Office of the Ohio Public Defender

Timothy Young, State Public Defender

Recodification Committee	Reagan Tokes Act

• Maximum sentence is calculated by adding 50% of the longest minimum sentence to the minimum sentence
  ○ Ex. Individual is sentenced to 2-year mandatory firearm specification, 10 years for rape, 10 years for aggravated robbery, and 6 years concurrent for burglary
  ○ Minimum Sentence is 22-years (2+10+10 with 6 years for burglary served concurrent)
  ○ Maximum Sentence is 27 years (22 + 50% of 10)
	• Maximum sentence is calculated multiplying the minimum sentence by 150%
	  ○ Ex. Individual is sentenced to 2-year mandatory firearm specification, 10 years for rape, 10 years for aggravated robbery, and 6 years concurrent for burglary
	  ○ Minimum Sentence is 22-years
	  ○ Maximum Sentence is 30-years 150% x (10 + 10)
	  ▪ 2-year mandatory gun spec is not included in the calculation

• Indefinite sentencing applies to all felonies	• Indefinite sentencing applies to felonies of the first and second degree and some third-degree felonies ○ Bill applies to aggravated vehicular homicide, aggravated vehicular assault, sexual battery, unlawful sexual conduct with a minor, GSI, assisted suicide, and robbery & burglary with two or more priors
• There is a presumption for release at the expiration of the individual's minimum prison term for all felonies exception felonies of the first and second degree	• There is a presumption for release at the expiration of the individual's minimum prison term for all felonies
• Judicial Release is available to all individuals serving non-mandatory offenses. Individuals are eligible after 30 days for sentences under 3 years, after 180 days for sentencings 3-5 years, and after serving 50% of a prison term for sentences over five years	• No changes to current judicial release law
• There will be no parole hearings unless an initial determination is made to extend an individual's sentence. If there is cause, the matter is referred for a hearing within six months before one or more members of the parole board or one or more hearing officer.	• DRC may rebut the presumption of release at a hearing. DRC can extend the sentence for a "reasonable" period of time, and conduct multiple hearings throughout an individual's prison term to rebut the presumption of release

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If the sentence is extended, the individual has a right to a full board hearing to review the extension with the assistance of counsel • Parole board must consider the following factor when deciding to extend a sentence (1) whether the individual committed an infraction of the institution that poses a threat and (2) whether individual completed any institutional programming to address all the individual's risk and needs	• Presumption of release can be rebutted by (1) showing that while the individual was incarcerated they committed an infraction or violation of law that poses a threat and demonstrates that the individual is not rehabilitated (2) the individual was placed in extended restrictive housing at any time within the year preceding the hearing or (3) at the hearing the individual is classified as a DRC security level three, four, five, or a higher security level
• Individuals must be released without supervision upon reaching their maximum sentence	• Individuals must be released upon reaching their maximum sentence
• Post-release control is replaced with parole	• Parole is not available for individuals with indefinite sentences
• Parole supervision can be waived for fourth and fifth degree felonies based on a risk-assessment. Non-reporting parole is available for third degree felonies based on risk-assessment. Parole is not to exceed five years for aggravated murder, murder, rape and felonies of the first degree; three years for felonies of second and third degree; and one year for felonies of the fourth and fifth degree	• All individuals released after serving an indefinite sentence must be on post-release control. Five years for felonies of the first degree, three years for second degree felonies that are not sex offenses, three years for third degree felonies that are not sex offenses
• A violation of parole that is a new felony offense can result in the individual serving the remaining prison time imposed until the maximum prison sentence is reached o Ex. Individual is sentenced to 10-15 years and granted parole. Total, the individual will serve 10-15 years in prison even if a parole violation should occur	• A violation post-release control can result in a nine-month prison sentence and the maximum cumulative prison term for all violations cannot exceed ½ of the minimum prison term o Ex. Individual is sentenced to 10-15 years and placed on post-release control. Total, the individual could serve 10-20 years in prison if a post-release control violations should occur
• Individuals confined for felonies of the fourth and fifth degree can earn credit towards early release for up to 15% of their sentence for completing DRC activities and programs	• All individuals sentenced under indefinite sentencing, except those servicing for a sex offense, can earn a 5-15% reduction of their sentence based on the level of offense as determined by DRC for "exceptional conduct while incarcerated"

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Sentencing Schemes in Ohio

Today, Recod, and Reagan Tokes

First Example – Single Count

1 F-1 with a 10 yr sentence

Present law: Sentence to 10 yrs. Could do up to 15 if D violates PRC after release.

