

Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Legislative & Judicial Brief is designed to share information and spark conversation. The Commission strives to move ideas to solutions that advance public safety, realize fairness in sentencing, preserve judicial discretion, provide a meaningful array of sentencing options and distinguish the most efficient and effective use of correctional resources.

-Sara Andrews



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Legislation Impacting Sentencing

SIGNED BY THE GOVERNOR



Justice Reinvestment

The final scheduled meeting of the Ohio Criminal Sentencing Commission's Justice Reinvestment (JR) 2.0 Ad Hoc Committee was on November 8, 2018.

The goal of the group is to “develop a statewide public safety strategy to reduce crime, improve behavioral health treatment and adopt more cost-effective sentencing, corrections and supervision policies.”

The work has resulted in four related policy objectives: reducing violent crime, expanding mental health and drug treatment, reducing recidivism and its costs, and improving criminal data collection – all of which received final votes by committee members.

A provisional written report is expected by year end and a longer, definitive report will be prepared once legislation is enacted by (the 133rd) General Assembly.

[More information is available here.](#)

SB1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking, drug possession and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound; revises the manner of determining sentence for certain violations of the offense of permitting drug abuse, and adds lisdexamfetamine to the list of schedule II controlled substances. On April 11, 2018 the Senate considered House Amendments, 0-33. On June 26, 2018 the bill was reported out of Conference Committee at the first hearing, on June 27, 2018 the House accepted the report of the Conference Committee, 82-12 and on the same date the Senate considered the report, 31-1. The bill was signed by the Governor on August 1, 2018 and effective October 31, 2018.

[*The Commission Quick Reference Guide is updated, find it here.](#)

SB66 SENTENCING MODIFICATION-REHABILITATION (EKLUND, TAVARES)

The bill, as introduced, modifies criminal sentencing and corrections law by including rehabilitation as a purpose of felony sentencing and removes the one-year minimum for presumptive fourth or fifth degree felony community control sanctions. The bill also modifies sanctions for a violation of a community control condition and the manner of calculating confinement credits. The bill modifies the eligibility criteria and procedure for participation in intervention in lieu of conviction and allows offenders convicted of certain multiple fourth or fifth degree felonies eligibility for conviction record sealing. Additionally, the bill revises procedures for the Adult Parole Authority to grant a final release or to terminate post-release control, and modifies the criteria for considering a prison term sanction for a post-release control violation. The bill was reported out as amended at the fourth hearing in the House Criminal Justice Committee on May 22, 2018. On June 27, 2018, the bill was amended on the Floor and passed by the House, 90-2. On June 27, 2018, the Senate considered and concurred with House amendments, 29-0. The bill was signed by the Governor on July 30, 2018 and effective October 29, 2018.

HB95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is a contributing factor of the violation. The bill passed the House of Representatives on June 21, 2017, 82-12 and was referred to the Senate Local Government, Public Safety and Veterans Affairs Committee on June 28, 2017. The bill was reported out of committee at the fourth hearing on October 24, 2107 and on June 27, 2018 passed by the Senate, 31-1. The bill was signed by the Governor on July 30, 2018 and effective October 29, 2018. The Department of Public Safety has made available an online course for people ticketed for distracted driving. Under the new law, a driver can be fined an additional \$100 if the moving violation that led to the ticket was a result of distracted driving. A distracted driver may elect, instead of paying the \$100, to attend a distracted driving safety course. Upon successful completion of the course, written confirmation can be submitted to the court along with payment for any other fines imposed, and the additional \$100 fine will be waived. [The course can be located on the BMV website.](#)

HB405 COUNTERFEITING OFFENSE (PERALES)

The bill creates the criminal offense of counterfeiting and based upon the value of the counterfeit involved, specifies penalties ranging from a fourth to first degree felony. The bill further provides that a person may be prosecuted for counterfeiting and related offenses, but if they involve the same conduct and the same victim, the two or more offenses must merge for conviction and sentencing as allied offenses of similar import and includes counterfeiting within the definition of "corrupt activity" under the Corrupt Activities Law. The bill was signed by the Governor on October 23, 2018 and effective in 90 days.

