS ORDERED TO REIMBURSE UNDER SECTION 2929.28 OF THE REVISED CODE OR TO REPAY UNDER A POLICY ADOPTED UNDER DIVISION (A) OF THIS SECTION.

### **§2945.17. RIGHT TO A JURY TRIAL**

At any trial, in any court, for the violation of any statute of this state, or of any ordinance of any municipal corporation, ~~except in cases in which the penalty involved does not exceed a fine of one hundred dollars~~ IF THE OFFENSE CARRIES A POTENTIAL PENALTY OF INCARCERATION, the accused has the right to be tried by a jury.

### **§2949.111 PRIORITY OF OFFENDER'S PAYMENTS**

(A) **Definitions** As used in this section:

(1) ~~"Costs"~~ "COURT COSTS" means any ~~court costs~~ ASSESSMENT that the court requires an offender to pay, TO DEFRAID THE COSTS OF OPERATING THE COURT.

(2) "STATE FINES" MEANS ANY FINE IMPOSED BY THE COURT FOR VICTIMS' REPARATIONS, PUBLIC DEFENDER SERVICES, AND COUNTY LAW LIBRARIES AS REQUIRED BY SECTIONS 2743.70, 2949.091, AND 3375.50 OF THE REVISED CODE.

(3) "REIMBURSEMENT" MEANS any reimbursement for the costs of confinement that the court orders an offender to pay pursuant to section ~~2929.223~~ 2929.18 OR 2929.71 of the Revised Code, ANY SUPERVISION FEE, any fee for the costs of electronically monitored house arrest that an offender agrees to pay pursuant to [former] section 2929.23 of the Revised Code, any reimbursement for the costs of an investigation or prosecution that the court orders an offender to pay pursuant to [former] section 2929.28 of the Revised Code, or any other costs that the court orders an offender to pay.

~~(2)~~(4) "Supervision fees" means any fees that a court, pursuant to ~~section~~ SECTIONS 2929.18, 2929.28, AND 2951.021 of the Revised Code ~~and as a condition of probation, requires an offender who is placed on probation to pay for probation services or that a court, pursuant to section 2929.18 of the Revised Code, requires an offender who is under a community control sanction to pay for supervision services.~~

~~(3)(5)~~ "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(B) **Order of Payment** Unless a court, in accordance with division (C) of this section, enters in the record of the case a different method of assigning a ~~payment toward the satisfaction of costs, restitution, a fine, or supervision fees~~ PAYMENTS, if a person who is charged with a misdemeanor is convicted of or pleads guilty to the offense, if the court orders the offender to pay any combination of COURT costs, STATE FINES<sub>1</sub>, restitution, a fine, or ~~supervision fees~~ REIMBURSEMENTS, and if the offender makes any payment OF ANY OF THEM to a clerk of court ~~toward the satisfaction of the costs, restitution, fine, or supervision fees~~, the clerk of court shall assign the offender's payment ~~so made toward the satisfaction of the costs, restitution, fine, or supervision fees~~ in the following manner:

(1) If the court ordered the offender to pay any COURT costs, the offender's payment shall be assigned toward the satisfaction of ~~the~~ THOSE costs until ~~the court costs~~ THEY have been entirely paid.

(2) IF THE COURT ORDERED THE OFFENDER TO PAY ANY STATE FINES AND IF ALL OF THE COURT COSTS THAT THE COURT ORDERED THE OFFENDER TO PAY, IF ANY, HAVE BEEN PAID, THE REMAINDER OF THE OFFENDER'S PAYMENT SHALL BE ASSIGNED TOWARD THE SATISFACTION OF THE STATE FINES UNTIL THEY HAVE BEEN ENTIRELY PAID.

(3) If the court ordered the offender to pay any restitution and if all of the COURT costs AND STATE FINES that the court ordered the offender to pay, if any, have been paid, the remainder of the offender's payment ~~after any assignment required under division (B)(1) of this section~~ shall be assigned toward the satisfaction of the restitution until ~~the restitution~~ IT has been entirely paid.

~~(3)(4)~~ If the court ordered the offender to pay any CONVENTIONAL OR DAY FINE fine and if all of the COURT costs<sub>1</sub>, STATE FINES<sub>1</sub>, and restitution that the court ordered the offender to pay, if any, have been paid, the remainder of the offender's payment ~~after any assignments required under divisions (B)(1) and (2) of this section~~ shall be assigned toward the satisfaction of the fine until ~~the fine~~ IT has been entirely paid.

~~(4)(5)~~ If the court ordered the offender to pay any ~~supervision fees~~ REIMBURSEMENT and if all of the COURT costs, STATE FINES<sub>1</sub>, restitution, and CONVENTIONAL OR DAY fine that the court ordered the offender to pay, if any, have been paid, the remainder of the offender's payment ~~after any assignments required under divisions (B)(1), (2), and (3) of this section~~ shall be assigned toward the satisfaction of the ~~supervision fees~~ REIMBURSEMENTS until the ~~supervision fees~~ THEY have been entirely paid.

(C) **Court's Ability to Reorder** If a person ~~who is charged with a misdemeanor is convicted of or pleads~~ FOUND guilty ~~to~~ OF the offense and if the court orders the offender to pay any combination of COURT costs, STATE FINES<sub>1</sub>, restitution, a CONVENTIONAL OR DAY fine, or ~~supervision fees~~ REIMBURSEMENTS, the court, at the time it orders the offender to pay ~~the combination of costs, restitution, a fine, or supervision fees~~, may prescribe a method AN ORDER of assigning payments ~~that the person makes toward the satisfaction of costs, restitution, a fine, or supervision fees~~ that differs from the method set forth in division (B) of this section. ~~If the court prescribes a method of assigning payments under this division, the court shall enter~~ BY ENTERING in the record of the case the method ORDER so prescribed. ~~Upon the entry~~ IF A DIFFERENT ORDER IS ENTERED in the record of the case of the method of assigning payments prescribed pursuant to this division, if the offender makes any payment to a clerk of court for the costs, restitution, fine, or supervision fees ON RECEIPT OF ANY

~~PAYMENT, the clerk of the court shall assign the payment to made toward the satisfaction of the costs, restitution, fine, or supervision fees in the manner prescribed by the court and entered in the record of the case instead of in the manner set forth in division (B) of this section.~~

[With the language on reimbursements, including pay-for-stay, in proposed §§2929.28 (B)(3) & 2929.71, related sections could be streamlined along the following lines:

### **§307.93 MULTIJURISDICTIONAL JAILS**

[Virtually identical amendments should also be made to **§§341.21** (confinement of Federal prisoners); **341.23** (confinement of inmates from places with no workhouse); **753.02** (confinement in local prisons or station houses probably can be repealed as obsolete); **753.04** (municipal workhouse commitments); **753.16** (out-of-county offenders committed to workhouse); **2301.56** (CBCFs); and **2947.19** (county prisoners committed to city workhouse). Also, **§§341.06** (jail prisoner reimbursement policy) & **2929.223** (misdemeanor confinement costs reimbursement) can be repealed.]

(A) The boards of county commissioners of two or more adjacent counties may contract for the joint establishment of a multicounty correctional center . . . [no changes].

[Divisions (B) & (C) would not change]

(D) PURSUANT TO SECTION 2929.71 OF THE REVISED CODE, EACH board of county commissioners and the legislative authority of each municipal corporation that enters into a contract under division (A) of this section may require a person who was convicted of an offense, who is under the charge of the sheriff of their county or of the officer or officers of the contracting municipal corporation or municipal corporations having charge of persons incarcerated in the municipal jail, workhouse, or other correctional facility, and who is confined in the multicounty or multicounty-municipal correctional center as provided in that division, to reimburse the applicable county or municipal corporation for its expenses incurred by reason of the person's confinement in the center.

[Strike these superceded provisions: the rest of (D)(1), dealing with payment to the treasury, the prosecutor's action for reimbursement; all of (D)(2), covering the county commissioner's, city council's, etc. resolution favoring reimbursement; all of (E), which created the "in lieu of court" pay for stay provisions and described what reimbursements are covered, duties of the reimbursement coordinator, etc; all of (F)(1), which covers medical co-payments; all of (F)(2), which deducts any co-payments from any pay for stay owed; all of (G)(1), which allows deduction of the costs of hygiene items from commissary funds; and all of (G)(2), dealing with the management of and profits from commissary funds.

Existing (H), re private operation of the facility, would be retained as new (E). Existing (I)'s definition would be retained as (F).]

## **DOMESTIC VIOLENCE**

In its 1996 report, the Supreme Court's Domestic Violence Task Force made several recommendations. A Commission subcommittee reviewed proposals relating to the Criminal Code. Participants included Judge Alice McCollum, Sheriff Gary Haines, Defender Becky Herner, victims' representatives Sharon Boyer and David Voth, and probation officers Tony Tedeschi and Karen Callahan.

The Commission suggested several refinements to the domestic violence law. The Commission worked with the General Assembly in making some of the changes in 1997. (See H.B. 238, eff. 11-5-97, which, among other things, extended from one to five years the period in which a former cohabitant could be subject to the offense and protection orders and made putative parents subject to the offense and orders.)

### **Harmonizing Penalties**

The Commission is concerned that domestic assault penalties sometimes differ from those for comparable assaults on strangers. For the most serious assaults, domestic violence's M-1 penalty is considerably lower than the F-2 penalty available when the victim is a stranger. The Commission recommends making domestic violence penalties track the penalties for felonious assault, assault, and aggravated menacing. Thus, knowingly causing or attempting to cause serious physical harm or knowingly causing or attempting physical harm with a weapon would be an F-2, tracking felonious assault. (Proposed §2919.25(A) & (F)) Knowingly causing or attempting physical harm or recklessly causing serious physical harm would be an M-1, tracking simple assault. (Proposed §2919.25(B), (C), & (F))

Similarly, the Commission believes that penalties for threatening harm should not be the same as for causing harm. Thus, the penalty for aggravated menacing would be reduced by one degree. (Proposed §2903.21) Knowingly causing a family or household member to believe the offender will cause serious physical harm would be an M-2, mirroring the aggravated menacing change. (Proposed §2919.25(D) & (F)) Also, under this plan, certain prior offenses would enhance these penalties by one degree. (Proposed §2919.25(F))

## Corporal Punishment

With Ohio's preferred arrest policy regarding domestic violence, law enforcement officers sometimes find themselves making arrests for domestic violence when a child is complaining of mild corporal punishment or when a parent is restraining an assaultive child. Without debating the merits of corporal punishment, the Commission felt that the law could give officers more direction if it contained language similar to the child abuse statute.

