

Community Control Supervision of Building Code Offenders in Cleveland’s Housing Court: Making the Most of Ohio’s Direct Sentencing for Misdemeanors

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I. INTRODUCTION

An owner of twenty rental properties in Cleveland appears before the Cleveland Housing Court (the “Housing Court”) to be sentenced for failing to repair a collapsing porch and to repaint the exterior of a rental property in Cleveland. After being charged, the owner made the needed repairs and now asks for a lenient sentence, given his eventual compliance. What the owner does not tell the Housing Court is that the City of Cleveland (the “City”) has condemned one of his other properties—a vacant house vandalized by thieves who tore out the copper pipe. That property currently poses a threat to the community, as it is open to entry because the owner has done nothing to address the problem.

Fortunately, the condemned house will not escape the Housing Court’s attention for long because the Housing Court sentences the owner to a term of community control supervision. Instead of choosing to mistrust and punish, or to trust and forgive, the Housing Court directly sentences him to meet community control requirements designed to ensure that he will responsibly maintain *all* of his properties, including the condemned house he failed to bring to the Housing Court’s attention. Under community control requirements, the Housing Court will assign one of its ten Housing Specialists to monitor the owner’s compliance with building codes at all of his rental properties. He will have the duty to provide a list of all the properties he owns, to visit each of them regularly, and to provide the Specialist with photographs of each property. The owner, now an “offender,” will be proving his own failure to obey the law if the photographs show peeling paint or rotted wood at any of the properties that the City inspector had not previously visited. The pressure on him to comply with code requirements at all of his properties will not fade.¹

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1. The examples used in this article are based on fact patterns and legal issues in cases that came before the Housing Court. Because the court’s obligation is not to comment publicly on pending or impending cases, and all cases with an unexpired term of community control are potentially impending cases, the examples are amalgamations of different cases or have details altered.

The Housing Court has developed its community control program² as an alternative to the traditional punishments of fines or jail time, which, though intended as a deterrent, may not persuade a neglectful owner to change his conduct or repair the properties which threaten Cleveland neighborhoods. The community control program, by requiring continued supervision of the repair process, thus makes the most of the “direct sentencing method” recommended by the Ohio Criminal Sentencing Commission when it recommended changes to Ohio’s misdemeanor sentencing law in 1998.³

Implementing the program has required the Housing Court to consider several policy considerations. To what extent is a sanction reasonably related to the overriding purpose of the sentence? While the Housing Court has the ability to monitor an offender’s behavior and actions, how far should the Housing Court’s supervision extend? Should the Housing Court limit its use of community control when monitoring an offender becomes a drain on staff resources? And to what extent should the court base its decisions on its knowledge of limits in the City’s code enforcement efforts?

2. *Dictionary of Legal Terms: Community Control Sanctions*, OHIO LEGAL SERVS., http://www.ohiolegalservices.org/public/legal_terms_dictionary/community-control-sanctions (last visited Mar. 31, 2016) (“While often called ‘probation,’ community control sanctions cover a wide variety of residential, non-residential, and financial options that judges use in criminal sentencing, including traditional probation supervision and numerous other restrictions administered by the local court. Community control is used for felons when a prison term is not imposed. It is imposed on misdemeanants when a jail term is not warranted. Residential community control sanctions include community-based correctional facilities, halfway houses, and others. Non-residential options include community supervision, drug and alcohol treatment, house arrest, electronic monitoring, community service, and the like. Financial sanctions include fines, restitution, and various reimbursements. Persons facing mandatory prison terms (e.g., for murder, high level sex and drug offenses, felonies committed with firearms, certain repeat offenders, etc.) or mandatory jail terms (e.g., for driving under the influence of alcohol or drugs) are not eligible for community control, other than financial sanctions.”).

3. OHIO CRIMINAL SENTENCING COMM’N, A PLAN FOR MISDEMEANOR SENTENCING IN OHIO 19–21 (1998), http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/publications/misdemeanor_voll.pdf [hereinafter COMMISSION REPORT]. The General Sentencing Proposal was adopted and is now a part of the Ohio Revised Code, Chapter 2929.

This Article will describe how the Housing Court has answered these questions so that it can best use community control sanctions to stop neglectful property owners from re-offending by failing to maintain and repair Cleveland's trouble housing stock.⁴ The Article will discuss the history of the Housing Court, the availability of community control as a sentencing option for misdemeanants in Ohio, and the inception of the Housing Court's unique community control supervision program, highlighting how the Housing Court has adapted the traditional community control model to meet the unique challenges of defendants convicted of a housing, building or health code violation. It will also focus on the policy implications that the Housing Court has faced and continues to face as it develops its program of community control supervision.

II. DEVELOPMENT OF CLEVELAND'S HOUSING COURT

[The Cleveland] Housing Court is part courtroom, part emergency room that performs legal triage on a mix of criminal and civil cases for people who fall behind on their rent and mortgage payments—financial problems that lead to other charges, such as housing, zoning and fire code violations.⁵

The Housing Court was created in 1980 in response to deteriorating conditions in Cleveland's neighborhoods and other concerns that would be better addressed by a specialty court with a single judge.⁶ The legislation that created the Housing Court gave

4. See Michelle Jarboe, *Vacant Houses, Blighted Buildings Still Plague Cleveland, But Problem is Shrinking: Taking Stock*, CLEVELAND.COM (Nov. 21, 2015, 7:00 AM), http://www.cleveland.com/business/index.ssf/2015/11/vacant_houses_blighted_buildin.html (explaining that although 6,000 structures still need demolition in Cleveland, this number is down from 7,700 in 2013).

