

As Reported by the House Judiciary Committee

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H. B. No. 123

Representatives Johnson, G., Cupp

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

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 19
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 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 81
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