Under §2919.22(B)(3), corporal punishment, parental discipline, or physical restraint does not amount to endangering children *unless* the punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child. At the suggestion of many in law enforcement, including Ashland County Prosecuting Attorney Robert DeSanto, the Commission would add similar language to the domestic violence law. If done, reasonable corporal punishment would no longer be a basis for a domestic violence arrest, making the law consistent with child endangering. (Proposed §2919.25(H))

## Draft Language

### §2919.25 DOMESTIC VIOLENCE

(A) NO PERSON SHALL KNOWINGLY:

(1) CAUSE SERIOUS PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER;

(2) CAUSE OR ATTEMPT TO CAUSE PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER BY MEANS OF A DEADLY WEAPON OR DANGEROUS ORDNANCE, AS DEFINED IN SECTION 2923.11 OF THE REVISED CODE.

~~(B)~~ No person shall knowingly cause or attempt to cause physical harm to a family or household member.

~~(B)(C)~~ No person shall recklessly cause serious physical harm to a family or household member.

~~(D)~~ NO PERSON SHALL KNOWINGLY CAUSE A FAMILY OR HOUSEHOLD MEMBER TO BELIEVE THAT THE OFFENDER WILL CAUSE SERIOUS PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER.

~~(C)(E)~~ No person, ~~by threat of force,~~ shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to a family or household member.

~~(D)(F)~~ Whoever violates this section is guilty of domestic violence. ~~Except as otherwise provided in this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor FELONY of the~~

~~first~~ SECOND degree. EXCEPT AS OTHERWISE PROVIDED IN THIS DIVISION, A VIOLATION OF DIVISION (B) OR (C) OF THIS SECTION IS A MISDEMEANOR OF THE FIRST DEGREE, A VIOLATION OF DIVISION (D) OF THIS SECTION IS A MISDEMEANOR OF THE SECOND DEGREE, AND A VIOLATION OF DIVISION (E) OF THIS SECTION IS A MISDEMEANOR OF THE FOURTH DEGREE.

If the offender previously has been convicted of domestic violence, of a violation of a municipal ordinance that is substantially similar to domestic violence, of a violation of section 2903.11, 2901.12, 2903.13, 2903.14, 2903.21, 2903.211, 2903.22, 2911.211, or 2919.22 of the Revised Code involving a person who was a family or household member at the time of the violation, or of a violation of a municipal ordinance that is substantially similar to one of those sections involving a family or household member at the time of the violation, a violation of division (A) or (B) OR (C) of this section is a felony of the fifth degree, ~~and~~ a violation of division (C) (D) of this section is a misdemeanor of the ~~third~~ FIRST degree, AND A VIOLATION OF DIVISION (E) OF THIS SECTION IS A MISDEMEANOR OF THE THIRD DEGREE.

~~(E)~~(G) As used in this section and sections 2919.251 and 2919.26 of the Revised Code:

- (1) "Family or household member" means any of the following:
  - (a) Any of the following who is residing or has resided with the offender:
    - (i) A spouse, a person living as a spouse, or a former spouse of the offender;
    - (ii) A parent or child of the offender, or another person related by consanguinity or affinity;
    - (iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.
  - (b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.
- (2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

(H) NO PARENT, GUARDIAN, OR CUSTODIAN SHALL BE UNDER THIS SECTION FOR USING CORPORAL PUNISHMENT OR THE THREAT OF CORPORAL PUNISHMENT AS A METHOD OF DISCIPLINING A CHILD, UNLESS THE PUNISHMENT OR THREAT VIOLATES DIVISION (B) OF SECTION 2919.22 OF THE REVISED CODE.

## **§2903.21 AGGRAVATED MENACING**

(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of such other person, such other person's unborn, or a member of the other person's immediate family.

(B) Whoever violates this section is guilty of aggravated menacing, a misdemeanor of the ~~first~~ SECOND degree.

## VICTIMS' RIGHTS

### **S.B. 2 Rights**

Chapter 2930 of the Revised Code gives crime victims the right to notice and an opportunity to participate at each key stage from arrest to release from incarceration. These rights were consolidated based on proposals by the Commission and codified by the General Assembly in 1994 and 1995 (see S.B. 186 of the 120<sup>th</sup> G.A., eff. 10-12-94; S.B. 2 & S.B. 269 of the 121<sup>st</sup> G.A., eff. 7-1-96).

S.B. 2 made clear that victims of assaultive and threatening misdemeanors are also entitled to the rights afforded by the new chapter. The following misdemeanors are covered: negligent homicide; vehicular homicide; assault; aggravated menacing; menacing by stalking; menacing; sexual imposition; domestic violence; intimidation of a victim or witness; and violations of substantially equivalent municipal ordinances.

### **Additional Benefits**

Besides enunciating specific rights for victims, S.B. 2 and related measures foster a direct, honest approach to sentencing that should give the victim and others a better understanding of the penalties imposed. The Commission's misdemeanor plan also favors direct sentencing.

The plan removes the caps on many consecutive terms and would end the requirement that felony and misdemeanor terms be served concurrently. By eliminating many "free" crimes, this should enhance justice in situations where there are multiple victims or victims of multiple offenses.

S.B. 2 stated two overriding purposes of sentencing: punish offenders and protect the public. These would carry over to misdemeanors. Judges would have to choose sentences based on the impact of the offense on the victim. For offenders not sentenced to jail, the continuum of sanctions should provide judges with a range of choices that hold offenders accountable, while rehabilitating them. Successful rehabilitation prevents future victims.

The draft would add the specific requirement that the judge *in any misdemeanor case* should consider any relevant statement made by the victim regarding sentencing. (Proposed §2929.22(C))

The Commission encourages the State to assist in funding expanded victims' rights.

**Restitution and Priorities**

As noted earlier (see FINANCIAL SANCTIONS, above), the proposal would make some changes that should benefit victims. These include refinements to restitution law and new flexibility in collection. As in S.B. 2 for felons, restitution would be a civil judgment against the offender. (Proposed §2929.28(A) & (D))

Prioritizing payment of restitution behind local and State court costs appears to denigrate restitution (see Order of Payment, above; Proposed §2949.111). But, that is not the intent. The collection of local costs helps keep courts--which order restitution--in business. State court costs ("State fines" under the proposal) help pay for the Crime Victims' Reparations program administered by the Court of Claims and the Attorney General. This program helps crime victims even when no conviction is obtained in a case.

## **MAYOR'S COURTS**

### **Why Mayor's Courts?**

Cities and villages have authority to enact ordinances that carry misdemeanor penalties. Often, those who violate these ordinances find themselves in mayor's courts. Yet, unlike other courts, mayor's courts are neither courts of record nor under the governance of the Supreme Court. Since the Commission was instructed to study all criminal sentencing in Ohio, and since mayor's courts impose thousands of sentences each year (primarily for traffic offenses), the Commission reviewed mayor's courts.

### **Survey Responses**

Unlike other courts, there is no statewide record of the number of cases filed, dismissed, and processed by mayor's courts. It is unclear how many mayor's courts even exist. The number seems to vary from year to year.

With the help of the Municipal League in 1994, the Commission surveyed Ohio's 942 municipalities to learn about mayor's courts. The Commission found that 439 had such courts in 1993 (a decline of 90 from the 532 identified in the League's 1989 survey). Of those with mayor's courts, 273 responded to the survey's questions on costs, case loads, and revenue.

We learned that mayor's courts typically serve smaller jurisdictions (3,401 residents on average) than municipal (100,485) and county (30,606) courts. The 273 responding mayor's courts handled about 324,920 cases, 38% of which (123,470) involved a hearing or trial. Most (62%; 201,450 cases) were resolved through a violations bureau, typically, payment of a traffic ticket by mail or at a clerk's window.

Mayor's courts were asked about their typical penalty (fine plus court costs) for persons travelling 10 MPH over the speed limit, when paid at the violations bureau. The average for those responding was \$59 (the range was \$30 to \$128). The average in municipal and county courts was \$68, according to a separate Commission survey.

### **Revenues**

To get a sense of how critical fine revenue from mayor's courts is to municipal coffers, the staff sampled the financial records of 103 municipalities having mayor's

courts.

On average, these municipalities collected 9 cents in fines, fees, licenses, and permits for every \$1 in local tax revenue. The range was 1 cent to \$31.54 for every tax dollar collected. Eleven municipalities collected more local court revenue than general tax revenue. In a few cases, mayor's court revenue accounted for more than 80% of the municipality's total revenue.

This does not indict all or most mayor's courts. Many are very professional and efficient, looking like well-run municipal and county courts. But, some others appear more marsupial. They seem to exist more to produce revenue for the municipality than to dispense justice.

When it became known that the Commission was studying mayor's courts, many mayors, magistrates, and city prosecutors contacted the Commission. They made a strong case for the convenience of their courts and for the quality of justice dispensed. However, almost without fail, these same municipal officials said, "we're not like \_\_\_\_\_," filling the blank with a notorious mayor's court in their part of the State.

#### **Registration and Reporting**

While the Ohio Constitution gives municipalities the "home rule" power to adopt and enforce local police and other regulations, mayor's courts themselves are creatures of State law. They are authorized by the General Assembly in Chapter 1905. And the penalties imposed in mayor's courts apply not merely to citizens of the municipality, but to anyone who violates the ordinances.

The Commission believes it is important for the State to know whether courts, including mayor's courts, impose fair, proportionate, and somewhat uniform penalties. But, it is hard to know about sentencing in mayor's courts if there are no records. General law is needed to fill the void.