5. Chief Justice Thomas J. Moyer, Annual State of the Judiciary Address on Sept. 14, 2006, SUP. CT. OHIO & OHIO JUD. SYS., http://www.supremecourt.ohio.gov/PIO/Speeches/2006/SOJ_091406.asp.

6. See Hon. Raymond L. Pianka, *Cleveland Housing Court—A Problem-Solving Court Adapts to New Challenges*, in FUTURE TRENDS IN STATE COURTS 44 (2012), http://www.ncdsv.org/images/NCSC_FutureTrendsInStateCourts_2012.pdf; see also OHIO REV. CODE ANN. § 1901.051(A) (LexisNexis 2010) (specifying that the Cleveland Housing Court have only one judge).

it extensive jurisdiction over housing issues and authorized it to make use of a staff of Housing Specialists to help the Housing Court in its mission.⁷

The Housing Court has exclusive jurisdiction over all criminal cases brought to enforce the City's Housing, Building, Fire Prevention, Zoning, and Agriculture and Air Pollution Codes.⁸ The Housing Court's jurisdiction over civil cases includes evictions, rent deposits, restraining orders, landlord/tenant disputes, actions to abate nuisances, and some foreclosures. If an issue impacts real property in the City, the Housing Court likely has the authority to hear the case.

[T]he division has exclusive jurisdiction within the territory of the court in any civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to premises used or intended for use as a place of human habitation, buildings, structures, or any other real property subject to any such code, ordinance, or regulate . . . in any civil action commenced pursuant to Chapter 1923. or 5321. or sections 5303.03 to 5303.07 of the Revised Code . . . [and] in any criminal action for a violation of any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to premises used or intended for use as a place of human habitation, buildings, structures, or any other real property subject to any such code, ordinance, or regulation . . . [and] in any civil action as described in division (B)(1) of section 3767.41 of the Revised Code that relates to a public nuisance.⁹

In addition, unlike most municipal courts, the Housing Court has unlimited monetary jurisdiction.¹⁰ This extra power prevents land-

7. OHIO REV. CODE ANN. §§ 1901.011, .02(B), .025, .031, .331(A)(1) (LexisNexis 2010).

8. *Id.* § 1901.181(A)(1).

9. *Id.*

10. *Id.* § 1901.131.

lords or tenants from forum shopping by bringing a claim in excess of the municipal court's jurisdiction; housing cases stay in Housing Court. With this streamlined approach, the Housing Court is the first to know and recognize repeat offenders.

The Housing Court has evolved into a problem-solving court.¹¹ The statutes establishing the Housing Court authorized that court to hire Housing Specialists to enable it to address concerns outside the courtroom.¹² The Housing Court has a complement of ten Specialists who have backgrounds in probation, landlord/tenant law, building and housing code enforcement, banking, social work, and community organizing. The Specialists serve as community control probation officers, operating the Housing Court's walk-in landlord/tenant clinic, and mediating disputes between parties. They serve as the eyes and ears of the Housing Court in Cleveland's neighborhoods.

The Housing Court emphasizes compliance with code requirements as the primary goal of criminal prosecution. The public good is best served when properties are repaired and maintained.¹³ While some punishment is warranted even if an owner eventually complies with code requirements, punishment alone will not serve the public if it does not function as a deterrent, the public continuing to suffer from blighted property conditions. The Housing Court's focus is therefore on deterrence and property rehabilitation. The Housing Court designed and implemented its community control program with this end in mind.

Prior to the implementation of the current community control supervision program, the Housing Court's practice was to defer its ultimate decision on execution of sentence so that defendants could argue in mitigation that they had eventually complied with Building Code requirements. This approach burdened the Housing Court's docket because of the need to hold repeated status hearings to determine if an owner has brought his property into compliance. It also focused the Housing Court's, and the offend-

11. Pianka, *supra* note 6, at 44.

12. OHIO REV. CODE ANN. §§ 1901.011, .331.

13. See generally Jarboe, *supra* note 4 (“[Vacant] buildings taint neighborhoods, hurt home values and entice criminals. Shabby houses stand as testaments to a half-century of population loss capped by a decade-long flood of foreclosures and a brutal housing bust.”).

er's, attention only on the property that was the subject of the criminal charges; it did not allow the Housing Court to insist that the offender make needed repairs at his other properties. When owners failed to comply, the Housing Court could choose to execute on a fine or jail term but then lost its power to try to compel the owner to comply. Keeping jurisdiction over the question of sentencing allowed the Housing Court to meet its policy goals, but failed to meet the goal of reaching finality in a criminal case. The Housing Court had to be mindful that, as a case progressed, it needed to reach a final sentencing decision. The Housing Court could not retain the ability to modify fines and jail time unless those sanctions were part of a sentence of community control sanctions. Creating a comprehensive program of community control supervision allowed the Housing Court to achieve a dual purpose of maintaining jurisdiction to consider all of an offender's properties and lessening the number of status hearings per case.