Legislation Impacting Sentencing

UPDATES

SB159 SEALING RECORDS AFTER PARDON (WILLIAMS, SYKES, BROWN, TAVARES)

The bill expands the Not Guilty/Dismissed Charge/No Bill Record Sealing Law so that a person who is granted a pardon by the Governor may apply for and, if specified criteria are satisfied, be granted an order under that Law to seal the official records in the case in which the person was convicted of the pardoned offense. The bill does not change that Law as it applies with respect to a not guilty finding, a dismissed charge, or a grand jury no bill, and applies the current procedures of that Law, modified to fit the bill's provisions, to a pardoned person who applies for sealing under those provisions. The bill was introduced on June 1, 2017 and had a first hearing in the Senate Judiciary Committee on November 13, 2018.

SB171 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)

The bill increases the penalty that applies to the offense of violating a protection order if the offender had previously been convicted of a protection order violation aggravated menacing or menacing. The bill also requires probation agencies (instead of law enforcement) to oversee electronic monitoring of those convicted of violating juvenile protection orders or menacing by stalking protection orders. The bill was introduced on July 6, 2017 and reported out of the Senate Judiciary Committee at the fourth hearing on May 15, 2018. On May 16, 2018, the bill was passed by the Senate, 32-0 and the bill had a first hearing in the House Criminal Justice Committee on November 13, 2018.

SB201 REAGAN TOKES LAW-INCARCERATION (BACON, O'BRIEN)

The bill provides for indefinite prison terms for first or second degree felonies and specified third degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term. The bill also is designed to generally allow the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration and allow the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specified findings. The bill was introduced on September 27, 2017 and the act's provisions are to be named the Reagan Tokes Law. There is a companion/part 2 Senate Bill (SB202) and House companion bill HB365 (Hughes, Boggs). The bill was amended and reported out of the Senate Government Oversight and Reform Committee on April 11, 2018 and considered by the Senate the same date 33-0. On May 15, 2018, the bill was referred to the House Criminal Justice Committee and had a first hearing on November 13, 2018.

SB207 FELONIOUS ASSAULT-OFFENSE EXPANSION (KUNZE)

The bill expands the offense of felonious assault to include knowingly causing or attempting to cause physical harm to another person by means of strangulation or suffocation. The bill was introduced on October 3, 2017 and referred to the Senate Judiciary Committee on October 25, 2017 and had a fourth hearing in the Senate Judiciary Committee on November 13, 2018.

[2018 Report: The State of NICS in Ohio](#)

On April 23, 2018, Governor John R. Kasich issued Executive Order 2018-03K, National Instant Criminal Background Check System (NICS) Compliance.

The order directed the Office of Criminal Justice Services (OCJS) to accomplish three main tasks: 1.) survey the current status of NICS reporting in Ohio and identify barriers to complete, timely, and accurate reporting; 2.) reconvene a 2015 Working Group that had previously addressed how data sharing could improve NICS compliance and 3.) use data generated by a NICS survey to issue a report detailing how to improve NICS reporting and include policy recommendations.

The working group delivered a report that assessed the current level of compliance in Ohio and identified barriers that exist to achieving comprehensive, up-to-date reporting. The group also made recommendations to expand training and education to those responsible for submitting data into the system, reforms to reduce duplicative or unclear reporting responsibilities and ensure greater coordination among entities.

Governor Kasich has since signed two more [Executive Orders](#), one that permanently establishes the National Instant Criminal Background Check System (NICS) Compliance Working Group and one that adopts emergency rules to require law enforcement agencies to upload protection order and warrants into the Law Enforcement Automated Data System (LEADS).

The full report can be found [here](#).