Recod: Sentence would be 10-15. D is parole eligible after 10. If violates parole D could serve any remaining time. Case ends if D serves all 15.

Reagan Tokes: Sentence would be 10 -15 yrs. D could serve another 5 on PRC if violated. The maximum potential time is 20 yrs.

Second example – Multiple Counts

3 F-2s max and stacked with 8 yrs on each

Present law: Sentence is 24 yrs. In addition, if D violates PRC could do up to 12 more so maximum potential time is 36 yrs.

Recod: Sentence is 24 – 28. Parole eligible after 24. If violates parole D could serve 4 more (1/2 of single highest felony sentence). Case ends if D serves all 28.

Reagan Tokes: Sentence would be 24-36. D could serve another 12 if PRC is violated. The maximum potential time is 48 yrs.

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Appellate Sentencing Review 12/14/2017

The problems of appellate review of felony sentencing.

Judge Sean C. Gallagher, Ohio Court of Appeals, 8th District

What is the current standard of review for felony sentencing in Ohio?

In *State v. Marcum*, the Supreme Court of Ohio abandoned the abuse of discretion standard and adopted the clear and convincing standard from the language in R.C. 2953.08. This brought the standard in line with the statue.

If Marcum fixed the standard of review, why is there still a problem?

Marcum was problematic for several reasons. Marcum appears to have revived a provision of the 1997 version of R.C. 2953.08(G) that was excised by the legislature in 2000. Thus, *Marcum* is premised on a statutory principle no longer in the statute.

In the 1997 version of the sentencing review statute, the legislature expressly provided that an appellate court may reverse, only "if the court clearly and convincingly finds," among other alternatives, "that the record does not support the sentence." R.C. 2953.08(G) (1)(a), eff. Jan. 1, 1997; *State v. Phillips*, 8th Dist. Cuyahoga No. 77082, 2000 Ohio App. LEXIS 4773, 6 (Oct. 12, 2000)

While the 1997 version of R.C. 2953.08(G)(1)(a) was in effect, courts reviewed the sentencing factors under R.C. 2929.11 and 2929.12 when determining whether the sentence was unsupported by the record. The legislature, however, removed the language of subdivision (G)(1)(a) starting with the version of R.C. 2953.08 effective October 10, 2000.

Did Marcum provide clarity for the term 'contrary to law'?

No. For over twenty years courts have debated the scope and meaning of this term. For some it means a sentence outside the authorized range. For others it means a sentence that failed to consider a mandatory provision in the law. For others it simply means a court didn't consider a statute or didn't give the required weight the court should have given to a statutory principle or factor.

Paragraph 23 of *Marcum* has left the appellate judges and appellate practitioners hanging.

P23 "We note that some sentences do not require the findings that R.C. 2953.08(G) specifically addresses. Nevertheless, it is fully consistent for appellate courts to review those sentences that are imposed solely after consideration of the factors in R.C. 2929.11 and 2929.12 under a standard that is equally deferential to the sentencing court. That is, an appellate court may vacate or modify any sentence that is not clearly

and convincingly contrary to law only if the appellate court finds by clear and convincing evidence that the record does not support the sentence."

Why is paragraph 23 in Marcum problematic?

The problem is appellate practitioners and appellate panels are equating a sentence that is "unsupported by the record" with one that is "contrary to law." This is a problem because if you look closely at 2953.08(G)(2)(a) and (b) you'll see there is no review for individual sentences under 2929.11 or 2929.12 under division (a). That section is for specific sentences like consecutive sentences under 2929.14(C)(4). That means the only way to review a 2929.11 or 2929.12 appeal of a sentence under the current version of R.C. 2953.08 is to assert the statute is somehow "contrary to law."

Why is that a problem?