III. COMMUNITY CONTROL SENTENCING

A. *The Scope of Community Control Sanctions in Ohio*

Community Control, often called probation,¹⁴ is defined by Ohio statute as a sanction that is separate and distinct from a prison term.¹⁵ The sanction covers a wide variety of residential, non-residential, and financial options that judges may use in criminal sentencing.¹⁶ Community control is used for felons when a prison term is not imposed and for misdemeanants when a jail term is not warranted.¹⁷ A judge can consider imposing other sanctions—such as electronic monitoring, community service, and residential treatment at a drug and alcohol rehabilitation center¹⁸—when sentencing a misdemeanant¹⁹ to jail time in order to encourage the

14. OHIO LEGAL SERVS., *supra* note 2.

15. OHIO REV. CODE ANN. § 2929.01(E) (LexisNexis 2010).

16. OHIO LEGAL SERVS., *supra* note 2.

17. *Id.*; COMMISSION REPORT, *supra* note 3, at 21.

18. OHIO LEGAL SERVS., *supra* note 2.

19. Violations of the City's housing, building, fire, zoning, agriculture, health, and air pollution codes range from minor misdemeanors to first-degree misdemeanors.

optimum use of taxpayer money.²⁰ “The longest jail term should be reserved for the worst offenders and offenses.”²¹

At the time of sentencing, the Housing Court will directly impose a sentence that consists of one or more community control sanctions.²² After an offender is sentenced, the Housing Court places the offender under the supervision of the Housing Court or department of probation in the Housing Court’s jurisdiction.²³ If the offender violates any condition of community control, the Housing Court has the opportunity to reevaluate and revise the original sentence.²⁴ The Housing Court hearing the community control violation hearing must provide an offender with six minimum due process rights:

- (1) written notice of the claimed violations; (2) disclosure of the evidence against the offender; (3) an opportunity to be heard in person and to present evidence; (4) the right to confront and cross-examine adverse witnesses; (5) a neutral and detached magistrate, and (6) written findings of fact stating the evidence relied on and the reasons for the revocation [in the event of revocation of community control].²⁵

A community control violation hearing is not a criminal trial and the City need only to present substantial evidence of a violation and not prove a violation beyond a reasonable doubt.²⁶

Upon finding that an offender has violated community control sanctions, the Housing Court may extend community control sanctions, impose more restrictive community control sanctions, or cancel community control sanctions and impose a definitive sentence.²⁷ Community control sanctions may not exceed five years,²⁸

20. COMMISSION REPORT, *supra* note 3, at 14.

21. *Id.*

22. OHIO REV. CODE ANN. § 2929.25(A)(1)(a) (LexisNexis 2010).

23. *Id.* § 2929.25(C)(1).

24. LEWIS R. KATZ ET AL., *BALDWIN’S OHIO PRACTICE CRIMINAL LAW* § 119:8 (3d ed. 2014).

25. *Id.*

26. *Id.*

27. *Id.*

and the Housing Court can reward success by shortening the time on community control or lessening the severity of the sanction.²⁹

B. The Intent of Community Control: "Direct Sentencing Method"

The Housing Court's community control supervision program makes the most of the "direct sentencing method" recommended by the Ohio Criminal Sentencing Commission ("the Commission") in 1998, and adopted by the legislature.³⁰ The Commission feared that the existing system of imposing, and then suspending, a sentence failed to make clear the overriding purpose of misdemeanor sentencing: "to protect the public from future crime by the offender and others and to punish the offender."³¹ The Commission opined that the suspended sentencing method frustrated this purpose.

Prior to the adoption of the Commission's Proposal, in order to sentence an offender to probation, a court had to first impose a jail term and then suspend it:

Today, in sentencing an offender to probation, a court must first impose a jail term, then suspend it, then place the offender on "probation" subject to various conditions. A jail term must be imposed even when the court does not intend that the offender be jailed, except as a punishment for violating probation. When offenders succeed on probation, as most do, the jail term is never served. In fact, even when the offender violates probation, the full suspended jail term is seldom ordered.

During its felony deliberations, the Commission concluded—and the General Assembly agreed—that suspended sentences can confuse defendants, victims, and the public. If we were creating a new justice system from scratch, it is unlikely we would start by imposing a jail term that we do not truly intend to have served.

28. OHIO REV. CODE ANN. § 2929.25(A)(2).

29. COMMISSION REPORT, *supra* note 3, at 8.

30. *Id.* at 19.

31. *Id.* at 7.