To get a better sense of the number of mayor's courts and the number of cases they process this plan would require mayor's courts to register annually with the Supreme Court. The registration would include information on training required by current law. (Proposed §1905.033(A))

As with other courts, mayor's courts would have to report quarterly on cases filed, pending, and terminated. Mayor's courts also would report on finances, dispositions, and

other information required by rule. The additional information makes sense not only for good data, but because mayor's courts do not have the same oversight as courts of record (Supreme Court rules, disciplinary counsel, etc.) and because there can be greater temptations for abuse. (Proposed §1905.033(B)(1))

Because the State has a strong interest in the efficient, fair operation of all of its courts, a municipality would have to comply with the registration and reporting requirements as a condition of holding mayor's court. (Proposed §1905.033(C))

The proposal would not attempt to give the Court a duty to govern mayor's courts. Rather, the Court would serve as a repository for data. Those interested in mayor's courts would have a place to find information.

There is precedent for State intervention in mayor's court operations. In addition to the statutes governing mayor's courts generally, when controversies arose regarding mayor's courts' handling of drunken driving cases several years ago, the General Assembly asked the Supreme Court to help set standards for training mayors and magistrates (see current §§1905.03 & 1905.031).

Some offenses are misdemeanors on first commission and felonies on subsequent violations (e.g., domestic violence). Police chiefs and others in law enforcement are concerned that the first convictions in mayor's courts for these offenses do not always reach the Bureau of Criminal Identification and Investigation's computers. Thus, the proposal also would require mayor's courts to report such convictions to the BCI&I. (Proposed §1905.033(B)(2))

#### **Draft Language**

### **§1905.033 MAYOR'S COURTS**

(A) **Registration** THE MAYOR OF ANY MUNICIPALITY IN WHICH MAYOR'S COURT IS HELD SHALL REGISTER ANNUALLY WITH THE SUPREME COURT. THE REGISTRATION SHALL BE FILED ON A FORM PRESCRIBED BY SUPREME COURT BY THE FIFTEENTH DAY OF JANUARY IN ANY YEAR IN WHICH MAYOR'S COURT IS TO BE HELD, OR AT LEAST FIFTEEN DAYS BEFORE MAYOR'S COURT IS FIRST HELD IN A PARTICULAR YEAR, WHICHEVER IS LATER. THE REGISTRATION SHALL INCLUDE THE NAME OF THE MAYOR AND OF ANY MAGISTRATE PRESIDING OVER THE MAYOR'S COURT AND THE DATES ON WHICH THE MAYOR AND ANY MAGISTRATE LAST RECEIVED THE TRAINING REQUIRED BY SECTION 1905.031 OF THE REVISED CODE.

(B) **Reporting** THE MAYOR OF ANY MUNICIPALITY IN WHICH MAYOR'S COURT IS

HELD SHALL REPORT THE FOLLOWING:

(1) TO THE SUPREME COURT, ALL CASES FILED, PENDING IN THE COURT, AND TERMINATED AND ANY FINANCIAL, DISPOSITIONAL, AND OTHER INFORMATION THAT THE SUPREME COURT PRESCRIBES BY RULE. THE REPORT SHALL COVER CASES IN THE PRECEDING CALENDAR QUARTER AND BE FILED BY THE FIFTEENTH DAY OF JANUARY, APRIL, JULY, AND OCTOBER ON A FORM PRESCRIBED BY THE SUPREME COURT;

(2) TO THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION, UPON CONVICTION, EVERY CONVICTION FOR AN OFFENSE THAT IS A MISDEMEANOR ON FIRST OFFENSE AND A FELONY ON ANY SUBSEQUENT OFFENSE.

(C) **Prohibition** NO MUNICIPAL CORPORATION SHALL HOLD MAYOR'S COURT WITHOUT COMPLYING WITH THE GENERAL LAW IN THIS SECTION GOVERNING REGISTRATION AND REPORTING.

## **ALLOCATING REVENUES AND COSTS**

### **GOALS**

Financial penalties are an important part of sentencing, particularly in misdemeanor courts. Ohio laws governing the allocation of costs and distribution of fine revenues have come under attack in recent years. The laws are complex and can lead to manipulation by political subdivisions.

In 1993, the General Assembly urged creation of the Supreme Court's Task Force on Criminal Fine Distribution to examine the system and recommend improvements. The Task Force issued its report in December, 1994. Generally, it called for all expenses to be paid by, and all fine revenue to be distributed to, the entity that operates the court having jurisdiction over the case. However, the recommendations were not introduced in the General Assembly.

The Commission began its study with several goals in mind:

- Truth in Sentencing: Trying to give an honest statement at sentencing of the offender's known financial penalty;
- Avoid manipulations in which jurisdictions use the system to maximize revenue at the expense of others;
- Try to assure that the jurisdiction incurring the expenses receives the funds collected;
- Try to assure that the fair share of the cost of the crime is borne by the defendant.

### **FINES COMMITTEE MEMBERS**

The Commission's Fines Committee developed most of the proposals described below. Members included: Capt. J.P. Allen, State Highway Patrol; Jerry Collamore, County Commissioners' Association of Ohio (CCAO); Commissioner John Dowlin, Hamilton County; Sheriff Gary Haines, Montgomery County; Atty. Becky Herner, State Public Defender's Office; Judge Alice McCollum, Dayton Municipal Court; Clerk Mark Owens, Dayton Municipal Court; and Mike Toman, CCAO. Fritz Rauschenberg staffed the Committee.

Other key contributors at various stages included Jan Novak and Keith Blough of the OSBA Law Libraries Committee, Judge Bill Finnegan of the Marion Municipal Court, and General Counsel John Gotherman of the Ohio Municipal League.

## **FINES DISTRIBUTION**

### **Current Law**

The current general rule for misdemeanor fines distribution is in §§1901.31(F) and 1907.20(C). These sections govern municipal and county court clerks. Fines coming from an offender convicted under a municipal ordinance generally go to the general fund of the municipality whose ordinance was violated. Fines collected from cases where the offender was convicted under a State statute (Ohio Revised Code) go to the county. There are exceptions.

The statutes governing who pays the operating costs of the misdemeanor system are more difficult. The main section is §1905.35, which makes municipalities responsible for the cost of jailing offenders charged under their ordinances. §753.02, allows municipalities to contract with counties for the cost of municipal prisoners in county jails.

These statutes were written in an era when there were many more municipal jails. With the emergence of State jail standards and construction funding primarily for county jails, there are far fewer municipal jails that house inmates for more than a few days. Municipalities rely more and more on the county jails to house misdemeanants arrested by their police departments.

### **Current Practice**

The Revised Code does not specify what has been practiced for a long time: municipalities pay for the prosecution, indigent defense, and incarceration (or the cost of any other penalty, such as probation supervision) of offenders charged under a municipal ordinance; municipalities receive all the fine revenue for offenses charged under their ordinances; and counties incur the costs and receive fine revenue for offenses charged under State Code.

**Example.** An average speeding ticket generates a \$68 penalty, currently distributed as follows:

- **Fine:** \$25 to the general fund of the municipality whose ordinance was violated, or to the county general fund if it is a violation of State law under the general rule. For a State Code speeding ticket, the money that otherwise would go to the county general fund is split between the county law library association and the county fund responsible for repairing roads and highways. This rule becomes more complicated in cases that arise via State Highway Patrol citations.

- **Local Court Costs and Fees:** \$23 to the entity (either a municipality or county) that operates the court. This may or may not be the same entity that received the fine revenue. At least \$3 goes toward court computerization. The money typically goes into the general fund of the municipality or county. Other times, the money goes to a special revenue fund designated for court operations.
- **State Court Costs:** \$20 to the State Treasury. \$9 goes to the State Victims of Crime Reparations Fund, while \$11 goes to the State General Revenue Fund (GRF) to pay for public defense.

#### **New Fines Distribution Rule**

Currently, the rule for fine revenue distribution makes the code under which an offender is charged the key factor in determining who gets the money that an offender pays.

The Commission recommends having one statute setting forth a new general rule for fine distribution. It further proposes changing the general distribution rule so that the key factor is the police agency involved, not the code charged.

The Commission also recommends assessing the current State court costs and law library subsidies as fines, with \$11 distributed to the State treasury for public defense and \$9 to the Victims of Crime Reparations Fund (more fully discussed under STATE FINES, below). The amounts and distribution would not change from current law. The other \$5 would go to the county law library association (see LAW LIBRARY FUNDING, below).

#### **Draft Language**

OF THE FIRST TWENTY-FIVE DOLLARS OF ANY FINE COLLECTED FOR A MISDEMEANOR, NINE DOLLARS SHALL BE PAID TO THE STATE TREASURY TO BE PAID INTO THE VICTIMS OF CRIME COMPENSATION FUND PURSUANT TO SECTION 2745.70 OF THE REVISED CODE, ELEVEN DOLLARS SHALL BE PAID TO THE GENERAL REVENUE FUND FOR PUBLIC DEFENSE PURSUANT TO SECTION 2949.091 OF THE REVISED CODE, AND FIVE DOLLARS SHALL BE PAID TO THE COUNTY LAW LIBRARY ASSOCIATION PURSUANT TO SECTION 3375.50 OF THE REVISED CODE.

ALL FINES COLLECTED FOR MISDEMEANORS IN EXCESS OF TWENTY-FIVE DOLLARS SHALL GO TO THE TREASURY OF THE MUNICIPALITY, COUNTY, TOWNSHIP, OR OTHER ENTITY THAT PAYS FOR THE GENERAL OPERATION OF THE POLICE AGENCY THAT MADE THE ARREST OR ISSUED THE CITATION IN THE CASE AND CREDITED TO THE GENERAL FUND OF THAT ENTITY. THIS RULE APPLIES UNLESS THERE IS A SPECIFIC EXCEPTION OTHERWISE PROVIDED IN THE REVISED CODE.

## OPERATING COSTS

### **Current Law and Practice**

The flip side of fine revenue is which unit of government bears the costs of prosecution, indigent defense, incarceration of misdemeanants, and other sanctions.

