



CRIMINAL SENTENCING COMMISSION

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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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Note: This issue will be released in two parts.



THE UNIFORM SENTENCING ENTRY

The Ohio Criminal Sentencing Commission—in partnership with the University of Cincinnati School of Information Technology—is continuing its work developing a web-based platform for uniform entry templates for sentencing, [the Ohio Sentencing Data Platform \(OSDP\)](#). Started in 2020, the pilot project has expanded much more rapidly than anticipated; currently 97 Judges are engaged with the pilot project in some way.

The OSDP is designed to tell the story of sentencing in Ohio. The story begins when judges implement the uniform entry templates into their existing court processes.

For more information, please contact Sara Andrews, sara.andrews@sc.ohio.gov.

LEGISLATION IMPACTING SENTENCING & SIGNED BY THE GOVERNOR

SB25 ENHANCE PENALTIES FOR CERTAIN DRUG TRAFFICKING OFFENSES (GAVARONE)

The bill was introduced on January 26, 2021. The bill enhances the penalties for the majority of drug trafficking offenses if either: the offense is committed on the premises of, or within 500 feet of, a substance addiction service provider's facility and the offender knows or should have known that the offense was committed within that restricted vicinity or the offender sells, offers to sell, delivers or distributes the controlled substance to a person who is receiving treatment at the time of the offense, or received treatment within 30 days prior to the offense, from a substance addiction service provider and the offender has knowledge of that treatment. It was signed by the Governor on April 21, 2022 and became effective 90 days after the signature date.

LEGISLATION IMPACTING SENTENCING & RECENTLY INTRODUCED

SB288 CRIMINAL LAW CHANGES (MANNING)

The bill was introduced on February 2, 2022. The bill modifies a substantial portion of the Revised Code relating to Criminal Law. Offenses modified by the bill include robbery, burglary, trespass, safecracking, and related offenses; theft, fraud, and related offenses; offenses against the public peace; offenses against justice and public administration; and certain vehicle license suspensions. The bill also creates a new offense of aggravated rape and defines the term "prior calculation and design".

SB301 LAW CHANGES-LICENSE SUSPENSIONS (BLESSING III)

The bill was introduced on February 24, 2022. The bill makes changes to the laws governing driver's license suspensions for certain drug offenses, for the failure to pay child support, and for students who are habitually truant from school. For drug offense license suspensions, the bill removes the possibility of a suspension for any misdemeanor drug offense and those felony drug offenses where the offender is not convicted of the highest degree of felony imposed for that offense. The bill also modifies the laws governing penalties for failure to provide proof of financial responsibility.

HB580 REVISE PENALTY FOR FAILURE TO COMPLY WITH POLICE OFFICER'S ORDER (MILLER)

The bill was introduced on February 28, 2022. The bill modifies the penalties for committing the offense of failure to comply with an order or signal of a police officer. The bill modifies the penalty for violations of division (B) of RC 2921.331. It increases the general penalty from a misdemeanor of the first degree to a felony of the fourth degree, increases the penalty from a felony of the fourth degree to a felony of the third degree if the offender was fleeing immediately after the commission of a felony, and increases the penalty from a felony of the third degree to a felony of the second degree if the offense was a proximate cause of serious physical harm to persons or property. The bill also modifies the imposition of driver's license suspensions as a result of a conviction of this offense.

HB586 POSTCONVICTION RELIEF BASED ON DNA EVIDENCE (SCHMIDT, UPCHURCH)

The bill was introduced on March 1, 2022. The bill allows a person convicted of a felony offense to file a petition for post-conviction relief based on DNA test results that are requested by or on behalf of the petitioner, the state, or any other government agency. Under current law such a petition can be filed only if the offender requested the testing.

LEGISLATION IMPACTING SENTENCING & RECENTLY INTRODUCED *continued***SB322 MODIFIES THE LAW GOVERNING SEX OFFENSES AND MEDICAL PROFESSIONALS (HACKETT)**

The bill was introduced on April 12, 2022. The bill expands the offense of sexual battery by prohibiting an offender from engaging in sexual activity (as opposed to sexual conduct under existing law) and encapsulates many of the prohibitions currently under the offense of sexual imposition. The bill requires that if the offender is a licensed medical professional the prosecuting attorney must send written notice of the indictment or charge to the appropriate regulatory board or agency and the court, upon conviction, must transmit a certified copy of the judgment entry of conviction to the same. The bill also expands the circumstances under which rape is committed, henceforth including conduct where the offender knows that the victim's judgment or control is substantially impaired because of the influence of a drug administered to the victim with consent for the purpose of medical or dental examination, treatment, or surgery.