By sentencing directly, the offender, victim, and public know exactly what is required. The probation department keeps the hammer it needs to make sure the defendant complies. The sentence does not flow from an often fictitious jail term. Honesty is the better policy.³²

Rather than first impose a jail sentence only to suspend it, the Commission proposed that a judge should be able to sentence directly to probation.³³ At sentencing, the judge could warn offenders that violations of the terms of probation could mean longer terms under the sanction or more restrictive sanctions, including a specified jail term, thus achieving the same result but doing so openly.³⁴ Direct sentencing notifies the offender, victim, and public of both the requirements of compliance and the consequences should the offender not comply.³⁵

While the Commission strongly recommended that judges use directed sentencing, it also recommended that they remain free to use suspended sentencing.³⁶ The practical effect on the offender is the same, but the way the judge announces the sentence is altered.³⁷ Adapting the Commission's sentencing example involving a drunk driving case to the housing context, under the suspended sentencing approach, the Housing Court judge would say, "six months in jail, suspended, and one year of probation, during which you must repair the roof, paint the front porch and maintain the property to minimum code." By contrast, the Housing Court judge imposing a direct sentence would announce, "I am imposing one year of community control supervision during which you must repair the roof, paint the front porch and maintain the property to minimum code; if you violate any of these conditions, you face the maximum sentence of six months in jail."

In recommending the direct sentencing method, the Commission envisioned that judges would be creative in their sentencing through, "additional sanctions designed to discourage the of-

32. *Id.* at 19–20.

33. *Id.* at 8.

34. *Id.*

35. *Id.* at 20.

36. *Id.*

37. *Id.*

fender and others from committing a similar offense, provided the sanctions are reasonably related to the overriding purposes of sentencing.”³⁸ The Housing Court has embraced this idea and designs its community control sanctions to discourage offenders from re-offending.

IV. DEVELOPMENT OF COMMUNITY CONTROL SENTENCING IN HOUSING COURT

A. *General Obligations of Community Control for Building Code Offenders*

When the Housing Court began to implement its community control program, its first challenge was to develop general community control supervision requirements. The restrictions typically imposed on offenders—to get treatment for substance abuse, to seek employment, to avoid former associates—are not applicable to the case of a neglectful property owner. The Housing Court instead imposed, by local rule, the obligation to provide a list of all properties the offender owns in Cleveland (or the Village of Bratenahl, Ohio, over which the Housing Court also has jurisdiction), the duty to keep all properties in good repair, and a requirement to regularly visit and inspect each property to ensure that it remains in good repair.³⁹ Each offender is also required to report to his assigned Housing Court Specialist who may give more specific instructions.⁴⁰

B. *The Role of Housing Specialists*

The Specialists’ role is to enforce the community control obligations imposed on the offender while functioning as community control officers. Though they offer coaching and assistance, they also serve as enforcers, summoning offenders before the Housing Court for community control violation hearings when the offenders do not comply with supervision requirements.

38. *Id.* at 24.

39. CLEVELAND MUN. HOUS. CT. LOCAL R. app. 2.18(3)–(4), (6) (2016), <https://www.clevelandmunicipalcourt.org/docs/default-source/default-document-library/2016-cleveland-housing-court-local-rules-as-transmitted-02-01-2016.pdf?sfvrsn=0>.

40. *Id.* at 2.18(2).

The supervision requirements are designed so that the burden of demonstrating compliance is placed on the offender. The offender must prepare a list of properties to submit to the Specialist.⁴¹ The offender must regularly visit his properties.⁴² And the offender must make needed repairs, even before the Specialist visits some or all of his properties.⁴³ The most common statement from offenders found to be in violation of community control requirements is that they made repairs once the Specialist identified for them the defects at their property. The Housing Court responds by informing them that the assigned Specialist is not their employee; offenders are supposed to regularly visit their properties, note any defects, and correct them before the Specialist visits. The Specialist's visits are to check up on the offender, not to guide the offender.

The offender's first burden is to address the conditions that were a part of the City's Notice of Violations of Cleveland's ordinances. In the strictest sense, the offender is already re-offending if the repairs are not completed. But the Specialist will have the discretion to decide on the time for compliance before a summons for violation of community control is issued.

Because the Specialist's goal is to help the offender to not re-offend, the Specialist may identify what repairs are needed and find resources to assist the offender. Sadly, there are not many resources to help homeowners. If the offender lacks sophistication, the Specialist will help educate the offender about minimum safety code requirements. The Specialist may suggest, or require, that the offender take general classes such as the Housing Court's seminar for landlords, "What Every Landlord Should Know," commonly called "Landlord School," or specific training such as training in lead abatement.

Because the offender is under the watchful eye of the Specialist, he or she can be brought back to the Housing Court quickly and called to account for failing to make repairs. This procedure is more expeditious than the City's procedure for inspection, which includes issuance of a notice of violations and subsequent criminal

41. *Id.* at 2.18(3).

42. *Id.* at 2.18(6).

43. *Id.* at 2.18(4).

prosecution.⁴⁴ The Specialist prepares a written report with photographs indicating the alleged violations of community control requirements. If the judge finds probable cause, the case is set for a community control violation hearing.⁴⁵ Community members benefit from the program because they can bring violations to the attention of the Housing Court's Specialists more easily than they could through the complaint process of the City's Department of Building and Housing. Any neighbor who knows about the offender's community control sentence can contact the Housing Specialist. More commonly, local community development corporations who monitor code enforcement become aware of the sentence and, if they send staff to check on the condition of properties in their service area, can have those staff members notify the court's Housing Specialist about any problems at the offender's properties.