Legislation Impacting Sentencing*****UPDATES*** (continued)****SB231 SIERAH'S LAW-VIOLENT OFFENDERS (GARDNER)**

The bill requires the Ohio Attorney General Bureau of Criminal Investigation to establish a Violent Offender Database (VOD), requires persons convicted of certain violent offenses to enroll in the database and names the provisions of the act "Sierah's Law". The bill also increases the current membership of the Ex-Offender Reentry Coalition from 17 to 21, adding four members of the General Assembly, specifying two of the four will be the chairpersons of the standing committees that primarily address criminal justice matters, modifies the duties of the Coalition and eliminates its repeal. The bill requires halfway houses to use the single validated risk assessment tool selected by the Department of Rehabilitation and Correction for adult offenders and it provides that the notice of release from prison of specified offenders given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminates the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders. The bill was amended at the second hearing in the Senate Judiciary Committee on February 27, 2018 and reported out at the third hearing on April 10, 2018. The bill was considered by the Senate on April 11, 2018, 31-2. On May 15, 2018, the bill was referred to the House Criminal Justice Committee and had a first hearing on November 13, 2018.

SB244 PROMOTING PROSTITUTION PENALTIES (DOLAN, MANNING)

The bill amends penalties for promoting prostitution by specifying that prior conviction of a similar violation or a conviction of trafficking or aggravated trafficking in drugs increases the offense to a third degree felony. The bill also specifies that if one or more convictions of a similar offense is a second degree felony and if the person pleads guilty to or is convicted of a firearm specification, the court shall sentence the person to a mandatory prison term. The bill was introduced on December 18, 2017, was passed by the Senate March 21, 2018 and had a first hearing in the House Criminal Justice Committee on November 13, 2018.

SB251 NONCONSENSUAL IMAGE DISSEMINATION PROHIBITION (SCHIAVONI)

The bill prohibits the nonconsensual dissemination of private sexual images, requires that certain property involved in the offense be criminally forfeited, and creates certain legal rights and employment protections for a victim of the offense. The bill was introduced on January 25, 2018 and had a first hearing in the Senate Judiciary Committee on November 13, 2018.

SB329 HAZING (BACON)

The bill was introduced on September 25, 2018. The bill expands the definition of hazing to include behavior to continue membership in an organization, not just an act of initiation. It increases the penalty from a fourth degree misdemeanor to a first degree misdemeanor. The bill was referred to the Senate Government Oversight and Reform Committee on November 14, 2018.

HB259 LIQUOR LICENSE-VIOLENCE DATABASE (SEITZ, WEST)

The bill requires the Attorney General to establish a database of persons who have committed an offense of violence at specified liquor permit premises and allow access to the database to holders of liquor permits in the specified categories. The bill was introduced on June 6, 2017 and was referred to the Health Committee on November 13, 2018.

HB296 DRUG CRIME NEAR ADDICTION SERVICES (GAVARONE)

The bill enhances the penalties for trafficking in Schedule I and II controlled substances (aggravated trafficking in drugs), and trafficking in cocaine, L.S.D., heroin, hashish, and controlled substance analogs, but not including marijuana, when committed on the premises or within 1,000 feet of a community addiction services provider when the offender recklessly disregards whether the offense is being committed within the vicinity of a community addiction services provider. The bill specifies the new penalty enhancements are at the same level as existing penalty enhancements for drug offenses committed in the vicinity of a school or juvenile. A substitute bill was accepted at the fourth hearing in the House Criminal Justice Committee on April 10, 2018 and the bill was reported out of committee at the fifth hearing on May 15, 2018. The bill was passed by the House on June 20, 2018, 92-1. The bill had a first hearing in the Senate Judiciary Committee on November 13, 2018.

HB349 POLICE ANIMALS (LATOURETTE)

The bill includes search and rescue animals in the statute and sets the penalties for assaulting those animals at the same level as existing penalties for assaulting a police dog or horse (2921.321(E)(1)(a)). The bill was amended at the fourth hearing in the House Criminal Justice Committee on May 15, 2018 and reported out of committee at the fifth hearing on May 22, 2018. On June 27, 2018 the bill was passed by the House, 78-15. The bill was referred to the Senate Judiciary Committee on November 14, 2018.