As with fine revenue, these costs are largely determined by the code under which the offense is charged. Municipalities bear the cost of prosecution, indigent defense, and incarceration of those offenders charged or convicted under municipal ordinances. Counties bear these costs for offenders charged under State Code.

This has led some municipal police forces to make charging decisions that maximize the municipality's fiscal situation. If the offense is a minor misdemeanor, which often results in revenue and minimal operating cost and no potential jail costs, the police can elect to charge under the municipal ordinance. If the offense is not a minor misdemeanor, the incentive for a municipality is to have the police charge under State law, so the county will pick up the costs of prosecution, indigent defense, and jail. The county gets the fine revenue in the latter case, but that is rarely enough to cover the costs. Much of the county's revenue is passed on to the road repair fund and law libraries.

In many jurisdictions there are formal or informal agreements to govern who pays for what in the misdemeanor system. For example, a municipality might pay to prosecute and defend State Code cases. In exchange, a county might provide some other service, such as courthouse security for the municipality. However, counties and municipalities do not always form such alliances, which can mean two prosecutors in each courtroom--one handling State law cases, another handling municipal ones.

### **New Misdemeanor Operating Costs Rule**

The Commission considered four options:

- **Have the entity operating the police agency pay all operating costs and get all fine revenue.** The municipality would bear operating costs if the arrest were made by municipal police; the county would pay if the arrest were made by the sheriff's department. Until the Municipal League compromise (discussed below), this was the Commission's preferred position.

- **Have the entity operating the court pay all operating costs and get all fine revenue.** This is the option recommended by the Task Force in 1994. The cost and the revenue would go to the county or municipality that operates the court with jurisdiction over the case. For example, in Franklin County, Columbus operates the municipal court. Under this option, Columbus would bear the cost of prosecution, indigent defense, and incarceration for cases going through the court. Columbus would get all the fines and local court cost revenue, regardless of the code charged. The rationale is that the cost of a case, particularly the incarceration cost, is largely determined by judges. Therefore the court's budget should be accountable for the costs of the decisions. While some Fines Committee members favored this approach, it was less popular than the approach described in the preceding paragraph.
- **Require municipal police departments to charge under municipal ordinances.** The State Patrol and county sheriffs charge exclusively under State Code. Municipal police departments could be limited by law to charging misdemeanants under municipal ordinances. The Commission did not pursue this tack, since it could be seen as an unconstitutional infringement on municipal home rule.
- **Require contracts between subdivisions or arbitration.** Early in 1998, the Ohio Municipal League proposed an alternative: Require counties and municipalities to enter into agreements over who pays what in the misdemeanor system. If the subdivisions are unable to agree, the issue would go to binding arbitration. The Commission ultimately decided to recommend this approach.

The Commission's initial position--having both revenues and costs go to the entity that employs the police agency making the charge--was likely to spawn warfare between counties and municipalities. The Commission instead settled on the contract/arbitration approach because, while still controversial, it encourages local solutions to local problems. It is better than a State-imposed solution.

In short, the Commission recommends encouraging counties and municipalities (and, in some cases, counties and townships) to enter into contracts that fairly apportion system costs or face binding arbitration. Here is suggested language.

**Draft Language**

(A) **Contract to Assign Expenses** ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, THE BOARD OF COUNTY COMMISSIONERS IN EACH COUNTY

SHALL EXERCISE ITS BEST EFFORTS TO ENTER INTO CONTRACTS BETWEEN THE COUNTY AND EACH MUNICIPAL CORPORATION AND TOWNSHIP WITHIN THE COUNTY TO PROVIDE FOR THE FAIR AND EQUITABLE SHARING OF THE COSTS OF PROSECUTION, INDIGENT DEFENSE, INCARCERATION IN A COUNTY OR MUNICIPAL JAIL, AND THE MEDICAL CARE AND TREATMENT OF PERSONS CHARGED WITH MISDEMEANORS UNDER MUNICIPAL ORDINANCES, TOWNSHIP RESOLUTIONS, OR STATE STATUTES. IF SUCH A CONTRACT IS IN PLACE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, THE CONTRACT SHALL REMAIN IN PLACE UNTIL IT TERMINATES.

**(B) Duration of Contracts** CONTRACTS ENTERED INTO PURSUANT TO THIS SECTION SHALL BE EFFECTIVE FOR NOT LESS THAN THREE YEARS AND NOT MORE THAN SEVEN YEARS. A CONTRACT MAY BE RENEWED FOR ADDITIONAL PERIODS NOT TO EXCEED SEVEN YEARS WITH OR WITHOUT AMENDMENTS TO ITS PROVISIONS. THE TERMS OF A CONTRACT UNDER THIS SECTION SHALL BE IN EFFECT UNTIL REPLACED BY A NEW CONTRACT OR AN ARBITRATION REPORT.

**(C) Arbitration If No Contract** WHERE A CONTRACT IS NOT MUTUALLY AGREED UPON WITHIN THE PERIOD PROVIDED IN DIVISION (A) OR UPON THE EXPIRATION OR TERMINATION OF AN EXISTING CONTRACT, UPON REQUEST OF ONE OF THE SUBDIVISIONS, THE COUNTY AND THE MUNICIPALITY OR TOWNSHIP SHALL SUBMIT TO BINDING ARBITRATION THE DETERMINATION OF THE RESPECTIVE AMOUNTS TO BE PAID BY EACH POLITICAL SUBDIVISION OF THE COSTS DESCRIBED IN DIVISION (A) OF THIS SECTION. EACH OF THE POLITICAL SUBDIVISIONS INVOLVED IN THE ARBITRATION SHALL APPOINT ONE ARBITRATOR WITHIN FIFTEEN DAYS OF A NOTICE FROM THE OTHER PARTY THAT ARBITRATION IS REQUESTED. THE TWO PERSONS SO APPOINTED SHALL SELECT A THIRD PERSON WITHIN FIFTEEN DAYS OF THE LAST TO BE APPOINTED. IF ONE OF THE PARTIES FAILS TO APPOINT AN ARBITRATOR, THE PRESIDING JUDGE OF THE COMMON PLEAS COURT SHALL APPOINT THE ARBITRATOR TO REPRESENT THE DEFAULTING PARTY, OR, IF THE TWO ARBITRATORS FAIL TO APPOINT A THIRD ARBITRATOR, THE PRESIDING JUDGE OF THE COMMON PLEAS COURT SHALL APPOINT THE THIRD ARBITRATOR. THE COST OF THE ARBITRATION SHALL BE ASSESSED ON THE PARTIES BY THE ARBITRATORS IN THEIR REPORT.

**(D) Scope of Arbitration** THE ARBITRATORS SHALL HEAR EVIDENCE FROM EACH PARTY WITH RESPECT TO:

- (1) THE AMOUNT OF FINE MONEY RECEIVED FROM MISDEMEANANTS;
- (2) THE AVAILABILITY OF OTHER MONEY FOR THE PURPOSES OF PAYING THE COSTS IN DIVISION (C) OF THIS SECTION;
- (3) THE NUMBER OF PERSONS CHARGED WITH MISDEMEANORS PLACED IN JAIL BY POLICE AGENCIES OPERATED BY THE PARTIES TO THE ARBITRATION;
- (4) THE RESIDENCES OF THE PERSONS CHARGED OR CONVICTED;
- (5) THE HISTORY OF HOW SUCH CHARGES HAVE BEEN MADE AND HOW THE COSTS HAVE BEEN PAID IN THE PAST;
- (6) THE IMPACT OF THE COSTS UPON THE POLITICAL SUBDIVISION'S OTHER SERVICES AND FACILITIES;
- (7) ANY MONEY APPROPRIATED OR PROVIDED BY THE STATE OR FEDERAL GOVERNMENT FOR THE PURPOSE OF PAYING THE COSTS.

**(E) Arbitrators' Decision** BASED ON EVIDENCE PRESENTED BY THE PARTIES TO THE ARBITRATION, THE ARBITRATORS SHALL DECIDE A FAIR AND EQUITABLE ALLOCATION TO EACH OF THE COUNTY AND MUNICIPALITY OR COUNTY AND TOWNSHIP OF THE COSTS DESCRIBED IN DIVISION (A) OF THIS SECTION. THE ARBITRATORS' REPORT SHALL BE IN WRITING AND SIGNED BY AT LEAST TWO OF THE ARBITRATORS. IT SHALL BE ISSUED WITHIN FORTY-FIVE DAYS OF THE APPOINTMENT

OF THE THIRD ARBITRATOR. THE ARBITRATORS' REPORT SHALL BE FINAL, EXCEPT THAT THE REPORT MAY BE APPEALED TO THE COMMON PLEAS COURT IF THERE WAS GROSS ABUSE OF DISCRETION OR FRAUD BY ONE OR MORE OF THE ARBITRATORS. ANY PARTY TO THE ARBITRATION MAY ENFORCE THE REPORT OF THE ARBITRATORS BY CIVIL ACTION. THE LOSING PARTY TO THIS APPEAL SHALL PAY THE REASONABLE ATTORNEY FEES OF THE WINNING PARTY.

### **HIGHWAY PATROL CASES**

The Highway Patrol always charges under the Revised Code, which means the county bears the costs of prosecution, incarceration, and most public defense. The fines from Patrol cases go 45% to the State GRF, 10% to counties, and 45% to the county or city that operates the court.

This gives some municipalities a windfall. They receive court costs to cover the cost of their operations, plus 45% of the fine revenue in cases in which they bear no expenses (since counties are paying the costs for these offenders). The windfall amounts to about \$7.8 million for municipalities statewide.

The Commission recommends distributing Highway Patrol fines (after paying the \$25 "State fine" for public defense, victims, and law libraries) as follows: 55% to the county general fund and 45% to the State GRF. The Commission also recommends that the county pay the costs associated with the patrol's misdemeanor arrests (as under current law).

In an exception to the proposed general rule, the State would not be responsible for the operating cost associated with the Patrol's arrestees. Instead, the 55% would go to counties to cover those costs.

Currently, the Highway Patrol's primary funding comes from the State gasoline tax. There has been speculation about shifting the Patrol's funding to another source, thereby shifting more gas tax revenue to highway construction. If this were to occur, it could influence the decision on what to do with Patrol fines. But, to date, the General Assembly has not made such a change.