The Housing Court conducts its community control violation docket twice per month. In most cases, the offender's hearing is divided into two stages. At the first stage, the judge or magistrate determines whether the offender has violated the requirements of his sentence of community control. Then, if there is a finding of violation, the judge or magistrate decides on the penalty. Before deciding on the penalty, the Housing Court typically continues the case to allow the offender to seek a lesser penalty if he or she addresses the underlying problem.

In keeping with the goal of placing the burden of compliance on the offender, the Housing Court emphasizes the offender's community control obligations and the Housing Court's expectation that the offender meet those obligations prior to any visit from the Specialist.

44. Building owners are required to keep properties in good repair and to demolish or repair them when ordered to by the Department of Building and Housing. CLEVELAND, OHIO CODE OF ORDINANCES § 3103.09(e)(1) (2016), [http://library.amlegal.com/nxt/gateway.dll/Ohio/cleveland_oh/cityofclevelandoh/iocodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:cleveland_oh](http://library.amlegal.com/nxt/gateway.dll/Ohio/cleveland_oh/cityofclevelandoh/iocodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:cleveland_oh). Failure to comply is a first degree misdemeanor. *Id.* § 3103.99(a).

45. Probable cause here can be supported by evidence that building code defects exist that the offender has not repaired or that the offender has failed to comply with specific terms of community control such as providing reports to the Housing Specialist or making regular visits to the offender's properties.

The Housing Court's ability to modify the terms of community control can be to the benefit of offenders.⁴⁶ Offenders who comply with community control requirements can ask the Housing Court to modify the terms of their sentence by reducing fines, lessening community control requirements, or shortening or ending their term of community control.⁴⁷

V. COMMUNITY CONTROL IN PRACTICE

In the years that the Housing Court has implemented community control sanctions, several public policy concerns have shaped the Housing Court's response to unique situations and offenders. The Housing Court's ultimate goal for offenders is full compliance to the City's housing, building, and health codes. Incarceration prevents the offender from bringing the property into full compliance, so how does the Housing Court guarantee that an offender makes the necessary repairs to his property? How does the Housing Court ensure that a property is brought into compliance when the offender is a bank holding the property as a trustee for another beneficiary or when the offending property is sold to escape the jurisdiction of the Housing Court?

The Housing Court's solution to many of these compliance puzzles has been to craft unique and creative sanctions under the direct sentencing method intended to prevent offenders from re-offending. The Housing Court has the power to impose any sanction "that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing."⁴⁸ The sanction must not, however, "be overly broad so as to unnecessarily impinge upon the probationer's liberty."⁴⁹

Ohio's courts have not considered the scope of community control sanctions imposed for housing or building code violations. The main sanctions that have been subjected to scrutiny are sanctions that involve parental rights. The courts have allowed or dis-

46. COMMISSION REPORT, *supra* note 3, at 20–24.

47. *Id.*

48. OHIO REV. CODE ANN. § 2929.27(C) (LexisNexis 2010).

49. *State v. Talty*, 814 N.E.2d 1201, 1204 (Ohio 2004) (quoting *State v. Jones*, 550 N.E.2d 469, 470 (Ohio 1990)).

allowed such sanctions based on the circumstances of the offense.⁵⁰

The Housing Court's power to impose sanctions on housing offenders may face similar limits. It could exceed the Housing Court's authority to order as a community control sanction that an offender stop being a landlord altogether since lesser restrictions could serve the goal of preventing the offender from re-offending.⁵¹ The Housing Court has, however, ordered offenders who have failed to make repairs to a large inventory of houses not to buy any more houses and has ordered offenders to demolish condemned houses without first having an opportunity to offer them for sale "as is" when it seems likely that an "as is" sale would not lead to the house being promptly repaired.⁵²

Community control supervision has not proven effective for every offender. Stricter punishments, such as imposing large fines or incarceration may be the Housing Court's best tool in these situations. Finally, even where direct sentencing appears to be a good solution, it can prove to be a drain on Housing Court resources for offenders with a large number of properties in disrepair. All of these concerns have created a malleable system, ever adapting to best accomplish the Housing Court's ultimate mission.

A. *Creative Sentencing: Tailoring Community Control
Obligations to Specific Circumstances*

Community control supervision carries with it the duty for the offender not to re-offend.⁵³ But the goal of sentencing is not

50. Compare *Talty*, 814 N.E.2d at 1204–07 (finding it unconstitutional to order an offender convicted of non-support of his children not to have any more children); *State v. Sturgeon*, 742 N.E.2d 730, 733 (Ohio Ct. App. 2000) (finding it unconstitutional to order an offender convicted of domestic violence against the mother of his children not to have contact with his children), with *State v. Jones*, 550 N.E.2d 469, 472 (Ohio 1990) (finding it constitutional to restrict an offender convicted of contributing to the delinquency of children from having contact with children not related to him); *State v. McClure*, 825 N.E.2d 217, 220 (Ohio Ct. App. 2005) (finding it constitutional to order an offender not to have contact with her children because she had admitted that she tried to kill them).