Legislation Impacting Sentencing
UPDATES (continued)

HB355 SEXTING UNDER 21 (HILL, REZABEK)

The bill generally prohibits sexting by a person 19 years of age and under but allows diversion from penalty. The bill requires every court in Ohio to create a "sexting educational diversion program" for Ohioans under 21 convicted of sending sexually explicit material featuring minors, as long as it is a first conviction, there is not more than a 5-year difference in ages between offender and person portrayed in the material, and there was no exchange of money or other item of value. The bill also creates several exceptions, including for people with explicit photos of themselves or their spouses (so long as they don't distribute the photos) and those who receive unsolicited photos and immediately delete them. The bill was amended at the first hearing on February 13, 2018 in the House Criminal Justice Committee and was reported out of committee on May 22, 2018. The House passed the bill on June 27, 2018, 94-0. The bill was referred to the Senate Judiciary Committee on November 14, 2018.

HB411 WRONGFUL IMPRISONMENT LAW (SEITZ, SYKES)

The bill modifies the law governing recovery for wrongful imprisonment. The bill allows an Ohio resident to file the civil action either in the court where the criminal action was initiated or in the common pleas court of the county where the person resides. Criterion describing the wrongful conviction is expanded to misdemeanor convictions, to the felonies or aggravated felonies covered under existing law. The bill also requires: 1.) the Court of Claims to deduct any known debts owed; 2.) a person to reimburse the state for the amount of any award in a related civil rights action that is received after the Court of Claims enters judgment in the person's favor and; 3.) a person to reimburse the state for the entire award for wrongful imprisonment if the person is later convicted of an offense that is based on any act associated with the conviction that was vacated, reversed, or dismissed on appeal and that was the basis of the person being determined wrongfully imprisoned. The bill amends the current statutory provision that allows a wrongful imprisonment claim for an "error in procedure" and allows only the error of a Brady violation (i.e. prosecution withholding evidence) to be eligible for a claim based on "error in procedure." The bill mirrors the Senate introduced version, SB248 that had a second hearing on June 5, 2018 in the Senate Judiciary Committee. On March 13, 2018, the bill was reported out at the fourth hearing in the House Government Accountability and Oversight Committee. On June 7, 2018, the bill was passed by the House, 77-11 and on June 19, 2018, the bill had a second hearing in the Senate Judiciary Committee on November 14, 2018.

HB497 SEXUAL IMAGE DISSEMINATION (ROGERS, MANNING)

The bill prohibits the nonconsensual dissemination of private sexual images and requires that certain property involved in the offense be criminally forfeited. It also creates certain legal rights and employment protections for a victim of the offense. The bill was amended at the third hearing on May 23, 2018 and reported out of committee at the fourth hearing on June 6, 2018. On June 27, 2018, the bill passed in the House, 93-0. The bill was referred to the Senate Judiciary Committee on November 14, 2018.

HB535 NALOXONE-NALTREXONE DATA REPORTING (GAVARONE)

The bill requires hospitals to report drug overdose cases monthly, including the number resulting in death, to the Department of Health and specifies the Department of Health will publish the information on its website. The bill also requires certain reporting of the administration of naloxone to the Department of Health and includes naltrexone within the Ohio Automated Rx Reporting System. The act is to be named the "Opioid Data and Communication Expansion Act." The bill was introduced March 1, 2018 and was reported out of the House Community and Family Advancement Committee at its fourth hearing on April 11, 2018. The bill was passed by the House on June 7, 2018, 88-0. The bill was amended at the third hearing in the Senate Health, Human Services and Medicaid Committee on November 13, 2018.

HB365 REAGAN TOKES LAW (HUGHES, BOGGS)

The bill provides for indefinite prison terms for first or second degree felonies and specified third degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term; generally allows the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration; allows the Department to rebut the release presumption and keep an offender in prison up to the maximum term pursuant to specified findings. The bill also requires the Department to establish a reentry program for all offenders released from prison that the Department determines placement in a halfway house or similar facility is necessary, but the offender has not been accepted by any such facility; requires the Adult Parole Authority to establish maximum work-load and case-load standards for its parole and field officers and have enough trained officers to comply with the standards. It requires that GPS monitoring used for offenders released from prison under such monitoring specify restrictions, including inclusionary zones and necessary exclusionary zones; requires the Department to establish system requirements for GPS monitoring of such offenders by the Department or third-party contract administrators; requires the Department to operate a statewide database for law enforcement use containing specified information about such offenders; and requires that third-party administrators for GPS monitoring under a new contract with the Department provide and use a law enforcement-accessible crime scene correlation program. The bill also requires the Ohio Criminal Sentencing Commission to appoint an Offender Supervision Study Committee. The provisions are to be named the Reagan Tokes Act. There is companion Senate legislation, part 1 Senate Bill 201 and part 2 Senate Bill 202 (Bacon, O'Brien). The bill was reported out of the House Criminal Justice Committee as amended on May 22, 2018 and passed by the House on June 20, 2018, 90-3. On November 14, 2018, the bill was referred to the Senate Government Oversight and Reform Committee.

