

Ohio Criminal Sentencing Commission
c/o Sara Andrews, Executive Director
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, Ohio 43215-3431

September 8, 2020

Re: Creation of a statewide sentencing database
Sent via e-mail to Sara.Andrews@sc.ohio.gov

Dear Director Andrews:



Ohio

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Hasan Kwame Jeffries
President

J. Bennett Guess
Executive Director

We write with regard to recent discussions and growing efforts to create a sentencing database here in Ohio. Like many others, the ACLU of Ohio has long been frustrated by the volume of important and crucial information and data that remains functionally inaccessible by criminal legal system stakeholders.

We agree with the assessment and concern others have expressed regarding the impact this lack of available data has on decision-makers; those tasked with directly and indirectly determining the fate of so many Ohioans. How are they to make fully-informed decisions when they are not, in fact, fully informed? Unfortunately, this is our ongoing reality in Ohio. Given the serious and often lifelong impacts the criminal legal system has on so many, we must strive for the best.

For these reasons, we appreciate your leadership, and that of Chief Justice Maureen O'Connor, the Ohio Criminal Sentencing Commission, numerous judges across the state, and others involved to finally make a sentencing database a reality in our state.

Based on remarks made by panelists at recent events, it appears the intention is to create a database that goes beyond just felony sentencing to include other aspects and developments in criminal cases. The ACLU of Ohio strongly endorses such an approach given how much is unknown about Ohio's criminal legal system.

For seven years in a row, Drug Possession has been and remains the number one reason people are sent to Ohio prisons. Using this single criminal offense as a reference point, here are several examples of what we do not know:

- The number of people in prison, now and over time, for drug possession previously convicted for the same or similar offenses.

- The number of people convicted and/or imprisoned for drug possession who later commit the same or a similar offense(s).
- If people are convicted and/or sent to prison drug possession at roughly equal rates by courts and judges across Ohio. Or are particular counties and judges outliers?
- A breakdown of exactly what substance(s) led to the drug possession charge. Are certain substances leading to more incarceration than others and at what rates?
- The number of people with a drug possession charge approved for intervention-in-lieu of conviction. Among those, which courts/judges grant it the least and the most?
- The number of people imprisoned for drug possession who apply for judicial release. How many are granted judicial release? Which courts grant it the least and the most? What relationships are there between frequency/denial of judicial release and the underlying offenses?
- For all the above, how does this break down via race? And age, gender, disability and numerous other factors? At what rates are these aspects of the criminal legal system mentioned above disproportionately affecting Ohioans along racial lines?

Indeed, if we can collectively accomplish the creation and utilization of a sentencing database that tracks and reveals all this information and more, it would be a major accomplishment in a state desperately needing meaningful progress on numerous criminal justice and mass incarceration issues. That said, the ACLU of Ohio also has some additional concerns and observations.

First, it appears the intention for this database is only for felony sentences, dispositions, and related information. However, that limitation ignores misdemeanor offenses and the juvenile system. We understand some advocates for the sentencing database anticipate a similar process and effort for at least misdemeanors in the future. The problem is any sentencing database that does not include data regarding misdemeanors and the juvenile system is incomplete and will not fully connect the dots between criminal sentencing, defendants, and their experiences at all levels of the criminal legal system.

Further, desire for such an Ohio database has been discussed for not years—but decades. Assuming success with this latest effort, how much longer would the wait be to incorporate misdemeanors and the juvenile system? Our concern is any anticipated minor delays will turn into delays of years or decades.

Second, we remain unclear who would have access to the information in the planned felony sentencing database. Is this database anticipated as a tool only for judges, prosecutors, and defense attorneys? Or is this data that will be widely available to all Ohioans, including stakeholders such as reform advocates, professionals in the fields of drug treatment, mental health, and reentry, academics, and everyone else?

The ACLU of Ohio advocates for as much access to this data as possible to anyone who wants it. The database should be planned and constructed with this goal in mind.

Related, we believe it is not enough to merely collect this data. Collection of data only gets us part way if there are not also frequent, comprehensive reports by entities such as (but not limited to) the Ohio Criminal Sentencing Commission regarding what this collected data further reveals about our criminal legal and mass incarceration systems.

If only some people and entities have access to this database and there are no plans or requirements regarding how that data is shared and reported, then its creation and implementation will be far from adequate.

The ACLU of Ohio will continue to follow the planning and development of this sentencing database and contribute thoughts and concerns when and where we believe they will be relevant and constructive. Likewise, please never hesitate to contact us if you believe we can be of assistance with this important effort.

Thank you for your leadership.

Sincerely,



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cc:

Chief Justice Maureen O'Connor, Supreme Court of Ohio
Justice Michael Donnelly, Supreme Court of Ohio
Judge Ray Headen, Eighth District Court of Appeals
Judge Gene Zmuda, Sixth District Court of Appeals
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Douglas Berman, Executive Director, Drug Enforcement & Policy Center