Because in paragraph 7 of *Marcum* the Supreme Court expressly found that the sentence imposed in the case was not "contrary to law." Marcum's received a single ten-year prison term that was within the statutory range. So how do we review a sentence that is not covered by the express provisions of what is deemed "otherwise contrary to law" under R.C. 2953.08(G)(2)(a)?

Is there an explanation for why Marcum went in this direction?

Marcum appeared to be trying to fill the void of the review of sentences not covered under R.C. 2953.08.

Marcum revived the permissible basis for reversing a sentence if the sentence is unsupported by the record, but it was done without regard to the "contrary to law" framework necessary to harmonizing division (G) with division (A) of R.C. 2953.08. Because *Marcum* determined that the sentence was not contrary to law, but the appellate court could nonetheless review to determine whether the sentence was supported by the record, *Marcum* necessarily imposed a review outside the scope of R.C. 2953.08(A), although the appellate review codified in R.C. 2953.08(G)(2) was adopted. Marcum at ¶ 23.

So how does an appellate court determine if the record does not support the sentencing court's decision?

Marcum tells us we should review these sentences under a deferential standard, but many practitioners and appellate panels are left wondering how to apply that standard? Does it mean appellate courts should re-weigh the trial court's sentencing considerations? Should appellate panels just accept a trial court's rationale if the trial court indicated they considered everything? Should there be a difference in reviewing "the record does not support" sentences between concurrent terms and consecutive terms?

Does this problem extend to the review of consecutive sentences?

Yes. In *State v. Foster*, 109 Ohio St.3d 1, the Ohio Supreme Court severed R.C. 2929.19(B)(2) as unconstitutional. At the time, the section provided that "The court shall impose a sentence and shall make a finding that gives its ***reasons*** for selecting the sentence imposed in any of the following circumstances * * *."

Subsequent to *Foster*, with respect to consecutive sentences, *Oregon v. Ice* declared that the Ohio Supreme Court was wrong, however, *Ice* only dealt with consecutive sentences and division (B) went further, so at least parts of that rule were left undecided.

Didn't HB 86 fix this?

No. In HB 86, effective at the end of 2009, the legislature removed the part of division B that required reasons for certain sentences.

Since the reasons requirement was removed from division B, there is no requirement that the trial courts must give reasons before imposing a sentence. This renders any review of consecutive sentencing beyond whether the R.C. 2929.14(C)(4) findings were made tenuous. Many appellate panels still review to see if the record supports the findings, but without reasons, that analysis is suspect. R.C. 2929.19(B) would have to be amended to include a "reasons" requirement if meaningful review is going to take place.

Thus, a trial court is not required by Crim.R. 32(A)(4) to give reasons supporting its decision to impose consecutive sentences.

See *State v. Bonnell*, 140 Ohio St. 3d 209 *, 2014-Ohio-3177, 16 N.E.3d 659, 2014 Ohio LEXIS 1934, 2014 WL 3628449

Is there a case that offers us an example of why this is a problem?

Yes, see *State v. Beverly*, 2d Dist. Clark No. 2015 CA-71, 2016 Ohio 8078. Beverly received a 50-year sentence while his codefendant's received a 13.5-year sentence. The disparity was based on Beverley's prior record. The appellate panel affirmed in a 2-1 vote with the dissent noting: "Beverly's case as approached by the majority is illustrative of the fact that "appellate review of sentencing is under assault."

What's the answer?

We need a new R.C. 2953.08. The best approach is to get rid of "contrary to law" and replace it with something simpler and definable.

What should be in play?

We should require trial courts to identify the R.C.2929.12 factors the court found relevant or persuasive for the sentence imposed. This should at least be done for consecutive sentences so we have something tangible to review. The R.C. 2929.14(C)(4) "findings" are just legal gibberish.

Should the standard go back to an abuse of discretion?

Yes. R.C. 2929.12 already talks about a trial court's discretion so why deviate from that in R.C. 2953.08? We can have an abuse of discretion standard for all sentencing review, but consecutive sentences, the ones that give everyone the most concern, should be subject to making the trial court justify its deviation from a standard concurrent sentence. We could replace the findings language in 2929.14(C)(4) with a requirement that trial judges identify the factors in R.C. 2929.12 and the overriding principles in R.C. 2929.11 that were relevant or persuasive to the sentence imposed. The review of those sentences wouldn't be perfect, but you'd at least have judges articulating why they were doing what they were doing. You'd also have a means for appellate panels to give some deference, but look and see if the sentence is really justified.