Legislation Impacting Sentencing

UPDATES (continued)

HB555 RETROACTIVE PENALTY REDUCTION (WEST, SYKES)

The bill makes a reduction of a penalty, forfeiture, or punishment apply retroactively when an offender was sentenced for the offense under the law in effect prior to the reduction, as long as the offense is not an offense of violence. The bill was introduced March 15, 2018 and had a first hearing in the House Criminal Justice Committee on November 13, 2018.

[National Inventory of Collateral Consequences of Conviction](#)

The new National Inventory of Collateral Consequences of Conviction (NICCC) resource, was launched on October 31, 2018 by the National Reentry Resource Center and the Council of State Governments Justice Center. The database compiles state and federal statutes, so that regulations triggered by a particular conviction can be identified.

HB597 TELEPHONE SPOOFING CRIME (FABER, DEVER)

The bill creates offenses of theft or conversion of a telephone number or exchange and providing misleading caller identification information, known as “spoofing”. The bill bars a person from using or repeating a phone number, exchange, or misleading call ID information not assigned to the person with the intent to defraud, cause harm or wrongfully obtain something of value. The legislation would not apply to blocked or unknown phone numbers. The bill had a first hearing in the House Criminal Justice Committee on November 13, 2018 and its companion legislation SB290 (Burke) was introduced on April 11, 2018 and had a second hearing in the Senate Judiciary Committee on November 14, 2018.

HB614 LEGAL IMMUNITY-DRUG OVERDOSES (WEST)

To provide immunity from arrest, prosecution, or conviction for use or possession of drug paraphernalia for a person who seeks or obtains medical assistance for a drug overdose when certain circumstances apply. The bill also excludes a person who is under a community or postrelease control sanction or who twice previously has been granted immunity from the provisions. It further requires a court or the Parole Board to first consider drug treatment or mitigation of the penalty for violation of a community or post-release control sanction resulting from seeking or obtaining medical help. The bill was introduced on April 24, 2018 and had a first hearing on November 13, 2018.

HB645 LSC-HUMAN IMPACT STATEMENTS (HOWSE)

The bill requires the Director of the Legislative Service Commission to prepare a human impact statement for each bill or resolution that proposes to create or amend a criminal prohibition or criminal penalty or to amend the law governing imprisonment, correctional supervision, or the rehabilitation of offenders (a criminal justice law). The statement must analyze whether the new or amended criminal prohibition, criminal penalty, or law, when implemented or enforced, would have a disparate impact on any racial or ethnic group or on a gender. The bill was introduced on May 14, 2018 and had a first hearing in the House Criminal Justice Committee on November 13, 2018.

Supreme Court of Ohio Decisions Impacting Sentencing

State v. Ireland, SLIP OPINION No. 2018-OHIO-4494

November 8, 2018: Defendant in a felonious assault trial claimed the incident occurred during a “blackout” and supported that claim with expert testimony regarding dissociative episodes related to posttraumatic stress disorder. The trial court instructed the jury that “blackout” was an affirmative defense requiring the defendant to prove the circumstances of his lack of consciousness by a preponderance of the evidence. The Court held that blackout was an affirmative defense, the burden of proving that defense rested on the defendant, and that the trial court properly instructed the jury on that burden.

State ex rel. Grant v. Collins, SLIP OPINION No. 2018-OHIO-4281

October 24, 2018: The court held that the provisions of Megan’s law still applied to an offender who was convicted of pre Adam Walsh Act crimes.

