

June 28, 2022

Sara Andrews
Executive Director, Ohio Criminal Sentencing Commission
Sent via email to: Sara.Andrews@sc.ohio.gov

Dear Director Andrews:

We, the undersigned, submit this public comment in response to the proposed amendments to the Rules of Superintendence regarding the creation of a felony sentencing database.

When plans for this database were announced, it elicited hope and excitement around Ohio from those well aware how policymaking, legislating, and judicial actions suffer from a lack of available data about our state's criminal legal system.

That is precisely why we, and so many others, have long advocated for data collection that will best inform and guide Ohio's decision-makers and numerous stakeholders as we all navigate a very complex, multi-pronged criminal legal system with impacts reaching throughout the state in countless ways.

We also recognize the need to get as much of this right with this opportunity now before us. The quicker Ohio can benefit from a comprehensive, informative, and accessible database the better.

In this spirit, the undersigned have two major concerns with how plans for the sentencing database are proceeding. One concern regards language in the proposed Rules of Superintendence about court records; the other involves operation of the database itself. While the second concern is not explicit to any language in the proposed Rules of Superintendence, it is a serious enough concern we include it here to ensure it is noted.

ACCESS TO COURT DATA

These proposed Rules of Superintendence treat data obtained by, or on, the sentencing data platform as exempt from the definitions of "case document" and "administrative document." In other words, all court documents received and used for the sentencing database will be unavailable to the public, the news media, legislators, researchers, and more.

This proposed language further explains the lone exception to this will be a public portal for the sentencing database:

The Ohio Criminal Sentencing Commission, with the approval of the Supreme Court, may make documents and data available to the public via a portal on the platform.

The biggest concern with this language is it allows for a worst-case scenario where no data is released via a/the public portal. There are no guarantees for any public access at all.

Otherwise, even with a Sentencing Commission and Supreme Court totally committed to preparing and disclosing as much data as possible via the public portal, capacity reasons will likely mean some data and issues are prioritized over many others. After all, people and stakeholders desire different data for countless reasons. Some want data on domestic violence. Others want the same for gun convictions. Still others seek court information on human trafficking. The need for such information is immense.

In addition, the proposed language explaining this data would still be available via its originating source, i.e. the individual courts, is not adequate to satisfy our concerns. That data is all currently available via its originating source.

The historical and ongoing problem for people who need to have access to such has always been an issue of capacity. Very few, if any, are equipped to contact up to 88 different common pleas courts and navigate the cumbersome process of getting their records requests adequately fulfilled in a timely manner from multiple sources. These concerns are compounded by courts that refuse to acknowledge or comply with records requests.

The undersigned believe the ultimate result of centralized data collection should be a system where Ohioans and others can request and receive data, ideally via an accessible and searchable database.

LEVEL OF PUBLICLY AVAILABLE DETAIL

Our second major concern with current plans regards the level of information or detail from the sentencing database that will be reported to the public. Our understanding is the database will not reveal any information specific to individual counties, individual courts, or individual judges.

Instead, our understanding is the information will be presented or available in a way that, at its most detailed, will only reveal how “counties of a similar size” operate. This presents significant transparency problems.

To further illustrate these concerns, consider the offense of Drug Possession. According to data from the Ohio Department of Rehabilitation and Correction, for the past seven years, the number one reason someone was sent to an Ohio prison is for a drug possession conviction. So, this is a particularly relevant offense to examine.

A comprehensive felony-sentencing database would and should show exactly how individual judges, in individual courts, in individual counties, treat drug possession offenses and convictions in their respective courtrooms. To illustrate the type of information we believe must be included via the proposed felony-sentencing database, we have provided a one-page document further detailing the amount of and types of information that can and should be available to Ohioans. This enclosure is not an exhaustive list, but it illustrates our overall point.

Indeed, drilling down only to a level of information and data that ends with “counties of similar size” will be of little use to stakeholders, advocates, legislators, researchers, news media, and others.