### **LAW LIBRARY FUNDING**

#### **Current Law and Practice**

County law libraries currently receive funding from misdemeanor fines. The bulk comes from half the fines collected for State traffic and liquor law violations. This money is collected by court clerks and transferred to each county law library association. The governing

statutes (in Ch. 3375) are confusing, and should at least be simplified.

The Commission recommends eliminating this exception to the general rule, and instead fund law libraries through civil filing fees and a criminal fine distribution mechanism similar to collections for public defense and victims' reparations. This way, county law libraries would be funded by the entire court system, including civil, probate, domestic relations and criminal cases, better reflecting law library users. Mayor's court cases would also be assessed. (Also see STATE FINES, below.)

The Fines Committee used information from the Ohio State Bar Association's Law Library Committee and the Supreme Court's court caseload summary to analyze how much would be needed to fund the libraries. Under the Committee's plan, roughly half of the revenue would come from the criminal system and the other half from the civil system.

The recommended assessment would be \$5 for each criminal and small claims case and \$10 for each other civil case.

The Commission recommends amending current law to permit regional law libraries, allowing better economy of scale. Also, the law should allow courts and law libraries to waive the fine and the existing computerized legal research local court cost, and replace them with a reasonable fee for the law library association to provide the court with computerized legal research. Here is proposed language.

#### **Draft Language**

#### **§3375.48 COMPENSATION OF LAW LIBRARIAN**

The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the board of trustees of such association of a person to act as librarian thereof, or of a person to act as librarian and not more than two additional persons to act as assistant law librarians thereof, shall fix the compensation of such persons, which shall be paid from the county treasury.

IF TWO OR MORE COUNTY LAW LIBRARY ASSOCIATIONS JOIN TOGETHER TO FORM A REGIONAL LAW LIBRARY ASSOCIATION, THE COMMON PLEAS JUDGES OF THE COUNTIES SHALL FIX THE COMPENSATION OF THE LAW LIBRARIAN AND ANY ASSISTANTS APPOINTED UNDER THIS SECTION.

#### **§3375.49 COUNTY COMMISSIONERS TO PROVIDE SPACE**

For the use of the law library referred to in section 3375.48 of the Revised Code, the board of county commissioners shall provide, at the expense of the county, suitable rooms with sufficient and suitable bookcases in the county courthouse or, if there are no suitable rooms in the courthouse, any other suitable rooms at the county seat with sufficient and suitable bookcases. The librarian or person in charge of the law library shall receive and safely keep in these rooms the law reports and other books furnished by the state for use of the court and bar. The board of county commissioners shall heat and light any such rooms. The books, computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, other materials and equipment utilized in conducting legal research, and furniture of the law library association that are owned by, and used exclusively in, the law library are exempt from taxation.

IF TWO OR MORE COUNTY LAW LIBRARY ASSOCIATIONS JOIN TOGETHER TO FORM A REGIONAL LAW LIBRARY ASSOCIATION, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTIES SHALL PROVIDE SPACE, BOOKCASES, HEAT, AND LIGHT AS PROVIDED IN THIS SECTION.

### **§3375.50 LAW LIBRARY COURT COST**

(A) **Civil Filing Fee** EACH COURT SHALL COLLECT TEN DOLLARS AS AN ADDITIONAL FILING FEE IN EACH NEW CIVIL ACTION OR PROCEEDING, EXCEPT THAT, IN THE COURT'S SMALL CLAIMS DIVISION, THE ADDITIONAL FEE SHALL BE FIVE DOLLARS. THIS DIVISION DOES NOT APPLY TO ANY EXECUTION ON A JUDGMENT, PROCEEDING IN AID OF EXECUTION, OR OTHER POST-JUDGMENT PROCEEDING ARISING OUT OF A CIVIL ACTION. THE FEE IMPOSED UNDER THIS DIVISION SHALL BE IN ADDITION TO ANY OTHER COURT COSTS IMPOSED IN THE ACTION OR PROCEEDING AND SHALL BE COLLECTED AT THE TIME OF THE FILING OF THE ACTION OR PROCEEDING. THE COURT SHALL NOT WAIVE PAYMENT OF THE ADDITIONAL FILING FEES UNLESS THE COURT WAIVES PAYMENT OF ALL FILING FEES IN THE ACTION OR PROCEEDING.

(B) **Criminal Fine** THE COURT, IN WHICH ANY PERSON IS CONVICTED OF OR PLEADS GUILTY TO ANY OFFENSE OTHER THAN A TRAFFIC OFFENSE THAT IS NOT A MOVING VIOLATION, SHALL IMPOSE A FINE OF FIVE DOLLARS IN ADDITION TO ANY OTHER FINES OR COURT COSTS THAT THE COURT IS REQUIRED OR ELECTS TO IMPOSE UPON THE OFFENDER. THE COURT SHALL NOT WAIVE PAYMENT OF THE ADDITIONAL FINE, UNLESS THE COURT DETERMINES THAT THE OFFENDER IS INDIGENT AND WAIVES THE PAYMENT OF ALL FINES AND COURT COSTS IMPOSED UPON THE INDIGENT OFFENDER. [Similar language should be placed in the victims of crime reparation law (§2743.70) and the State public defender court cost/fine law, (§2949.091)]

(C) **Juvenile Court Cost** THE JUVENILE COURT IN WHICH A CHILD IS FOUND TO BE A DELINQUENT CHILD OR A JUVENILE TRAFFIC OFFENDER FOR AN ACT WHICH, IF COMMITTED BY AN ADULT, WOULD BE AN OFFENSE OTHER THAN A TRAFFIC OFFENSE THAT IS NOT A MOVING VIOLATION, SHALL IMPOSE A FINE OF FIVE DOLLARS IN ADDITION TO ANY OTHER COURT FINES OR COURT COSTS THAT THE COURT IS REQUIRED OR ELECTS TO IMPOSE UPON THE CHILD. THE COURT SHALL NOT WAIVE PAYMENT OF THE ADDITIONAL FINE UNLESS THE COURT DETERMINES THE JUVENILE IS INDIGENT AND WAIVES THE PAYMENT OF ALL FINES AND COURT COSTS.

(D) **Bail Forfeitures** WHENEVER A PERSON IS CHARGED WITH ANY OFFENSE OTHER THAN A TRAFFIC OFFENSE THAT IS NOT A MOVING VIOLATION AND POSTS BAIL, THE COURT SHALL ADD FIVE DOLLARS TO THE AMOUNT OF BAIL. THE PAYMENT SHALL BE RETAINED BY THE CLERK OF THE COURT UNTIL THE PERSON IS CONVICTED,

PLEADS GUILTY, FORFEITS BAIL, IS FOUND NOT GUILTY, OR HAS THE CHARGES AGAINST THE PERSON DISMISSED. IF THE PERSON IS CONVICTED, PLEADS GUILTY, OR FORFEITS BAIL, THE MONEY SHALL BE TRANSMITTED PURSUANT TO DIVISION (E) OF THIS SECTION. IF THE PERSON IS FOUND NOT GUILTY OR THE CHARGES AGAINST HIM ARE DISMISSED, THE CLERK SHALL RETURN THE PAYMENT TO THE PERSON.

(E) **Non-Payers** NO PERSON SHALL BE PLACED OR HELD IN A DETENTION FACILITY FOR FAILING TO PAY THE ADDITIONAL FEE, FINE, OR BAIL REQUIRED BY THIS SECTION. [Similar language should be placed into the failure to pay law, §2947.15, the victims of crime reparation law, §2743.70, and the State public defender court cost/fine law, §2949.091]

(F) **Distribution of the Money** ALL MONEY COLLECTED UNDER THIS SECTION SHALL BE TRANSMITTED ON THE FIRST BUSINESS DAY OF EACH MONTH BY THE CLERK OF THE COURT TO THE COUNTY TREASURER. THE MONEY THEN SHALL BE DEPOSITED BY THE TREASURER TO THE CREDIT OF THE LAW LIBRARY FUND HEREBY CREATED.

(G) **Court Computerization and Legal Research** ANY COURT MAY USE THE FEES PRESCRIBED IN SECTIONS 1901.261, 1907.261, 2303.201 OF THE REVISED CODE TO CONTRACT WITH THE COUNTY LAW LIBRARY ASSOCIATION FOR THE PURPOSES OF PROVIDING THE COURT WITH COMPUTERIZED LEGAL RESEARCH SERVICES OR OTHER SERVICES AGREED UPON BY THE COURT AND THE COUNTY LAW LIBRARY ASSOCIATION.

(H) **Definitions** AS USED IN THIS SECTION:  
(1) "MOVING VIOLATION" AND "BAIL" HAVE THE SAME MEANINGS AS IN SECTION 2743.70 OF THE REVISED CODE.  
(2) "DETENTION FACILITY" HAS THE SAME MEANING AS IN SECTION 2921.01 OF THE REVISED CODE.

## **§§3375.51 through 3375.53 MONIES COLLECTED FOR LAW LIBRARIES**

[Superceded. Repeal.]

## **§§3375.54 & 3375.55 USE OF MONEY & ACCESS TO PUBLIC OFFICIALS**

[Make technical amendments to refer only to §3375.50, rather than to §§3375.50 to 3375.53.]

## **§3375.56 ANNUAL REPORT; REFUND OF EXCESS**

On the first Monday of each year, the board of trustees of the law library association shall make a detailed statement to the county auditor, verified by the oath of the treasurer of the association, of the amount of the fines, FILING FEES and penalties COURT COSTS received under sections SECTION 3375.50 to 3375.53, inclusive, of the Revised Code, and of the money expended by the association.

If the total amount received under such sections during the preceding calendar year covered by such report exceeds the expenditures during the same period, the auditor shall certify such fact to the board which shall thereupon direct the treasurer of the association to refund proportionately to the treasurers of the political subdivisions from which such balance was received, not less than ~~ninety~~ SEVENTY-FIVE per cent of any unencumbered balance on hand from the preceding year.