State v. Vega, SLIP OPINION No. 2018-OHIO-4002

October 3, 2018: Officer in a traffic stop acted lawfully in opening two sealed envelopes found in the backseat of a vehicle where indicia of drug activity were present including a strong odor of marijuana in the vehicle. While the officer testified that the envelopes did not smell like marijuana, the Court held that the probable cause stemming from the odor of marijuana and indicia of trafficking was sufficient to allow the officer to search containers within the vehicle for contraband.

State v. Carnes, SLIP OPINION No. 2018-OHIO-3256

August 15, 2018: The Court held that a juvenile adjudication for conduct that constituted the offense felonious assault could be used as a necessary prior conviction for a charge of having a weapon while under disability. This finding was distinguished from the situations in *State v. Bode* 144 Ohio St.3d 155 and *State v. Hand* 149 Ohio St.3d 94 where juvenile adjudications were used to enhance sentences for subsequent offenses committed as an adult. In *Carnes* the juvenile adjudication constituted an element of the offense rather than a sentencing enhancement.

State v. Moore, SLIP OPINION No. 2018-OHIO-3237

August 14, 2018: Credit for time served in jail pending trial under R.C. 2967.191 is not applicable toward the mandatory prison term attached to a firearm specification. Defendant wished to have jail time credit applied to the mandatory 4 year portion of his 8 year 11 month sentence because to do so would make him eligible for judicial release at an earlier date. The Court held that the plain language of title 29 prohibited any reduction of mandatory time for a firearm specification, and that no equal protection violation stems from that prohibition.

State v. Martin, SLIP OPINION No. 2018-3226

August 14, 2018: The court found no plain error where a juvenile court failed to appoint a guardian ad litem as required by the “safe harbor” provisions for victims of human trafficking under R.C. 2152.021(F). The juvenile was bound over to adult court on numerous chargers including murder after an amenability hearing, but neither counsel nor the judge appointed the guardian required by the safe harbor provisions and no objection was raised. The juvenile later plead guilty in adult court. While the Court found the safe harbor provisions were not limited to non-violent offenses, it also found the juvenile did not meet the plain error standard by sufficiently establishing that the crimes were related to her trafficking victimization.



Ohio Criminal Sentencing Commission Members

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Lt. Charles Chandler – *Peace Officer*
Kathleen Hamm, *Defense Attorney*
Brooke Burns – *Public Defender*

*the Commission is assisted by its Advisory Committee, a [complete list is here](#).

Working Committees of the Commission

Sentencing & Criminal Justice Committee priorities include the study of criminal penalties and sentencing statutes and patterns in Ohio, recommending statutory change and reviewing national developments and trends on matters of sentencing. The committee is also poised to respond and make recommendations regarding more broad areas including probation, risk assessment, release programs, specialized dockets, community corrections and building, as well as improving, relationships and coordinating the work of the Commission with other justice partners – both state and federal.

Juvenile Justice Committee priorities include the review of criminal penalties and sentencing statutes and patterns in Ohio and recommending strategies to combat juvenile delinquency and recidivism.

Data Collection and Sharing Workgroup primary goals are to develop, coordinate and identify ways to collect and promote methods for sharing appropriate data and information with justice system partners.

Each committee consists of a chair, a vice chair and individual members. The committee chairs are Commission Members or an Advisory Committee member. Committee membership may include individuals outside of the Sentencing Commission and its Advisory Committee that have a vested interest in the Commission's work.

All committees generally meet the third Thursday of each month. For a full list of members, work to date and future meeting information, please visit <http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp> or email Sara Andrews at sara.andrews@sc.ohio.gov.

2018 Full Commission Meeting Dates

Thursday, December 13, 2018 at the Vern Riffe Center

[2019 Meeting Schedule](#)

*Working committees meet between Full Commission meeting dates.

Unless otherwise noted, all meetings are held beginning at 10:00 a.m. at the Thomas J. Moyer Ohio Judicial Center, 65 South Front Street, Columbus, Ohio 43215.

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Special Thanks to contributor:

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