51. COMMISSION REPORT, *supra* note 3, at 24.

52. Kermit J. Lind, *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 237, 239–40 n.11 (2008).

53. COMMISSION REPORT, *supra* note 3 at 24.

merely to put offenders in peril of being punished because that increased scrutiny may, in fact, fail to deter them from re-offending.⁵⁴ The Housing Court therefore tailors community control sanctions to best stop each individual offender from re-offending.⁵⁵ This is the creative sentencing the legislature envisioned for misdemeanor sentencing.

One example of creative sentencing is how the Housing Court handled one offender who bred a large number of dogs at his residence in violation of City zoning laws, neglecting the dogs in the process. The offender so mistreated the dogs he was breeding that many had to be euthanized. Neighbors complained about the excessive odor coming from his yard as a result of the number of dogs he kept. The offender was convicted and placed on community control so he first had the general obligation not to re-offend. He failed his obligation by continuing to use his home to breed dogs, continuing to keep a large number of dogs there. As a more stringent sanction, the Housing Court ordered that he could not keep more than one dog at his home. When the offender again kept multiple dogs at his house—neglecting one of them so severely that it needed immediate medical attention—the Housing Court forbade him from having any dogs in his home. The Housing Court thus ensured that the offender could not try to hide his dog breeding from scrutiny.

The Housing Court's greatest challenge since the foreclosure crisis has been how to address cases involving properties formerly in foreclosure. Many offenders in Cleveland face the problem of continuing to own homes they thought they had lost through foreclosure.⁵⁶ Banks have increasingly decided not to take title to houses in Cleveland if no one offers the minimum bid at a foreclosure sale, since the cost of making necessary repairs may exceed the price the house is likely to command.⁵⁷ The banks' decision

54. *Id.*

55. *Id.*

56. Marissa Weiss, *Attack of the Zombie Properties*, 47 URB. LAW. 485, 485–86 (2015) (explaining that many homeowners incorrectly believe that the start of the foreclosure process means that the bank is taking responsibility for the property and they must immediately vacate).

57. Lind, *supra* note 52, at 239–40 (explaining that foreclosure processes can take several years and by the time they are sold the cost of repairs exceed

not to take title leaves the original owner with responsibility for repairing or demolishing the house, which has usually been broken into and vandalized, yet unable to sell or give it away because of its “zombie” title.⁵⁸ Because Cleveland is served by the Cuyahoga County Land Revitalization Corporation (commonly known as the Cuyahoga County Land Bank), many of these offenders plan to seek release of mortgage liens, and other liens, so they can convey the property to the Land Bank. In these cases, the Housing Court orders offenders to keep the home secure from entry, free of graffiti, with the grass and weeds cut, and no debris in the yard while they seek release of liens.

In cases where owners are not able to obtain release of liens, they often wish to stay in a holding pattern, hoping that a tax foreclosure leads to them losing title or that the City demolishes the house. But Cuyahoga County does not have the staff to bring tax foreclosures on every abandoned house and the City does not have the funds to demolish every condemned house. In these cases, if the offender lacks the money to repair or demolish the house, the threat of punishment will not force the issue. But neither is it just for the offender to walk away from his or her responsibility. In such cases, the Housing Court, after evaluating the offender’s income, orders the offender to allocate at least a portion of their income to funding a savings account with the goal of eventually saving enough money to pay for demolition of the house. This tailored remedy forces the offender to keep up the effort not to re-offend rather than punishing the offender with fines that will only make it harder for them to comply.

However, there is a set of offenders who in no way lack funds. Several major national banks have been convicted and sentenced to community control supervision. None of the banks, unfortunately, have kept their properties free of building code defects. After finding the banks to have violated community control, the Housing Court considers what sanctions would prove most effective in preventing the banks from re-offending. Since many of the building code defects result from repeated break-ins, the Hous-

the value of the house causing many lien holders to simply walk away and abandon the property as “worthless”).

58. *See id.* at 240 (“These owners are, however, still owners of record and legally responsible for the condition the property.”).

ing Court ordered one bank to install metal security doors at each property where a break-in had occurred. When this measure failed to prevent the bank from re-offending, the Housing Court imposed the requirement that the bank install wireless security alarms in each of its vacant properties. The bank objected that this sanction was not reasonably related to the goal of stopping the bank from re-offending, arguing that it was third parties, not the bank, who caused the re-offense against the law. The Housing Court overruled the objections because the record established that, even if the break-ins were outside the bank's control, the bank's failure to promptly secure and repair the properties was caused by its failure to regularly inspect its vacant houses. When the Housing Court's Housing Specialist drove by a small sample of the bank's properties, he discovered several break-ins that the bank did not yet know about. The sanction of installing wireless home security systems was therefore reasonably related to the goal of stopping the bank from re-offending.

The Housing Court also imposes a sanction on neglectful landlords that was once innovative but has become tried and true: residential confinement to property owned and neglected, by the landlord. Such confinement serves two functions: it punishes the offender by making him or her the party who suffers from any failure to make repairs, and it motivates the offender to make the needed repairs. The hope is also that the sanction sensitizes the landlord to the effects on others of his or her neglect of property.