### **LOCAL COURT COSTS**

Local court costs would remain similar to current law. The law should specify that local court costs can only be used for purposes under the court's or clerk's administration, and that the first \$25 of any fine cannot be waived unless the local court cost is waived as well.

### **STATE FINES**

Currently the so-called State court cost is \$20. \$9 goes to the Victims of Crime Reparations Fund. \$11 goes to the State GRF, to offset the cost of the State subsidy for public defense. These penalties are not true "court costs" as they do not pay for the operation of the court.

The Fines Committee initially recommended that these costs continue to go to the State Treasury, but be more honestly named "State fees". However, some judges questioned whether it was appropriate for the judicial branch to collect "fees". Questions were raised about whether a person could be jailed for not paying a fee. Based on the suggestions of Judge William Finnegan of the Marion Municipal Court, the Fines Committee proposed rolling what was the State court costs into a fine.

Under this proposal, the first \$25 of each fine collected would include both the \$20 now paid to the State treasury for the Victims' Reparation Fund and public defense and the new \$5 fine that would go to the county law library.

Any added amount assessed by the judge and collected by the clerk would go to the general fund of the entity whose police made the arrest. (See FINE DISTRIBUTION, above.)

There is concern that judges would waive the \$25, causing funding problems for victims, defenders, and law libraries. Thus, the Commission recommends that the part of the fine earmarked for law libraries and the State treasury be distributed before any money goes to the local general fund. The statute would make clear that an offender could not be jailed for failure to pay the first \$25. Judges would not be allowed to waive the first \$25 unless the local court costs were also waived.

### **ORDER OF PAYMENT**

When several financial sanctions are imposed, and an offender pays part, but not all, that is owed, the law currently sets the following repayment priorities: 1. Court costs (including State-imposed costs for victims'

reparations and public defenders); 2. Restitution; 3. Fines; 4. Supervision fees.

The Commission would modify this slightly by separating local court costs from State-imposed fines and by making clear that pay-for-stay and other reimbursements (such as supervision fees) get credited after restitution is made. The suggested priorities (Proposed §2949.111(B)):

1. Local court costs (those that defray the costs of operating the court--see proposed §2949.111(A)(1));
2. State fines (those imposed for victims' reparations, public defender services, and, if the fine proposals discussed later are adopted, county law libraries--see proposed §2949.111(A)(2));
3. Restitution;
4. Conventional fine or day fine;
5. Reimbursements (including pay-for-stay, supervision fees, etc.).

As now, the court could reorder this (e.g., require that restitution be made first). (Proposed §2949.111(C), in the general misdemeanor draft, above.)

#### HOW MUCH MONEY IS INVOLVED?

##### **Example**

How these recommendations will play out across the State depends in part on how courts respond to the new law library funding mechanism. Assuming that the additional \$5 for the law library is assessed in addition to the other fines and costs, the penalty (now \$73) for a typical speeding ticket would go as follows:

- **Fine (including State Fine):** \$50, of which \$25 would go towards the Victims Reparation Fund, State GRF for public defense, and the county law library association. The other \$25 would go to the general fund of the entity (typically a municipality, township, or county) which operated the police agency that made the arrest. (If a court does not raise the overall penalty, the local portion would be \$20 instead of \$25.) For Highway Patrol cases, \$13.75 would go to the county, and \$11.25 would go to the State GRF.
- **Local Court Costs and Fees:** \$23 to the entity (either a municipality or county) that operates the court.
- **State Court Costs:** \$0, since they would be rolled into the fine imposed by the judge.

## **Operating Costs**

It is very difficult to know with any precision how much the local misdemeanor system costs. The Commission has some information that allows it to estimate county jail costs, and information on indigent defense costs through the State Public Defender's Office. Otherwise, there is no definitive source of local misdemeanor system operating costs.

While there is no statewide data to tell us precisely how much counties spend on jails, a good estimate would be about \$240 million statewide. Looking at per diem costs, based on \$52.52 per day (the estimated average operating cost of a county jail slot) times 10,832 jail beds (the estimated full service jail days in facilities inspected by the Bureau of Adult Detention) over a year, the annual total operating cost of jails in Ohio can be estimated at \$207.6 million. The County Commissioners Association estimates that sheriffs' operations (which is primarily the cost of the jail) cost around \$266.4 million statewide. \$240 million is a compromise figure.

A 1994 study by Sentencing Commission intern Jennifer Boswell (see the third part of this report) found that half of the county jail beds are used by misdemeanants, and half of the misdemeanor cases are charged under State Code. Assuming the other half comes from municipal police departments, about one eighth of the cost of jails (or \$30 million) is due to misdemeanants arrested by municipal police departments and charged under the Revised Code. This, of course, varies considerably from county to county.

The impact of the Municipal League compromise, recommended by the Commission (costs would be assessed based on contracts or arbitration), is tough to predict. It depends on what the current practice is and how negotiations change those practices. Presumably, where municipalities charge for fiscal gain, there could be additional costs for them. Where municipalities charge under their own ordinances and pay for jail days, counties could pay for more beds.

## **Revenue**

On the revenue side, municipalities would get more money statewide, as they would get the fines from cases charged under State law by their police departments. The amount involved here would be some part of the estimated \$18.7 million that counties currently get in fines coming from police agencies other than the Highway Patrol. The

Commission estimates the total increase for municipalities from these fines to be around \$10 million.

Counties would receive an estimated \$7.8 million in additional Highway Patrol fines that currently go to municipalities that operate municipal courts.

The \$14.5 million that currently goes to law libraries would go to the general fund of the entity operating the police agency involved in the case.

Shifting State court costs to a fine should lead to a greater assessment, as each citation in a multiple case would have the fine assessed, rather than one assessment for each case.

### **Law Libraries**

Law libraries currently receive about \$14.5 million statewide in fine and penalty money. Most of that would otherwise go to counties under the current general rule (because it comes from State Code traffic cases).

Under the proposal, law library subsidies would come from the new filing fees and fines. The \$5 per criminal and small claims case and \$10 per other civil case would increase the amount of money available for law libraries statewide. The Commission predicts that, if the fees and fines are assessed and collected, total revenue would be \$19.5 million statewide compared to \$14.5 million today. However, many counties would not receive as much money under this proposal, particularly less populous counties that have disproportionately high Highway Patrol activity, which generates State Code traffic revenue today.

### **TRUTH IN SENTENCING**

The Commission favors truth in sentencing, where feasible. Seeing a fine grow with "costs" can be a startling experience for traffic offenders and other misdemeanants. While the distinctions between fines, costs, fees, and the like are meaningful, the offender really wants to know how much the violation will cost.

The Commission encourages judges to state the total financial penalty at sentencing, to the extent feasible. For example, on a simple speeding ticket, instead of saying "\$25 and costs" a judge would say "\$68". With the State court costs and law libraries being shifted to the fine portion of the penalty, in the typical example, the fine

would go from \$25 to \$50, and the total court costs would go from \$43 to \$23.

Additional court costs such as those for juries, witnesses, subpoenas, *et cetera* often are not known at the time of sentencing. Those costs could be rolled into the basic local court cost assessed in all cases. Or, each jurisdiction could develop a schedule of costs associated with a given category of dispositions. For example: all jury trials might cost \$300 per day; court trials might cost \$100 per day; guilty pleas at arraignment might have \$30 in court costs. Again, the judge could include this as part of the total stated penalty.

### **IMPROVING COLLECTION**

For any fine imposed, there should be some effort made to collect. Success in fine collection depends on several factors, but it largely boils down to: (1) assessing amounts within the offender's true ability to pay; (2) allowing the collecting entity to keep part of the money; and (3) making an effort to collect (letters, phone calls, etc.), rather than assuming the money is unrecoverable.

Several statutory changes also should help. The clerk, or another person authorized by law or by the court, should be formally authorized to enter contracts with public or private agencies to help collect.

The Code would clearly allow payments in installments, with a credit or debit card, by another electronic transfer, or by any other approach that the court considers just. The proposal would clearly allow the clerk to pay any fee assessed for the electronic transfer out of public money or assign it to the offender. It also would make clear that the offender could be ordered to pay the fee. (Proposed §2929.28(E)(1) & (2)) This refines current §2929.51(C), which would be repealed. The new law would cover all financial sanctions, rather than just fines, and extend the repayment period from two to five years.

Also, the proposal would encourage up front payments by allowing the clerk to charge a fee for administering a payment schedule. (Proposed §2929.28(E)(3))

As in S.B. 2 for felons, to further help collection, especially of restitution, any financial sanction would automatically be a civil judgment against the offender. The victim or governmental entity owed the money could seek civil enforcement of the judgment. The civil remedies

would supplement, but not preclude, enforcement of the criminal sentence. (Proposed §2929.28(D)) A financial sanction would not preclude a victim's civil remedies against the offender. (Proposed §2929.28(F))

Also, community service could be used in place of back fines or for court costs if the judge finds the offender indigent.

### **EARMARKED FINES AND OTHER ANOMALIES**

There are dozens of fines in the Revised Code that are earmarked for particular purposes. Many are associated with specific regulatory agencies. For example, the Department of Natural Resources' Division of Wildlife receives money from violations of hunting and fishing regulations that the Division enforces.

Other earmarked fines are used for purposes unrelated to the regulations they enforce. In many cases, the money is spent on purposes distantly related to the laws being enforced. In other cases, the fine money goes for some activity closely related to the law being violated.

Currently, fines for drunken drivers can be distributed to as many as five different funds. Some of the money is earmarked for incarceration, while other money is targeted for enforcement and education. Still, another part of the fine revenue goes toward treatment for indigent offenders. Fines for seat belt violations are funneled into six funds, related to seat belt education and emergency medical services.

The Commission would end certain earmarks and retain others. Earmarks directly related to a particular regulatory function should be retained. Others should be placed under the new general rule. A few others would be modified.

There are at least 120 of these exceptions to the general rule in the Revised Code. The Commission reviewed them.

Municipal, county, and State general funds would have to pick up the cost of programs supported by earmarked fines, but there would be additional general revenue from other fines that are no longer earmarked.

