

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 123**

**Representatives Johnson, G., Cupp**

**Cosponsors: Representatives Butler, Rogers, Stinziano, O'Brien, S., Rezabek**

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**A BILL**

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. 20  
Notice shall include specific information as to the place at 21  
which the defendant claims to have been at the time of the 22  
alleged offense. If the defendant fails to file such written 23  
notice, the court may exclude evidence offered by the defendant 24  
for the purpose of proving such alibi. 25

**Sec. 2951.03.** (A) (1) ~~No~~ Unless the defendant and the 26  
prosecutor who is handling the case against the defendant agree 27  
to waive the presentence investigation report, no person who has 28  
been convicted of or pleaded guilty to a felony shall be placed 29  
under a community control sanction until a written presentence 30  
investigation report has been considered by the court. The court 31  
may order a presentence investigation report notwithstanding an 32  
agreement to waive the report. If a court orders the preparation 33  
of a presentence investigation report pursuant to this section, 34  
section 2947.06 of the Revised Code, or Criminal Rule 32.2, the 35  
officer making the report shall inquire into the circumstances 36  
of the offense and the criminal record, social history, and 37  
present condition of the defendant, all information available 38  
regarding any prior adjudications of the defendant as a 39  
delinquent child and regarding the dispositions made relative to 40  
those adjudications, and any other matters specified in Criminal 41  
Rule 32.2. Whenever the officer considers it advisable, the 42  
officer's investigation may include a physical and mental 43  
examination of the defendant. A physical examination of the 44  
defendant may include a drug test consisting of a chemical 45  
analysis of a blood or urine specimen of the defendant to 46  
determine whether the defendant ingested or was injected with a 47  
drug of abuse. If, pursuant to section 2930.13 of the Revised 48  
Code, the victim of the offense of which the defendant has been 49  
convicted wishes to make a statement regarding the impact of the 50

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 82  
identifying a witness. 83

(B) (1) If a presentence investigation report is prepared 84  
pursuant to this section, section 2947.06 of the Revised Code, 85  
or Criminal Rule 32.2, the court, at a reasonable time before 86  
imposing sentence, shall permit the defendant or the defendant's 87  
counsel to read the report, except that the court shall not 88  
permit the defendant or the defendant's counsel to read any of 89  
the following: 90

(a) Any recommendation as to sentence; 91

(b) Any diagnostic opinions that, if disclosed, the court 92  
believes might seriously disrupt a program of rehabilitation for 93  
the defendant; 94

(c) Any sources of information obtained upon a promise of 95  
confidentiality; 96

(d) Any other information that, if disclosed, the court 97  
believes might result in physical harm or some other type of 98  
harm to the defendant or to any other person. 99

(2) Prior to sentencing, the court shall permit the 100  
defendant and the defendant's counsel to comment on the 101  
presentence investigation report and, in its discretion, may 102  
permit the defendant and the defendant's counsel to introduce 103  
testimony or other information that relates to any alleged 104  
factual inaccuracy contained in the report. 105

(3) If the court believes that any information in the 106  
presentence investigation report should not be disclosed 107  
pursuant to division (B) (1) of this section, the court, in lieu 108  
of making the report or any part of the report available, shall 109  
state orally or in writing a summary of the factual information 110

contained in the report that will be relied upon in determining 111  
the defendant's sentence. The court shall permit the defendant 112  
and the defendant's counsel to comment upon the oral or written 113  
summary of the report. 114

(4) Any material that is disclosed to the defendant or the 115  
defendant's counsel pursuant to this section shall be disclosed 116  
to the prosecutor who is handling the prosecution of the case 117  
against the defendant. 118

(5) If the comments of the defendant or the defendant's 119  
counsel, the testimony they introduce, or any of the other 120  
information they introduce alleges any factual inaccuracy in the 121  
presentence investigation report or the summary of the report, 122  
the court shall do either of the following with respect to each 123  
alleged factual inaccuracy: 124

(a) Make a finding as to the allegation; 125

(b) Make a determination that no finding is necessary with 126  
respect to the allegation, because the factual matter will not 127  
be taken into account in the sentencing of the defendant. 128

(C) A court's decision as to the content of a summary 129  
under division (B) (3) of this section or as to the withholding 130  
of information under division (B) (1) (a), (b), (c), or (d) of 131  
this section shall be considered to be within the discretion of 132  
the court. No appeal can be taken from either of those 133  
decisions, and neither of those decisions shall be the basis for 134  
a reversal of the sentence imposed. 135

(D) (1) The contents of a presentence investigation report 136  
prepared pursuant to this section, section 2947.06 of the 137  
Revised Code, or Criminal Rule 32.2 and the contents of any 138  
written or oral summary of a presentence investigation report or 139

of a part of a presentence investigation report described in 140  
division (B) (3) of this section are confidential information and 141  
are not a public record. The court, an appellate court, 142  
authorized probation officers, investigators, and court 143  
personnel, the defendant, the defendant's counsel, the 144  
prosecutor who is handling the prosecution of the case against 145  
the defendant, and authorized personnel of an institution to 146  
which the defendant is committed may inspect, receive copies of, 147  
retain copies of, and use a presentence investigation report or 148  
a written or oral summary of a presentence investigation only 149  
for the purposes of or only as authorized by Criminal Rule 32.2 150  
or this section, division (F) (1) of section 2953.08, section 151  
2947.06, or another section of the Revised Code. 152

(2) Immediately following the imposition of sentence upon 153  
the defendant, the defendant or the defendant's counsel and the 154  
prosecutor shall return to the court all copies of a presentence 155  
investigation report and of any written summary of a presentence 156  
investigation report or part of a presentence investigation 157  
report that the court made available to the defendant or the 158  
defendant's counsel and to the prosecutor pursuant to this 159  
section. The defendant or the defendant's counsel and the 160  
prosecutor shall not make any copies of the presentence 161  
investigation report or of any written summary of a presentence 162  
investigation report or part of a presentence investigation 163  
report that the court made available to them pursuant to this 164  
section. 165

(3) Except when a presentence investigation report or a 166  
written or oral summary of a presentence investigation report is 167  
being used for the purposes of or as authorized by Criminal Rule 168  
32.2 or this section, division (F) (1) of section 2953.08, 169  
section 2947.06, or another section of the Revised Code, the 170

court or other authorized holder of the report or summary shall 171  
retain the report or summary under seal. 172

(E) In inquiring into the information available regarding 173  
any prior adjudications of the defendant as a delinquent child 174  
and regarding the dispositions made relative to those 175  
adjudications, the officer making the report shall consider all 176  
information that is relevant, including, but not limited to, the 177  
materials described in division (B) of section 2151.14, division 178  
(C) (3) of section 2152.18, division (D) (3) of section 2152.19, 179  
and division (E) of section 2152.71 of the Revised Code. 180

(F) As used in this section: 181

(1) "Prosecutor" has the same meaning as in section 182  
2935.01 of the Revised Code. 183

(2) "Community control sanction" has the same meaning as 184  
in section 2929.01 of the Revised Code. 185

(3) "Public record" has the same meaning as in section 186  
149.43 of the Revised Code. 187

**Section 2.** That existing sections 2945.58 and 2951.03 of 188  
the Revised Code are hereby repealed. 189

**Section 3.** The General Assembly respectfully requests the 190  
Supreme Court to modify Criminal Rule 32.2 to allow the court in 191  
a felony case, upon agreement of the defendant and the 192  
prosecutor who is handling the case against the defendant, to 193  
impose community control sanctions without ordering a 194  
presentence investigation report. 195