HB626 MODIFY PENALTIES FOR FAILURE TO COMPLY WITH POLICE OFFICER (PATTON)

The bill was introduced on April 20, 2022. The bill modifies the second prohibition of the failure to comply statute by specifying that the police officer whom the offender is willfully eluding or fleeing from must be acting in the performance of that officer's duties. The bill also adds mandatory jail and prison terms under certain conditions and modifies the mandatory license suspension provisions.

HB665 MURDER/ INVOLUNTARY MANSLAUGHTER AGE REQUIREMENTS (HUMPHREY)

The bill was introduced on May 12, 2022. The bill modifies both the murder and involuntary manslaughter statutes. Specifically, the bill makes both murder as a proximate result of committing or attempting to commit an offense of violence that is a felony of the first or second degree and involuntary manslaughter applicable only to offenders over the age of 18.

HB674 INCREASE PENALTY – PROVIDING ALCOHOL TO A MINOR IN CERTAIN CASES (RAY)

The bill was introduced on May 16, 2022. The bill increases the penalty for providing alcohol to an underage person from a misdemeanor of the first degree to a felony of the fourth degree if the offense proximately causes the death of another. The bill also requires a mandatory prison term for a felony of the fourth degree violation.

SB345 RESTRICT RESIDENCE OF VIOLENT OFFENDERS ON POST-RELEASE CONTROL (PETERSON)

The bill was introduced on May 27, 2022. The bill creates a new term "extreme offense of violence", defines that term, and creates a new provision which prohibits offenders convicted of such offenses from residing within ten miles of the location of the offense while under post-release supervision. The bill provides several enforcement mechanisms, including eviction of such an offender from rental premises within that radius, and indicates that a violation of the provision may be punished as contempt of court.

SB339 TRACKING DEVICE-GENERAL PROHIBITIONS (MANNING, ANTONIO)

The bill was introduced on May 31, 2022. The bill enacts a provision that prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. A violation of this new provision would be a misdemeanor of the first degree.

REMAINING VOTING SESSIONS

There are 5 remaining voting sessions in the 134th General Assembly: November 16, 2022 (House and Senate), November 30, 2022 (House and Senate), December 1, 2022 (House), December 7, 2022 (Senate), December 14, 2022 (House and Senate), and December 21, 2022 (House and Senate).

OTHER COURT NEWS**STATE OF THE JUDICIARY**

Chief Justice Maureen O'Connor delivered her final State of The Judiciary address on September 15, 2022 at the annual Ohio Judicial Conference meeting in Columbus. The address was live streamed and is [available for viewing](#) on The Ohio Channel website.

NEW JURY INSTRUCTIONS

OJC's Jury Instructions Committee has completed 14 new jury instructions, some necessitated by recent statutory changes. The new instructions are available on the [OJC website](#) and include: use of non-deadly force in self-defense, the defense of another, or the defense of a residence; carrying concealed weapons; retaliation; making false claims; criminal mischief; criminal trespass and aggravated trespass; and trafficking in persons.

STAFF UPDATE

The Ohio Criminal Sentencing Commission recently hired Alex Jones in the role of Criminal Justice Counsel. Alex is a graduate of the University of Cincinnati College of Law and worked as an Assistant Prosecuting Attorney prior to joining the Commission staff.

SUPREME COURT OF OHIO DECISIONS

[*Newburgh Hts. v. State*, Slip Opinion No. 2022-Ohio-1642](#), decided May 19, 2022. Effective July 3, 2019, R.C. 5747.502(B) required municipalities to report to the tax commissioner the amount of fines collected from traffic cameras and the commissioner was to reduce the share of local-government funds by that amount. Additionally, municipalities are required to make a deposit of costs and fees when commencing a civil action to enforce a citation issued using automated traffic-camera system. Newburgh Heights filed an action for declaratory judgement and injunctive relief arguing R.C. 5747.502(B) violated the Ohio Constitutions home rule power provisions. The trial court denied the request and the appeals court reversed. The Supreme Court held that the General Assembly was permitted to reduce state funding to municipalities that use redlight and speeding photo enforcement.