Underneath the brief description of the exception is the Commission's recommendation. "**General rule**" means the Commission would remove the exception, with fines following

the new general distribution rule. "**Keep exception**" means the Commission would keep the exception, with the money typically reverting to the agency making the investigation. In other cases, more detail is included in the recommendation. (The list comes from a Legislative Services Commission memo, *The Ohio Court System*, by Bill Heaphy.)

Typically, where the Commission recommends continuing an exception, the offense seldom makes it to the justice system because regulatory agencies often have other mechanisms to enforce them. Since these offenses rarely result in a jail term, most costs associated with them fall on the regulatory agencies. Therefore, the Commission felt that exceptions giving all fine revenue to the agencies were appropriate. However, if the offense could routinely result in jail time, the Commission would end the exceptional earmark and place it within the new general rule. Here is the list.

- **§109.11.** Fines collected from investigations involving the Attorney General. No other section mandates that fines go into the fund. General rule, but keep language establishing the fund.
- **§315.37.** Fines generated by trespassing on State canal lands go to the county engineer. General rule.
- **§325.36.** County Compensation Law provides that half of the fees collected, other than those prescribed, go to the person who turns in the violator. General rule.
- **§§343.01, 343.99, & 3734.57.** Solid Waste Management Districts law fines go to the district. Keep exception.
- **§§505.17, 505.172, & 505.173.** Township parking and noise resolutions, liquor permit noise resolutions, and junk vehicle resolutions. General rule.
- **§737.112.** Penalties for violations of State statutes and municipal ordinances enforced by municipal fire departments go to the municipal corporation's general fund. Keep exception.
- **§738.05.** Sanitary Police Pension Fund Law. Keep exception.
- **Title 9.** Agriculture Regulatory Law contains a number of exceptions to the general rule. Some call for a split between the State and a political subdivision. Others direct all the proceeds to the State Treasury. Keep exceptions, but amend those in which the money is split to direct the money to the appropriate State fund.
- **§955.44.** Dog and Kennel Fund fines go to the county treasury. Keep exception.

- **§959.13.** Cruelty to animals fines go to the local Humane Society if there is one, if not, to the municipality where the violation occurred. Keep exception where there is a humane society, follow the general rule if no society.
- **§1321.211.** Second mortgage loans, insurance premiums, pawnbrokers, and precious metal dealers laws fines go to the State Treasury for the Department of Commerce. Keep exceptions.
- **Title 15.** In Natural Resources Law, some sections allow the Director of Natural Resources to determine which fund gets the revenue. Keep exceptions, but more common criminal offenses (such as disorderly conduct) that occur on State parks, forests, nature preserves, etc. should follow the general rule.
- **§1901.024.** Allows Hamilton, Lawrence, and Ottawa Counties to get half of the fine revenue that arises out of municipal ordinance cases. For example, in Hamilton County, half the money for violations of Cincinnati municipal ordinances goes to Hamilton County, instead of to Cincinnati as the general rule requires. General rule. Otherwise, the three counties would get a windfall on cases arising from municipal police departments.
- **§2733.38.** Quo Warranto Law fines are paid into the county treasury "for use in schools pursuant to §3313.32". General rule, since the quoted section was repealed in 1985.
- **§2917.41.** Public Transit Law fines go 75% to the county and 25% to the transit system involved. General rule.
- **§§2923.32 & 2923.35.** Forfeitures for Corrupt Activity. Keep exception until forfeitures are addressed by the Commission.
- **Ch. 2925.** S.B. 2 modified mandatory drug fines, setting them at half the maximum fine for F1s, F2s, and F3s. All the fine money goes to law enforcement trust funds of the police agencies involved. Keep exception.
- **§2935.33.** Fines from someone believed to be alcoholic or intoxicated may be ordered paid to the treatment program or to the local drug addiction services district. General rule.
- **§§3375.50-3375.53.** Law Libraries. Fund law libraries through criminal fines and civil filing fees (see LAW LIBRARY FUNDING, above).
- **§3701.57.** Fines for various Department of Health violations go to the State Treasury. Keep exception for activities regulated by the Department.

- **§§3704.16, 3704.161, & 3704.99.** Auto emission standards violators' fines go to the political subdivision of the arresting law enforcement agency. General rule.
- **§3707.53.** Local Board of Health Law fines under Chapter 3707 (contagious diseases, food and dairy inspection, sanitary plants, etc.) go to the political subdivision that operates the local board. Keep exception.
- **§3710.15.** Asbestos Law implies that fine money goes to the State Treasury for the Department of Health. Keep exception, making clear the money goes to the Department of Health as the agency that regulates asbestos.
- **§3713.09.** Fines for Bedding and Stuffed Toy Law violations go to the Department of Industrial Relations. Keep exception.
- **§3715.20.** Certain Pure Food and Drug Labeling Law fines go to local health departments. Keep exception.
- **§3715.73.** Certain other Pure Food and Drug Law fines go to the State Treasury via the enforcing Department of Agriculture or the Pharmacy Board. Keep exception.
- **§3719.21.** Controlled Substance Law fines. Keep exception (see Ch. 2925, above).
- **§3719.36.** Poison Control Law fines go to the Pharmacy Board. Keep exception.
- **§3722.04.** Adult Care Facilities Law fines go to the Department of Health via the State Treasury. Keep exception.
- **§3723.14.** Radon Law fines go to the Department of Health via the State treasury. Keep exception.
- **§3724.06.** Community Alternative Homes Law fines go to the Department of Health via the State Treasury. Keep exception.
- **§3737.02.** Underground Storage Tank Law allows the State Fire Marshall to direct fines to the Underground Storage Tank Administration Fund. Keep exception.
- **§3743.68.** Fireworks Law fines go half to the entity that files the complaint and half to the entity that enforces the complaint. General rule.
- **§3770.06.** Lottery Law fines go into a special fund in the State Treasury. Keep exception.
- **§§3911.18, 3933.05, & 3999.08.** Insurance Law fines go to the county treasury "for use in schools pursuant to §3313.32". Modify exception so that fine money goes to the State Treasury or the appropriate fund in the Ohio Department of Insurance. Also, the quoted section was repealed in 1985, so the reference should be repealed.

- **§§4105.20, 4107.22, & 4107.24.** Industrial Relations Law fines go to the Department of Industrial Relations via the State Treasury. Keep exceptions.
- **§4109.13.** Employment of Minors Law fines and those for School Attendance Law violations are credited to the school district where the offense was committed. The Commission recommends repealing this section. General rule, if kept.
- **§4123.50.** Fines for failure to pay workers compensation premiums go to the general fund of the subdivision where the offense occurs. Keep exception, but revise it so the revenue goes to the AG's office, since it is typically prosecuted by the AG (see §109.11, above).
- **§4141.38.** Fines for failure to pay unemployment compensation premiums go to the State Treasury and the Bureau of Employment Services. Keep exception.
- **§4143.20.** Personal Placement Services Law fines go half to the county and half to the State Treasury for the Department of Commerce. Keep exception with all fines going to Commerce.
- **§4151.45.** Mine Safety Law fines go to the Department of Industrial Relations via the State Treasury. Keep exception.
- **§4169.03.** Skiing Safety Law fines go to the Department of Industrial Relations via the State Treasury. Keep exception.
- **§4301.57.** Half of the fines for Liquor Law violations go to the State Treasury and half to the county where the prosecution occurred. General rule.
- **§4501.06.** This refers to a number of highway related fee statutes, but not fines. In one case (recreational vehicle fees and fines) another statute conflicts with this one. Since most of the statutes referred to here are regulatory, the fine money should go to the Highway Safety Fund. But, fines should follow the general rule for violations under §4507.13, as it relates to commercial driver licenses, and §4519.11, governing vehicles such as all terrain vehicles and snowmobiles.
- **§4501.11.** Creates the State Fair Security Fund and Security and Investigations Fund in the Department of Public Safety Budget. Some of the State share of Highway Patrol fines goes from the State GRF into these funds, based on temporary law in the budget act. Keep the current distribution of Patrol fines. Money would continue to be distributed by the budget act.
- **§4501.16.** Ohio State Patrol, See §5503.04. General rule.

- **§4507.17.** DUI law. See §4511.99. Modified general rule. Simplify so that fines follow the general rule, except for the Enforcement and Education Fund (\$25-\$210 per case depending on the number of priors), where a portion goes to law enforcement.
- **§4507.99.** County or municipal Indigent Driver Alcohol Treatment Funds receive half of the fines for DUI/DUS to be used by local boards for treatment. General rule (see §4507.17, above).
- **§4511.193.** \$25 from each drunken driving fine goes to the indigent driver alcohol treatment fund. Modified general rule (see §45407.17, above).
- **§§4511.99 & 4501.17.** Rules related to traffic penalties, including the fine laws for drunken driving, and their distribution. General rule.
- **§4513.221.** Equipment and Loads Law allows townships to regulate vehicle noise and loads. Fines go to the township general fund. General rule.
- **§4513.263(E).** Seat Belts fines go to a number of different funds, with the majority going to emergency medical services. Keep exception since this is a minor misdemeanor that is almost regulatory in nature.
- **§4513.35.** Governs fines for most State Code traffic violations. After the law library gets its cut, the money must go to the fund for maintenance and repair of highways within the county. General rule. County commissioners could then transfer the money into an appropriate fund.
- **§4519.11.** Special Vehicle Law fines go to the State Recreational Vehicle Fund. General rule.
- **Title 47.** Occupational Licensing Law contains a number of exceptions related to licensing boards. The fine money typically goes into the State Treasury for the particular board involved. Keep exceptions.
- **§§5503.04 & 5537.16.** Lay out the distribution of fines from cases arising out of the Ohio Highway Patrol. Keep exception (same as §4507.17, above).
- **§5577.99.** Load Limit Law fines go to the county treasury and are credited to any fund for the maintenance and repair of roads. Keep exception.
- **§5589.13.** Fines for certain offenses committed on highways, (such as obstructing public highways, destroying bridges or culverts, etc.) are paid to county treasury and credited to any fund for the maintenance and repair of roads. Keep exception.