Should concurrent sentences within a range be treated differently from consecutive sentences?

Yes. Standard sentences within the proscribed range could still be appealed, but there should be a presumption of proportionality and consistency since they fall within the range determined by the legislature.

Are we creating a Blakely problem by requiring courts to reference the factors?

No. I see no *Blakely* issues with identifying factors. By requiring judges to identify the factors we are not increasing the maximum sentence for any crime. Consecutive sentencing has always been discretionary. I don't read anything in *Blakely* or *Oregon v. Ice* to disturb that view. *Blakely* has unfortunately become like the "boogie man" in a 5 year olds head at midnight. We need to stop thinking everything is controlled by some distorted interpretation of *Blakely*. Ohio statutes are nothing like the Washington statute at issue in *Blakely*.

PROPOSED R.C. 2953.08 12/14/2017

This version allows for appeal of all sentences and uses an abuse of discretion standard for all sentences. It creates a presumption of proportionality and consistency when the sentence(s) fall within the proscribed range for the offense(s) and where multiple sentences are imposed, those sentences are run concurrent to each other.

Where multiple sentences are imposed consecutive to each other the trial court is required to state the relative factors under R.C. 2929.12 that form the basis of the consecutive sentence. Where consecutive sentences are in play, defense counsel at sentencing shall raise those mitigating factors that support the imposition of concurrent terms, while the prosecutor shall raise those aggravating factors supporting the imposition of consecutive sentences. The trial court shall state the factors the court deemed relevant to the imposition of consecutive sentences. The trial judge may consider and identify any other factors not raised by the parties relevant to a particular sentence.

Appeals by the Defendant

(A) Apart from any other right to appeal as provided by this section, a defendant who is convicted or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant only in the following circumstances:

(1) The trial court abused its discretion in determining that the individual felony sentence comports with the principles and purposes of felony sentencing as set forth in 2929.11 and 2929.12 of the Revised Code. ***(This division allows the defendant to appeal the length of any felony sentence and the review of those sentences is by abuse of discretion).***

(2) The sentence consists of prison terms for two or more felony offenses that are ordered to be served consecutively under division (C)(3) of section 2929.14 of the Revised Code. ***(Makes all consecutive sentences appealable).***

(3) The sentence imposed for an offense is not within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14(A) of the Revised Code. ***(This is intended to do away with the***

"contrary to law" language of current R.C. 2953.08(A)(4) and replace it with something more concrete)

(4) The sentencing judge failed to comply with any mandatory statutory duty with respect to the imposition of sentence. ***(This is the "authorized by law" analogue to "contrary to law")***

Appeals by the Government

(B) A prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, only under the following circumstances:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence is not authorized by any provision of the Revised Code.

(3) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

(4) The trial court abused its discretion in determining that the individual felony sentence comports with the principles and purposes of felony sentencing as set forth in 2929.11 and 2929.12 of the Revised Code. ***(This division allows the state to appeal the length of any felony sentence.)***

(5) The sentence consists of two or more sentences ordered to be served concurrently despite the applicability of division (C)(4) of Revised Code Section 2929.14.***(This division allows an appeal for the failure to impose consecutive sentences where the government believes consecutive sentences should have been imposed).***

(C) (1) Sentences imposed upon a defendant, including consecutive sentences, are not subject to review under this section if the sentence is authorized by law, a specific term of years or an agreed range of years for the sentence has been recommended jointly by the defendant and the prosecution in the case,

and is imposed by a sentencing judge. ***(Added consecutive sentences and the phrase "agreed range of years" and makes agreed sentences non-appealable.)***

(2) A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

* * *

(G) (1) When reviewing a felony sentence, the appellate court shall consider the entire record, including any presentence investigation report if available, the offender's conduct, the trial court's statements, the evidence adduced at trial, and the information presented during the sentencing hearing. An appellate court hearing an appeal under any of these sections shall determine whether the trial court abused its discretion in imposing the sentence.