Put another way, when some legislative proposals emerge or bills are introduced regarding mass incarceration and/or the criminal legal system, it is often wondered whether the problems the legislation seeks to improve are statewide problems. Or, do problems result from just some courts or judges in Ohio? Is a bill with statewide application and all the massive effort needed to pass that bill necessary? Or could much of the problem be solved with targeted education, advocacy and engagement at the local level? Again, a comprehensive, effective database will highlight how widespread certain problems are, or are not, across Ohio and, when they exist, where. Current database plans will not shed light on this level of information.

The creation of a felony sentencing database will be one of the most impactful developments to Ohio’s criminal legal and mass incarceration systems in decades. But only if the data provides Ohioans and stakeholders with complete and readily accessible information.

We understand the monumental task and rare opportunity at hand. We greatly appreciate the ongoing efforts by yourself, the Sentencing Commission, and others involved to explain, and answer questions regarding, the coming database. We look forward to continued discussion and stand ready to assist however we can. Replies to this letter can be directed to Gary Daniels, Chief Lobbyist, ACLU of Ohio, via email at gdaniels@acluohio.org or Jocelyn Rosnick, Policy Director, ACLU of Ohio, via email at jrosnick@acluohio.org on behalf of the undersigned.

Sincerely,

American Civil Liberties Union (ACLU) of Ohio
Black Lives Matter Cleveland
Common Cause Ohio
Ensuring Parole for Incarcerated Citizens (EPIC)
The Freedom BLOC (Black Led Organizing Collective)
Heartbeat Movement, Inc.
Ohio Fair Courts Alliance
Ohio Families United for Political Action & Change (OFUPAC)
Policy Matters Ohio
River Valley Organizing

FELONY SENTENCING DATABASE & DRUG POSSESSION

(Addendum to June 28, 2022 public comment letter submitted by ACLU of Ohio, Black Lives Matter Cleveland, Common Cause Ohio, EPIC, The Freedom BLOC, Heartbeat Movement, Inc., Ohio Fair Courts Alliance, OFUPAC, Policy Matters Ohio, and River Valley Organizing).

Below is an example of the types of data we believe should be available to the public and ultimately answered via a felony sentencing database. This document is centered around the felony offense of Drug Possession, the number one reason people have been sent to an Ohio prison the past seven years. There is surely plenty of other useful information to be gleaned from such a database with regard to Drug Possession, so the below list should not be considered exhaustive.

- How many total people are convicted of Drug Possession per year?
- How do those convictions break down re: felony level?
- Of people convicted, how many have Drug Possession as their most serious offense vs. one of 2+ offenses?
- How many people receive plea deals for Drug Possession? What are the details of those plea deals?
- How many defendants benefit from intervention-in-lieu of conviction? What are the details of their ILC?
- How many serve prison time?
- How many serve prison time vs. some other form of punishment or incarceration?
- How many serve time in a community-based correctional facility (CBCF) or local jail?
- How many go through a local drug court or similar diversion?
- How many serve no time (prison, CBCF, jail)?
- What difference in punishment does it make or appear to make when a defendant has a previous Drug Possession (and/or similar offense) conviction?
- If sentenced to prison, a CBCF, or jail what is the average length of stay?
- For those who go to or return to prison, a CBCF, or jail, how many do so as a result of violating post-release conditions and/or other sanctions?
- If they end up in or back in prison, a CBCF, or jail as a result of violating sanctions, how long do they serve?
- How many convicted of Drug Possession recidivate with a new Drug Possession conviction?
- How many convicted of Drug Possession recidivate with a crime/conviction that is not Drug Possession?
- How many apply for judicial release?
- How many receive judicial release?

And more generally, how does any/all of the below apply to any/all of the above?

- Percentage of total instead of how many total?
- Differences re: demographics – men/women, black/white, younger/older, etc.?
- How does this break down according to actual substance (fentanyl, heroin, multiple, etc)?
- How does this break down county-by-county?
- How does this break down judge-by-judge?