The Housing Court retains jurisdiction over cases where it has imposed community control sanctions, allowing it to reward offenders who comply. Offenders can request that the court terminate their term of community control or modify financial sanctions imposed on them.

B. When Punishment is Needed

When offenders subject to community control sanctions fail to comply with the requirement not to re-offend, despite the fact that there are no obstacles preventing them from taking steps not to re-offend, the Housing Court no longer has the freedom to tailor the sanction. The Housing Court can only deter such offenders through traditional punishment.

One such offender was a for-profit business that, despite having had its eyes wide open when it became owner of vacant houses in Cleveland, nevertheless asked the Housing Court to be

lenient with it. The business requested that the Housing Court expect no more of it than the Housing Court would of former homeowners struggling with zombie titles. The business became owner of vacant houses in Cleveland because it chose to purchase tax certificates from the Cuyahoga County and to foreclose on homeowners who did not pay the offender on demand. Yet the owner failed to show the Housing Court that it was making any effort to make needed repairs or promptly demolish condemned houses. It would take action only when the Housing Court's Housing Specialist identified specific defects at particular houses. The Housing Court announced to this offender that the Housing Court's community control officer was not its employee, checking its housing stock as a service to the offender; the Specialist was checking to see if the offender had met its obligation to regularly inspect and repair. Though the offender did not wish to spend money on repairs, preferring to sell the vacant houses in their "as is" condition, the Housing Court explained that compliance with the community control requirement to keep property in good repair was not optional. The Housing Court fined the offender \$20,000 and extended its term of community control supervision.

C. When Punishment Fails: Defiant Offenders

The Housing Court's decision to punish offenders who violate the terms of community control can fail to bring about the desired result of changing the offender's behavior. In the case of an individual, the threat of incarceration or incarceration may fail to coerce the offender to comply with community control requirements. In the case of offenders who are shielded business entities—corporations or limited liability companies—the threat of fines may have no effect on the offender if the investor/owners of the offender entity conclude that raising the capital needed to comply with community control requirements would lead to a greater loss for them than the imposition of fines, even when those fines are substantial.⁵⁹ The Court has, in the past year, been confronted with three offenders who have not hidden the fact that they violat-

59. Business entities are subject to fines up to \$5,000 for each day during which they fail to comply with an order from the city's building department. CLEVELAND, OHIO CODE OF ORDINANCES § 3103.99(c) (2016) (citing OHIO REV. CODE ANN. § 2929.31(8) (LexisNexis 2010)).

ed community control requirements because the owners of the company, the sole asset of which was the derelict property, had not, and would not, raise the capital needed for the offender to comply with the law. They chose instead to leave the company unable to comply with the law and therefore subject to the maximum punishment the Housing Court could impose. Since it is the offender itself, as distinct from its owners, and has the obligation to comply with community control requirements, the owners can choose to let the company fail so that they face no additional financial liability. The offenders argued that the fact that making the needed repairs would likely cause it a business loss should excuse them from complying or that the Housing Court should hold them blameless. The fact that complying with the law will cause a company, or a person, to lose money is no justification for failing to comply and does not render the offender blameless. The Housing Court therefore punishes these offenders with fines, fully aware that the shield of liability provided by corporate law will likely defeat the public's interest in code enforcement in cases where a company's owners hold to the view that the company's value is less than the cost of funding the company so that it can comply with the law. The fines ordered by the Court can be converted to civil judgment but may go uncollected or be collected without causing the offender to make any effort to comply with community control requirements.

D. Transferring Property Without Making Repairs

When an offender transfers a property without making needed repairs, the failure to make repairs during the time of ownership is a violation of community control requirements. But in these cases the Housing Court cannot design a sentence intended to cause the offender to repair the property. The Housing Court can only decide what punishment is appropriate given the offender's violation. The Housing Court may consider the sale a mitigating factor in determining punishment to the extent to which the sale was to a responsible buyer such as an established company with a record of renovating properties or an individual who plans to live in the house and has sufficient income to repair and maintain the property. The Housing Court will not find the sale to be a mitigating factor if it was a quick sale to an out of state speculator who will likely neglect the property while trying to sell, or "flip" it, for a quick profit.

E. Direct Sentencing Turns into a Drain of Court Resources

The Housing Court must consider, when imposing creative community control sanctions, the burden on its staff of Housing Specialists that the sanctions create. It is the Housing Specialists that must monitor the offender's compliance with increasingly specific requirements.

Some offenders, after having been found to have violated community control requirements, appear to the Housing Court to be in good faith when they pledge to meet their obligations. When called to account for their subsequent failures to make repairs at particular properties, they often justify those failures based on their efforts to address problems at other properties. If the Housing Court faults the offender for his or her priorities, it can order the offender to change those priorities, to make certain repairs before others. This approach, however, burdens the assigned Housing Specialist who may be asked to decide on the right priorities and will be asked to inspect and confirm that particular repairs were made.