(2) An appellate court hearing an appeal under division (A)(1) or (B)(4) where the sentence(s) are within the proscribed range for the offense or offenses and the offense(s) are run concurrently shall afford the trial court's sentences with a presumption of proportionality and consistency. This presumption is rebuttable by either the defendant or the government.

(3) An appellate court hearing an appeal under division (A)(3) of this section shall determine whether a sentence imposed on an offender is outside the applicable statutory range for the particular degree of offense. If the sentence imposed is outside the applicable statutory range, the appellate court shall vacate the sentence and remand for a new sentencing hearing solely on the affected counts. ***(New section dealing with appellate reversals for sentences outside the statutory range)***

(a) An appellate court hearing an appeal under division (A)(4) of this section shall determine whether the sentencing judge failed to comply with any mandatory statutory duty when imposing sentence. If the sentencing judge failed to comply with any mandatory sentencing duty, the appellate court may reverse the sentence only if it finds that there is a substantial probability that the sentence imposed would have been different had the sentencing judge complied with the mandatory duty. ***(New section stating that if the court failed to comply with a mandatory duty in sentencing, like post-release control or failing to advise a defendant of a fine, reversal is warranted only if the appellate court finds a***

substantial probability that the sentence would have been different had the court complied.)

(b) An appellate court hearing an appeal under division (A)(2) or (B)(5) of this section shall, examine the factors identified in the record by the trial court and under an abuse of discretion standard determine if the factors support the consecutive sentence imposed. The appellate court shall consider at the minimum, whether the sentence imposed is proportional to the offender's conduct, the harm caused by the offense, the offender's relevant, as it pertains to the charges, criminal history, the risk the offender poses to the public, the offender's likelihood of recidivism and the burden the sentence places on state or local resources.

If the appellate court so determines that the consecutive sentences are excessive or disproportionate, or place or an unnecessary burden on state or local resources and that the goal of punishing the offender and protecting the public from future crime by the offender or others can be achieved by a shorter sentence, or that concurrent terms demean the seriousness of the offender' conduct or are insufficient to punish the offender and a longer sentence is necessary to punish or protect, the appellate court may reverse the consecutive sentence and remand for a de novo sentencing hearing. In such a hearing, the trial court may consider the R.C. 2929.12 factors and R.C. 2929.14(C)(4) anew to determine whether some of the terms are to be served consecutively or concurrently.

R.C. 2929.19(B)((2)(a)

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term; ***if a consecutive sentence or consecutive sentences are imposed, identify the relevant factors under R.C. 2929.12 raised by the defendant or the prosecution or independently identified by the trial judge that were determinate of the sentence imposed.***

2953.08 Recodification comments. 12/14/2017

Judge Sean C. Gallagher, Ohio Court of Appeals, Eighth District.

I have served as an appellate judge for over 15 years. I previously served as a trial judge and was a felony prosecutor for a number of years. I offer what follows based on 35 years of direct experience in the criminal justice system. I will focus solely on the specific language in the current R.C. 2953.08 draft proposal.

General Comments:

Role of appellate courts:

While proportionate and fair sentences are a clear goal, any recodification effort should guard against making appellate courts second-tier sentencing tribunals. This trend is already in play. In virtually every sentencing appeal, defendants now ask appellate panels to reject the trial court's discretion and give greater weight to the mitigating factors rejected by the trial court. This is an unsettling trend because appellate panels lack the interaction with the offender, the victim, and the witnesses, all vital aspects of sentencing. We have to avoid the temptation to create a process where we judicially circumscribe the trial court's sentencing discretion and turn appellate panels into fact-centric, sentencing tribunals. One such example is *State v. Nichter*, 2016 Ohio 7268, 10th District Court of Appeals, released October 11, 2016, where a judicial release determination has been made, appealed and reversed on three separate occasions.