- **\$5593.20.** Fines for violating rules of local bridge commissions go to the appropriate bridge commission. Keep exception.
- **\$5743.15.** Fines for violating the licensing of wholesale and retail cigarette sellers go 75% to the municipality and 25% to the county of violation. General rule.
- **\$6103.29.** County Water Supply System Law fines go to whichever fund the county commissioners determine. General rule.
- **\$6117.45.** Sewer District Law fines go to the county sewer improvement or maintenance fund, as directed by the county commissioners. General rule.

## **FISCAL IMPACT OF THE MISDEMEANOR PLAN**

The Commission must analyze its recommendations with an eye toward their impact on State and local resources. This section outlines the Commission's staff estimates of the impact of some of the misdemeanor proposals.

It focuses on the misdemeanor sentencing proposals discussed earlier in this volume and traffic recommendations (discussed in Part 2), focusing particularly on their impact on county jails. The impact of changes proposed to the fine and operating costs laws are analyzed in context above.

### **IMPACT ON JAILS**

#### **Jail Crowding**

The face of jail crowding is changing. According to the Bureau of Adult Detention (BAD), the 1996 average daily population in Ohio's full service jails was 12,245. The design capacity was 13,665, making jails 89.6% full. In 1992, the average count was 11,808 with a design capacity of 12,419, 95.1% full. In 1996, 36 of the 94 full service jails have beds contracted out with some other jurisdiction.

Why the decline in jail crowding? Two factors are definitely at work. First, the number of jail beds increased. Full service beds increased from 11,808 in 1992 to 13,665 in 1996. Minimum security beds went from 319 in 1993 to 1,108 in 1996. Second, in response to S.B. 2, there has been a dramatic increase in funding for community misdemeanor programs via the Department of Rehabilitation and Correction's (DRC) Bureau of Community Sanctions. This probably diverts many offenders from full service jails.

The use of jail beds varies considerably from county to county. This is because the size and makeup of the jail populations can be very different. In some jails, the vast majority of prisoners are pretrial felons, in others, the majority are sentenced misdemeanants. In the Commission's 1994 study, the mean days served in Ohio's county jails ranged from 2.7 days to 31.1 days. BAD's reports show a range of less than one day to over 60 days in full service jails (including municipal jails).

Thus, the effect of a policy that changes length of jail

stays would differ from county to county. For example, encouraging the use of a summons in lieu of arrest might affect a jail that has an average time served of 2.7 days much more than a jail that has an average time served of over 30 days. Conversely, lifting the cap on consecutive sentences would have the opposite effect.

#### **Misdemeanants in Jail**

Despite difficulties in estimation, some conclusions can be drawn regarding the number of jail days served by misdemeanants statewide. The Commission's 1994 study estimated that 43.0% of the jail days were served by sentenced misdemeanants. A survey by the Office of Criminal Justice Services in 1991 found 28% sentenced misdemeanors. A similar survey in 1988 put it at 32%. Using data from BAD, an estimate for full service jails (including larger municipal jails) is 32% sentenced misdemeanors.

#### **Misdemeanors Consecutive to Felonies**

The Commission recommends allowing misdemeanor jail sentences to run consecutively to felony prison sentences. This will increase the number of jail days served, as current law calls for those sentences to run concurrently. In the DRC's 1992 intake study, 1.25% of new prisoners had a misdemeanor as their second most serious commitment offense. Under current law, the additional incarceration cost of the misdemeanor is fairly small (perhaps some added time served pretrial as the court disposes of the misdemeanor).

If, under the proposal, 1.25% of DRC's prison intake (19,184 during CY 1996) would get consecutive misdemeanor time, there would be 240 additional misdemeanants in jails. Assuming the average time served is 16.4 days (the mean sentenced misdemeanor time served in our 1994 jail study), the change would mean about 3,933 more jail days statewide.

The cost of 3,933 incarceration days depends on where the days are served. In county jails, the estimated average cost is \$54.54 per day. Assuming 3,933 additional days, the increased cost to county jails would be \$214,506 statewide.

This estimate is likely to be low, because there is a larger pool of offenders coming to prison with at least some misdemeanor convictions that are not recorded (we have data only on the second most serious conviction--there may

be multiple felons with misdemeanor convictions that do not show up in these data). Also, there are presumably many cases where a misdemeanor is dismissed because of a pending felony, which would not be dismissed if punishments could run consecutively. In addition, a misdemeanant who has a felony conviction is likely to get more than the average time for the misdemeanor. Of course, it is tough to predict when a judge will choose to give consecutive sentences in these cases. Generally, when judges have the option elsewhere in the law, they select concurrent terms.

### **No Cap on Consecutive Sentences**

The Commission recommends lifting the cap on consecutive jail sentences for misdemeanors that do not arise out of the same incident. Serious misdemeanants sometimes receive six month jails. In fact a significant portion (about 12.9%) of jail days are served by these offenders. However, a very small portion of offenders actually exceed six months today. Thus, only a tiny portion of jailed offenders are affected by the current 18 month (540 day) cap.

In the Commission's 1994 study sample of just over 13,300 releases, only two had served 540 or more days. Given that few offenders reach the cap now, the impact of removing the cap should not be great statewide. However, if several inmates serve longer than 18 months in a particular jail, the effect on that jail could be dramatic.

### **Felony Drunken Driving**

However, the new felony drunken driving law should offset these and other changes. It will take hundreds of the longest-term misdemeanants out of local jails. This is discussed under "Drunken Driving" below.

## **FINE INCREASE AND COLLECTIONS**

The Commission would increase the maximum fine for minor misdemeanors from \$100 to \$150. Again, it is difficult to get a good handle on how this will effect revenue and court operations. Presumably, it will mean some higher fine assessments, which in turn could lead to higher collections. However, in some cases it could lead to lower collections or higher costs, since some offenders might choose to contest a higher fine rather than pay at the violations window.

A look at our sample of misdemeanor cases where there was only one charge showed that 16.0% of the criminal minor misdemeanor offenses (an estimated 7,190 statewide) had a

fine of \$100. 1.4% of the traffic cases (about 10,500) were at the maximum. While a greater percentage of criminal fines were at the maximum, a there was a greater number of traffic cases. Assuming for those cases an average of an additional \$10 per case was collected, then the additional amount raised would be \$176,520.

### **MAYOR'S COURTS**

The Commission recommends that the mayor's courts register with the Supreme Court and report on their caseloads. The reports would be similar to those submitted by municipal and county courts (minus civil cases, which do not go to mayor's courts). Thus, the number of misdemeanor, OVI, and other traffic cases filed and terminated would be reported. The Supreme Court would be asked to compile and publish the statistics along with those of the State's other courts.

It is difficult to assess precisely the impact of the proposals on mayor's courts because there is not much information available on their operations. The Commission's staff estimated that 439 mayor's courts were in operation during 1993. They are for the most part much smaller than the smallest municipal and county courts. Overall in 1993, they handled about 325,000 cases--about 14.4% of the total misdemeanor caseload statewide. The average penalty (including fines, local court costs, and State court costs) for a 10 MPH over limit speeding ticket was less than the average penalty for municipal and county courts (\$59 versus \$68). Mayor's courts bring in an estimated \$20.4 million in total revenue, and cost about \$9.08 million to operate.

Requiring mayor's courts to compile and report caseload information will cost municipalities with mayor's courts some staff time, although some mayor's court clerks already compile this information. Others (particularly small ones, with tiny caseloads) may elect not to hold mayor's court rather than do the reporting. In 1994, our survey asked mayors whether they would favor reporting requirements similar to those recommended by the Commission. 60% said no.

As repository, the Supreme Court might have to develop rules, help train mayor's court staffs in reporting, and compile and publish the data. This may require an additional staff member.

## **TRAFFIC RECOMMENDATIONS**

### **Drunken Driving**

The future may look very different for jails because of changes to the drunken driving law in S.B. 166 (effective October, 1996). The largest single offense for which people are in Ohio's jails is drunken driving, with multiple drunken drivers making up the largest portion. These offenders often serve 180 days or more.

By mandating that those who commit five drunken driving offenses within six years serve a prison term (and by allowing fourth offenders into community-based correctional facilities), S.B. 166 should eventually divert hundreds of long-term offenders from local jails to State facilities. This should create space in jails for others.

While it is tough to predict the bill's impact with certainty, it could be dramatic, dwarfing any additional jail days resulting from the Commission's proposals. The number of felony drunken drivers sent to prison increases monthly. Statewide, early estimates are that about 3,900 future inmates will be in State facilities rather than local jails, freeing about 1,950 beds at any one time. Since there always are offenders that can take jail space vacated by others, the impact of S.B. 166 may never seem that obvious, but it is nonetheless real.

### **License Suspensions**

The impact of the driver's license suspension proposals is also difficult to analyze. Driving under suspension and no operator license offenders account for about 4.5% of the days served in county jails. It is possible that more people will be under license suspensions in Ohio. In converting many of the license suspensions to the new classifications, many of the minimum or maximum periods of suspension for the same activity increased. Many others stayed the same, and few saw the minimum or maximum range decreased. Given that, this plan could result in more people with suspended licenses.

However, recent changes in law about failure to file accident reports and the removal of the provision allowing a judge to suspend a license when recklessness is found could reduce the number of suspensions.

Will the net effect be more people arrested for DUS (causing greater pressure on courts and jails)? All things equal, it would. However, the recommendations also call

for greater flexibility in granting driving privileges for activities such as treatment, education, and health care as well as employment. And the proposals encourage more unlicensed persons to get licenses. This could reduce the number of people illegally driving with suspended licenses.

Also, the penalty for failure to reinstate a license would be reduced from M-1 to M-3, with the additional license suspension removed. Related to this is the reworking of the driving without a valid license statute, so that some M-1s would drop as low as M-4. The net result will be fewer total jail days served by these offenders.

### **Speeding Priors**

Another proposal that could have an impact is raising the number of priors that increase speeding to an M-4 from one to two. While most of these defendants plead guilty, there are hundreds of trials for M-4 traffic offenses, many of which have public defenders assigned. Thus, this provision could increase the amount of fines collected, decrease the number of defendants asking for public defenders, and decrease the number of appearances and trials for speeders.

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