

AN ACT

To amend sections 2945.58 and 2951.03 of the Revised Code to change the time for notification of an alibi defense in a criminal case, to allow the court in a felony case to impose community control sanctions without a presentence investigation report upon agreement of the defendant and the prosecutor, and to request the Supreme Court to modify Criminal Rule 32.2 to allow the court in a felony case to impose community control sanctions without a presentence investigation report upon agreement of the defendant and the prosecutor.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2945.58 and 2951.03 of the Revised Code be amended to read as follows:

Sec. 2945.58. Whenever a defendant in a criminal cause proposes to offer in his the defendant's defense, testimony to establish an alibi on his the defendant's behalf, such defendant shall, not less than ~~three~~ seven days before the trial of such cause, file and serve upon the prosecuting attorney a notice in writing of his the defendant's intention to claim such alibi. Notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant for the purpose of proving such alibi.

Sec. 2951.03. (A)(1) ~~No~~ Unless the defendant and the prosecutor who is handling the case against the defendant agree to waive the presentence investigation report, no person who has been convicted of or pleaded guilty to a felony shall be placed under a community control sanction until a written presentence investigation report has been considered by the court. The court may order a presentence investigation report notwithstanding an agreement to waive the report. If a court orders the preparation of a presentence investigation report pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2, the officer making the report shall inquire into the circumstances of the offense and the criminal record, social history, and present condition of the defendant, all information available regarding any prior adjudications of the defendant as a delinquent child and regarding the dispositions made relative to those adjudications, and any other matters specified in Criminal Rule 32.2. Whenever the officer considers it advisable, the officer's investigation may include a physical and mental examination of the defendant. A physical examination of the defendant may include a drug test consisting of a chemical analysis of a blood or urine specimen of the defendant to determine whether the defendant ingested or was injected with a drug of abuse. If, pursuant to section 2930.13 of the Revised Code, the victim of the offense of which the defendant has been convicted wishes to make a statement regarding the impact of the offense for the officer's use in preparing the presentence investigation report, the officer shall comply with the

requirements of that section.

(2) If a defendant is committed to any institution, the presentence investigation report shall be sent to the institution with the entry of commitment. If a defendant is committed to any institution and a presentence investigation report is not prepared regarding that defendant pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2, the director of the department of rehabilitation and correction or the director's designee may order that an offender background investigation and report be conducted and prepared regarding the defendant pursuant to section 5120.16 of the Revised Code. An offender background investigation report prepared pursuant to this section shall be considered confidential information and is not a public record under section 149.43 of the Revised Code.

(3) The department of rehabilitation and correction may use any presentence investigation report and any offender background investigation report prepared pursuant to this section for penological and rehabilitative purposes. The department may disclose any presentence investigation report and any offender background investigation report to courts, law enforcement agencies, community-based correctional facilities, halfway houses, and medical, mental health, and substance abuse treatment providers. The department shall make the disclosure in a manner calculated to maintain the report's confidentiality. Any presentence investigation report or offender background investigation report that the department discloses to a community-based correctional facility, a halfway house, or a medical, mental health, or substance abuse treatment provider shall not include a victim impact section or information identifying a witness.

(B)(1) If a presentence investigation report is prepared pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2, the court, at a reasonable time before imposing sentence, shall permit the defendant or the defendant's counsel to read the report, except that the court shall not permit the defendant or the defendant's counsel to read any of the following:

- (a) Any recommendation as to sentence;
- (b) Any diagnostic opinions that, if disclosed, the court believes might seriously disrupt a program of rehabilitation for the defendant;
- (c) Any sources of information obtained upon a promise of confidentiality;
- (d) Any other information that, if disclosed, the court believes might result in physical harm or some other type of harm to the defendant or to any other person.

(2) Prior to sentencing, the court shall permit the defendant and the defendant's counsel to comment on the presentence investigation report and, in its discretion, may permit the defendant and the defendant's counsel to introduce testimony or other information that relates to any alleged factual inaccuracy contained in the report.

(3) If the court believes that any information in the presentence investigation report should not be disclosed pursuant to division (B)(1) of this section, the court, in lieu of making the report or any part of the report available, shall state orally or in writing a summary of the factual information contained in the report that will be relied upon in determining the defendant's sentence. The court shall permit the defendant and the defendant's counsel to comment upon the oral or written summary of the report.

(4) Any material that is disclosed to the defendant or the defendant's counsel pursuant to this section shall be disclosed to the prosecutor who is handling the prosecution of the case against the

defendant.

(5) If the comments of the defendant or the defendant's counsel, the testimony they introduce, or any of the other information they introduce alleges any factual inaccuracy in the presentence investigation report or the summary of the report, the court shall do either of the following with respect to each alleged factual inaccuracy:

(a) Make a finding as to the allegation;

(b) Make a determination that no finding is necessary with respect to the allegation, because the factual matter will not be taken into account in the sentencing of the defendant.

(C) A court's decision as to the content of a summary under division (B)(3) of this section or as to the withholding of information under division (B)(1)(a), (b), (c), or (d) of this section shall be considered to be within the discretion of the court. No appeal can be taken from either of those decisions, and neither of those decisions shall be the basis for a reversal of the sentence imposed.

(D)(1) The contents of a presentence investigation report prepared pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2 and the contents of any written or oral summary of a presentence investigation report or of a part of a presentence investigation report described in division (B)(3) of this section are confidential information and are not a public record. The court, an appellate court, authorized probation officers, investigators, and court personnel, the defendant, the defendant's counsel, the prosecutor who is handling the prosecution of the case against the defendant, and authorized personnel of an institution to which the defendant is committed may inspect, receive copies of, retain copies of, and use a presentence investigation report or a written or oral summary of a presentence investigation only for the purposes of or only as authorized by Criminal Rule 32.2 or this section, division (F)(1) of section 2953.08, section 2947.06, or another section of the Revised Code.

(2) Immediately following the imposition of sentence upon the defendant, the defendant or the defendant's counsel and the prosecutor shall return to the court all copies of a presentence investigation report and of any written summary of a presentence investigation report or part of a presentence investigation report that the court made available to the defendant or the defendant's counsel and to the prosecutor pursuant to this section. The defendant or the defendant's counsel and the prosecutor shall not make any copies of the presentence investigation report or of any written summary of a presentence investigation report or part of a presentence investigation report that the court made available to them pursuant to this section.

(3) Except when a presentence investigation report or a written or oral summary of a presentence investigation report is being used for the purposes of or as authorized by Criminal Rule 32.2 or this section, division (F)(1) of section 2953.08, section 2947.06, or another section of the Revised Code, the court or other authorized holder of the report or summary shall retain the report or summary under seal.

(E) In inquiring into the information available regarding any prior adjudications of the defendant as a delinquent child and regarding the dispositions made relative to those adjudications, the officer making the report shall consider all information that is relevant, including, but not limited to, the materials described in division (B) of section 2151.14, division (C)(3) of section 2152.18, division (D)(3) of section 2152.19, and division (E) of section 2152.71 of the Revised Code.

(F) As used in this section:

(1) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

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

(3) "Public record" has the same meaning as in section 149.43 of the Revised Code.

SECTION 2. That existing sections 2945.58 and 2951.03 of the Revised Code are hereby repealed.

SECTION 3. The General Assembly respectfully requests the Supreme Court to modify Criminal Rule 32.2 to allow the court in a felony case, upon agreement of the defendant and the prosecutor who is handling the case against the defendant, to impose community control sanctions without ordering a presentence investigation report.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____