Specific Comments on the Recodification Draft:

2953.08(A)(5):

The undefined term "contrary to law" remains in the draft proposal. This should be a non-starter. This undefined phrase has caused more confusion and inequity in sentencing than any other aspect of SB2. It has needlessly cost taxpayers millions of dollars over the past 20 years in transporting inmates back and forth, preparing transcripts and paying attorney fees for resentencing hearings that, in the end, rarely resulted in any meaningful change. To be fair, the appellate judges have contributed to this problem by not defining the parameters of the phrase. Currently, the phrase undermines any limitations on review by opening up everything to a claim that it is "contrary to law." If retained, the term should be defined as "not

authorized by statute." That will at least require an assigned error to point to that aspect of a statute was violated. If the term is not defined, it will become a catch all and will undermine the limitations outlined in 2953.08(A)(1-4).

2953.08(A)(1-4):

This re-draft makes sense by limiting appeals to defined parameters. The only concern is that when applying 2929.13 it will result in longer sentences. For example, currently the maximum sentence for an F-1 is 11 years. Under this proposal a defendant who receives an 11 year sentence will actually be facing up to 16 and ½ years. This will result in an increase in the prison population.

2953.08(B)(3):

Subsection (B)(3) discusses agreed sentences, but fails to address the most common form of sentencing agreements. Those are where a defense attorney and a prosecutor agree on a range, and the judge imposes a sentence within that agreed range. Will those sentences be considered "agreed" sentences?

2953.08(C):

The requirement to seek leave under (C) is empty when you consider that the second paragraph of Section (D) allows for the claim to be included in the merit brief. It then further complicates the review process by suggesting there will be an initial review to determine if a proportionality issue exists. This will require two reviews: one to assess leave and one to assess the merits. In effect, appellate panels will be doing the appeal just to determine if leave will be granted. I would eliminate this section and select those sentences you really want to be appealed and include them under Section (A).

2953.08(E)(1):

The term "authorized by law" in Section (E)(1) should be defined; if not, it will become problematic, similar to the varying interpretations of "contrary to law." I would suggest taking the definition, in part, from *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923. A sentence is "authorized by law" and not appealable within the meaning of R.C. 2953.08 only if it comports with all mandatory sentencing provisions. I

would add that a trial judge exercising discretion within a mandatory provision does not make that discretion appealable.

2953.08(G):

The proposed language does not address how, or under what method, an appellate court will review the proportionality of a sentence. Without clarity we will end up having appellate panels being asked to re-weigh what consideration a trial court gave to any relevant sentencing factors. Ohio supposedly gives trial judges the discretion to weigh sentencing factors. We then erode that discretion by allowing appellate judges to substitute their view of what weight should be given to those same factors in a review process that has no formal structure or methodology. This turns appellate review into nothing more than a "smell test" and appellate panels into second-tier sentencing courts. We should expressly give trial judges the discretion to apply the factors based on the record and not disturb them or reweigh them, and only review them to determine if the record supports the discretion the trial judge exercised. In other words, if the court says the defendant has a prior violent record, but the record shows no prior offenses of violence, only then should the appellate panel find error. This approach is consistent with the proposed language in R.C. 2929.12(C), which states: *"With respect to offenses other than capital offenses, the sentencing court shall set forth the rationale, either on the record or in the sentencing journal entry, or both, for imposing the rendered sentence. It shall be presumed that the sentencing court considered all relevant aggravating and mitigating circumstances applicable regarding the offender, each victim, the crime for which sentence was imposed, and the public interest in determining the appropriate sentence, as long as the rationale the court provides does not indicate that those factors were applied incorrectly."* (Emphasis added.)

2953.08(G)(1):

The language in Section (G)(1) giving appellate panels the authority to increase, reduce, or otherwise modify a sentence is problematic. Appellate judges should not be involved in resentencing offenders from the appellate bench. The defendant is not present, and the victim is not present. How could we ever increase a sentence outside the presence of the offender? Good civics dictates that appellate courts should stick to reviewing records

and determining errors, then returning the case to the appropriate level if there is a problem.

2953.08(G)(2):

The idea under Section (G)(2) that the appellate court entry of judgment will become the sentencing entry is bad civics. Trial courts write sentencing entries, and the Department of Corrections has become proficient in reading them. Appellate courts are not sentencing courts and should not be involved in drafting sentencing orders for trial courts. This language also has the problem of the defendant having no right of allocution if resentenced by the court of appeals.