[*State v. West*, Slip Opinion No. 2022-Ohio-1556](#), decided May 11, 2022. The defendant did not object to the trial judge's questions of the defendant during cross examination. After conviction, West appealed to the Tenth District Court of Appeals. The Tenth District affirmed his conviction rejecting the argument that the trial court exhibited bias in questioning West at trial and therefore committed structural error. The court of appeals applied the plain-error standard of review and concluded that West did not demonstrate plain error. West appealed and the Supreme Court held that a criminal defendant who does not object to an error made during trial, regardless of severity of the mistake, then the defendant appealing the case must prove the error impacted the outcome of the trial. Further the Supreme Court ruled that West has not established a reasonable probability that the judge's actions affected the outcome of the trial.

[*State ex rel. Adams v. Winkler*, Slip Opinion No. 2022-OHIO-271](#), decided February 7, 2022. The defendant sought mandamus relief against the trial court judge, claiming that a nunc pro tunc entry which was corrected to include R.C. 2929.14(C)(4) consecutive sentence findings should be vacated for a lack of jurisdiction. The appeals court denied the motion because it named the wrong respondent, and the defendant had a remedy through direct appeal. The Court upheld the denial based on the error in named parties, declining to address the issue of the trial court's jurisdiction to issue the nunc pro tunc entry.

Revised Code Section(s): 2929.14

[*State v. Bates*, Slip Opinion No. 2022-OHIO-475](#), decided February 22, 2022. Defendant was sentenced in 2008 and the sentencing entry failed to include that post-release control would be mandatory and the consequences for violations of post-release control. In 2018 the state brought the error to the court's attention at a hearing regarding the defendants SORN classification, and the Court advised the defendant of the mandatory nature of PRC and the consequences of violation and issued a new journal entry including that information. The defendant appealed, and the appeals court denied the appeal based on earlier void-versus-voidable jurisprudence. The Supreme Court reversed this decision, holding that errors in the original 2008 journal entry needed to be addressed on direct appeal, otherwise appellate challenges to such errors are barred by res judicata. The Court further noted that it lacked the needed information to address how the error in the 2008 entry could affect the supervision imposed on the defendant.

Revised Code Section(s): 2967.28, 2929.19

[*State v. Maddox*, Slip Opinion No. 2022-OHIO-764](#), decided March 16, 2022. The Court resolved the certified conflict regarding whether the non-life felony indefinite sentencing scheme of SB 201 is ripe for constitutional review. In a 4-3 opinion, the majority held that the defendant could challenge the constitutionality of the sentencing scheme on direct appeal. The Court found that requiring the defendant to wait until their incarceration is extended beyond the minimum term would cause hardship, and that as the maximum term is imposed at the initial sentencing hearing, no further factual development is necessary to make the constitutional determination. The Court further found sufficient harm by the potential additional loss of liberty to allow for challenge of the sentencing scheme.

Revised Code Section(s): 2967.271

[*State v. Bethel*, Slip Opinion No. 2022-OHIO-783](#), decided March 22, 2022. Defendant was convicted of capital murder and had the conviction upheld upon review in 2006. In 2009 the defendant filed a postconviction motion for a new trial alleging new information related to the case, which was denied by the trial court. In 2018 the defendant filed a second motion for a new trial, alleging that the State withheld evidence that should have been turned over under the *Brady* rule. The Court held that a defendant seeking postconviction relief "satisfies the "unavoidably prevented" requirement contained in R.C. 2953.23(A)(1)(a) by establishing that the prosecution suppressed the evidence on which the defendant relies" and found prima facie evidence of the claimed suppression. However, the Court held that the defendant failed to prove by clear and convincing evidence that the constitutional error would have led to a different outcome in the jury's verdict. The Court also held that the motion for a new trial filed by the defendant was not prohibited under R.C. 2953.21(K) as it is not a collateral challenge to the case, and that it was not within the trial court's power to deny the motion for leave to within a reasonable time of the discovery of the new evidence. But, the motion for a new trial was ultimately denied based on the same finding by the Court that the suppressed evidence was not proven to be material.

Revised Code Section(s): 2967.271

SUPREME COURT OF OHIO DECISIONS *continued*

[*State v. Eatmon*, Slip Opinion No. 2022-Ohio-1197](#), decided April 12, 2022. Eatmon charged with multiple felony charges relating to the shooting of Khaalis Miller. Three weeks before trial the State filed a motion for material witness warrants. The state outlined the attempts it had made to contact the victim and his mother. Trial court denied the motion but granted the State a continuance. The State filed a new motion adding that the prosecutor called Miller's residence and spoke with an individual who identified as Miller until the prosecutor identified herself. Trial court denied State's motion and granted another continuance. At the next trial date, the State orally renewed its request. The State argued that R.C. 2941.48 does not require a witness to be personally served. The trial court denied the motion and dismissed the case without prejudice. The Eighth District Court of Appeals affirmed the judgment of the trial court. The Supreme Court held that when the State requests a material witness warrant that it must be done by oath or affirmation and be supported by probable cause to believe the witness is material and the warrant is necessary to procure the witness' attendance at trial.