One offender purchased over twenty vacant homes in Cleveland using money from an investor but without obtaining funds needed for repairs. In addition, some of the homes were condemned and needed to be demolished. The offender allegedly also lacked the money to pay for demolitions. The Housing Court began to consider sanctions more and more narrowly tailored to the task of getting the offender to make the most needed repairs first. But doing so threatened to make the Housing Specialist into the offender's property manager, so, instead of asking the Housing Specialist to prioritize how the offender should spend the funds he did have through lists of repairs at particular houses, the Housing Court made the sanctions more general, ordering the demolition of certain condemned houses by certain dates and for other houses, ordering that all repairs needed for those houses be accomplished by set deadlines.

The Housing Court's willingness to burden its staff with detailed supervision of offenders depends, in part, on the extent to which the City is enforcing its codes through its inspectors. If the City sends its inspectors, issues notices of violation, and brings new criminal cases against offenders sentenced to community control, the Housing Court does not need to duplicate those efforts by using its own staff to visit those same properties. The City brings

both minor misdemeanor charges and first-degree misdemeanor charges before the Housing Court three days a week. The Department of Building and Housing and the City's Law Department decide on the cases to be brought and sometimes make it a priority to inspect and prosecute landlords who own, but neglect, a substantial number of properties. But, when the City's enforcement is haphazard or incomplete, with criminal charges brought only for a particular property, the Housing Court makes it a priority for its staff to consider the condition of all of an offender's properties.

F. Connecting the Dots Between Civil and Criminal Cases

The Housing Court's Housing Specialists also help landlords and tenants in civil cases. A tenant might come to Housing Court to find out what she can do about her water being shut-off. A landlord asks about the process to evict a tenant. When the same Housing Specialists are assigned to monitor offenders' compliance with community control requirements, they have a ready-made opportunity to confirm what offenders are telling them or to find out when offenders are not telling the whole truth.

One offender told the Housing Specialist assigned to his case that he had only purchased houses for extended family members to live in. But the Housing Specialist learned from her work on civil cases that the offender had purchased more properties than he told her about and that he was renting out some of the properties to non-family members. She brought him in for a violation hearing so the Housing Court could force him to provide her with honest information and to make repairs at all the properties he bought.

G. Highs and Lows: Community Control's Effective and Ineffective Cases

Community control sanctions sometimes achieve the Housing Court's goal of ensuring that offenders make repairs to neglected properties in Cleveland. One of the Housing Court's most extensive community control sentences involved a real estate company that purchased vacant homes in bulk from major banks, paying about \$500 per house. The company intended to sell the properties to low income families with poor credit using land contracts with almost no down payment required. Houses that did not attract interest would be flipped to other speculators. The Housing Court ordered that the homes be repaired prior to being sold by land contract, that condemned houses be demolished, and that houses not

be flipped to other speculators. Completely rehabbing the homes would have made them too expensive for most Cleveland families, but allowing them to be sold “as is” would leave eager homebuyers without hot water tanks or furnaces, with leaky roofs and collapsing foundations, with lead paint and electrical hazards. In a word—uninhabitable.

In this case, the Housing Court chose to devote the time of the Housing Specialist assigned to the task of determining what repairs would justify modifying the company’s \$500,000 in fines. She visited every home sold to an owner occupant to interview the buyers and determine what condition the house was in and what the buyers had already paid to repair or replace. The Housing Court heard her specific recommendations and ordered the company to make repairs and to credit buyers for repairs the company should have made. At regular status hearings, the Housing Court heard the results of her inspection of vacant condemned houses and set deadlines for those houses to be demolished.

The judge and magistrates of the Housing Court rarely see the offenders who comply with the requirements of community control since they are not summoned to Housing Court for violation hearings. Offenders who are successfully complying may file written motions asking for the modification of community control based on their success; the modification can include the reduction of fines, the lessening of community control requirements, or the early termination of community control.

It should be noted that community control sanctions can sometimes fail to achieve their purpose. An owner of nine rental properties on Cleveland’s west side claimed to lack the money needed to make repairs. After hearing from a homeowner who had lived for years directly beside one of the offender’s worst properties, the Housing Court sentenced the offender to home confinement at that property. The offender defied the Housing Court by failing to terminate the tenancy of the month-to-month tenant who occupied that property so that he could begin serving his sentence. The offender also failed to cut the grass and weeds at the property; he did not install a simple pipe to drain the kitchen sink, which his tenant could not use except by putting a bucket under the sink to catch the wastewater. Given his defiance, the Housing Court ordered this offender to serve ninety days incarceration, that sentence to be modified as soon as he had arranged to serve the previously ordered home confinement. After being released from incarceration,

tion due to failing health, the offender sold the property where he was to serve his sentence, defeating once again the Housing Court's intent to force him to make needed repairs. The Housing Court must now consider the appropriate punishment given the offender's inability to make repairs.

VI. CONCLUSION

The traditional view of criminal sentencing is that punishing an offender deters that offender and others from violating the law again. This traditional model, however, lacks the flexibility needed by a court specializing in housing issues. Ohio's community control sentencing alternative provides a much more flexible approach. A court can directly sentence owners to take actions that will prevent them from re-offending. The offenders avoid greater punishment at the cost of taking on the burden of having the court monitor all the properties they own.

Cleveland's Housing Court is using just such an approach in sentencing, an approach made possible by the Housing Court's expertise in housing issues, its experienced staff, and its ongoing evaluation of the success of its community control requirements.