Revised Code Section(s): 2937.18, 2941.48

[*State v. Moore*, Slip Opinion No. 2022-Ohio-1460](#), decided May 5, 2022. Moore was in prison for having been convicted of kidnapping and felonious assault against his wife, who was filing for divorce. Moore was sentenced to 8 years and 11 months in prison and placed in Marion County. Moore spoke with his cellmate about murdering his wife, he even offered \$50,000 and drew a map of places she could be at so that the cellmate could kill her. The cellmate contacted the police and wore a wire to record Moore discussing the plot to kill. Moore was indicted for new charges of retaliation, attempted aggravated murder and conspiracy in Erie County. Moore's original felony conviction was from Erie County. Moore moved to dismiss his case multiple times during trial and the trial court denied such motion. Upon conviction, Moore appealed to the Sixth District Court of Appeals. The Sixth District reversed because all the elements of the offense of retaliation occurred in Marion County. The State appealed to the Supreme Court. The Supreme Court held that venue for the crime of retaliation under R.C. 2921.05(B) is proper where the defendant committed the criminal offense or any of its elements, not where the victim previously pursued criminal charges against the defendant. Therefore, the Sixth District Court of Appeals reversal was affirmed.

Revised Code Section(s): 2921.05, 2901.12

[*State v. McAlpin*, Slip Opinion No. 2022-Ohio-1567](#), decided May 12, 2022. Defendant represented himself at trial and was convicted of kidnapping, robbing, and murdering husband-and-wife owners of a car dealership. The jury recommended death and defendant was sentenced to death. The Supreme Court affirmed the conviction on direct appeal of right. The Court found that the defendant's Sixth Amendment right to self-representation extends to all phases of a capital trial and that the right under the Ohio constitution does as well.

Revised Code Section(s): 2929.04, 2941.145, 2930.13, 2930.14, 2947.051, 2929.03

[*State v. Hudson*, Slip Opinion No. 2022-OHIO-1435](#), decided May 4, 2022. Hudson was indicted by the Mahoning County Grand Jury after he turned 21 for offenses that occurred when he was 17. Hudson moved to dismiss the indictment arguing that the general division lacked subject matter jurisdiction as he was taken into custody prior to turning 21. The state attempted to cure the jurisdiction defect by dismissing the original indictment and reindicting when Hudson was 22. The Court found that Hudson was 20 when he was arrested and that he was continually in custody until the time of the new indictment. Therefore, the superseding indictment did not give jurisdiction to the general division. Hudson should have been prosecuted in the juvenile court for the offenses which occurred when he was 17. The juvenile court has exclusive jurisdiction pursuant to 2152.02(C)(3) and 2151.23(I).

[*State v. Leyh*, Slip Opinion No. 2022-OHIO-292](#), decided February 8, 2022. The defendant sought to reopen their appeal based on alleged ineffective assistance of appellate counsel, alleged that original appellate counsel failed to include relevant evidence and records which could have affected the outcome of the appeal. The Court found error in the appellate courts denial of the motion, holding that it held the defendant to a higher standard of proof than that which is required by App. R. 26(B). The defendant need only show that a genuine issue exists for the motion to be granted – the question of whether ineffective assistance was outcome determinative must occur after the appeal is reopened and the case has been briefed.

[*State v. Crawford*, Slip Opinion No. 2022-Ohio-1509](#), decided May 10, 2022. Following a jury trial, Crawford was found guilty of involuntary manslaughter. Crawford had a firearm while being under disability and discharged the firearm causing the death of another. Crawford appealed arguing that his weapons under disability crime was not the predicate offense for an involuntary manslaughter conviction. The Supreme Court held that there was no basis for reading the involuntary-manslaughter statute in the manner Crawford argued. If a person is prohibited from using a gun but does so anyway, proximately resulting in the death of another, they can be found guilty of involuntary manslaughter. Reason for prohibition is not relevant.

Next Meeting of the Full Commission
(Location TBA)

Thursday December 15, 2022 10:00 a.m.

Note: The October meeting has been cancelled

Due to several persistent scheduling complications the full Commission meeting originally scheduled for October 27, 2022 has been cancelled.

*Working committees meet between full Commission meeting dates.



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