



CRIMINAL SENTENCING COMMISSION

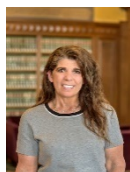
65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3451

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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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LEGISLATION IMPACTING SENTENCING & SIGNED BY THE GOVERNOR**Am.Sub.HB110 BIENNIAL BUDGET (OELSLAGER) – Criminal Changes**

The following changes are **effective September 30, 2021**. Courts currently accepting guilty pleas which may be sentenced after September 30, 2021 should note the changes to Post-Release Control in their plea colloquy.

[Felony Sentencing Hearing Requirements R.C. 2929.19](#) – When placing a defendant on community control, the sentencing court is no longer required to reserve a specific prison term. Instead, the court must inform the defendant of the range of prison terms available for the offense under R.C. 2929.14.

[Community Control Violators / Technical Violations R.C. 2929.15](#) – The return to community control supervision after a 90/180-day prison sanction for a technical violation is optional rather than mandatory, the term “suspended” prison term is replaced with “reserved” and the provision are reordered for clarity.

[Targeted Community Alternatives to Prison \(TCAP\) R.C. 2929.34](#) – TCAP participation remains voluntary and beginning September 1, 2022 will also apply to F4 offenses.

[Post-Release Control R.C. 2967.28](#)

Post-Release Control (PRC) supervision terms as well as when and how PRC can be terminated were modified. The new terms of PRC are:

- **ANY felony sex offense** – A mandatory 5-year term.
- **F1 offenses** – A mandatory minimum 2 years, up to a maximum of 5 years.
- **F2 offenses** – A mandatory minimum 18 months PRC, up to a maximum of 3 years.
- **F3 offense of violence** – A mandatory minimum 1-year PRC.
- **All other F3, F4, and F5 offenses** – Up to 2 years of PRC at the discretion of the APA.

[Certificates of Qualification for Employment \(CQE\) R.C. 2953.25 and R.C. 2953.31](#) – The bill prohibits review of sealed records when an individual is being evaluated for a CQE.

[Sealing of Records of Convictions in Unconditional Pardons R.C. 2967.04](#) – The Governor may include a condition that records relating to a conviction be sealed as part of the grant of an unconditional pardon.

[Electronic Instant Bingo Rules R.C. 2915](#) – The bill revises provisions throughout R.C. Chapter 2915 to provide rules for “electronic instant bingo”.

[Illegal Conveyance Into a Detention Facility R.C. 2921.36](#) – An exception is created allowing for small amounts of sacramental wine to be brought into detention facilities for religious purposes.

[Probation Study Workload Committee Uncodified Section 725.10](#) – Establishes a Probation Workload Study Committee housed within the Supreme Court of Ohio that is tasked with reporting to the General Assembly by December 31, 2021.

**25 YEAR ANNIVERSARY**

On September 16, 2021 Reginald Wilkinson, EdD [facilitated a Roundtable Discussion among Commission Members recognizing the 25-year anniversary of the enactment of SB2*](#), known as Truth in Sentencing in Ohio.

As a result, a workgroup was established to refine the discussion topics and develop recommendations to achieve clarity and reduce [the complexity of felony sentencing](#) consistent with the Commission’s Vision: To enhance justice and its Mission: To ensure fair sentencing in the state of Ohio.

*SB2: Am.Sub.S.B. No. 2, 146 Ohio Laws, Part IV, 7163–7814

LEGISLATION IMPACTING SENTENCING INTRODUCED & UPDATES

INTRODUCED

SB223 PARTIAL SEALING OF RECORDS CONTAINING OVI (ANTANI)

The bill was introduced on September 2, 2021 and referred to the Senate Judiciary Committee on September 8, 2021. The bill allows sealing of charges dismissed through Intervention in Lieu of Conviction (ILC) even if those charges are connected to an OVI conviction. The bill (1) creates a subfile system to retain OVI conviction records, (2) requires the petitioner to propose a plan for redaction, and (3) allows the clerks of court to access computerization funds without judicial approval.

HB418 REDUCE MENTAL STATE UNDERAGE POSSESSION OF ALCOHOL (BIRD, STEWART)

The bill was introduced on September 14, 2021 and reduces the mental state, from knowingly to recklessly, that applies to the provision of law that prohibits an owner or occupant of any public or private place from allowing an underage person to possess or consume alcohol in that place. However, this prohibition does not apply (under the bill or current law) to a parent, legal guardian, or adult spouse who is present and who gives intoxicating liquor or beer to an underage person. Further, to prove that a person has violated this prohibition, the prosecutor must prove all of the elements of the crime, including the person's mental state at the time of committing the offense.

HB427 PROHIBIT ADDICTION TO COMPEL PROSTITUTION (WHITE, MANCHESTER)

The bill was introduced on September 20, 2021 and prohibits the use of a controlled substance or manipulation of controlled substance addiction as a method of human trafficking or to compel prostitution.

SB218 VOYEURISM (ANTANI)

The bill was introduced August 10, 2021 and referred to the Senate Judiciary Committee on September 8, 2021. The bill increases penalties for the offense of voyeurism, for both first-time (from M3 to M1) and repeat offenders (F4 or F5).

HB406 VOYEURISM (SCHMIDT)

The bill was introduced on August 30, 2021 and referred to the House Criminal Justice Committee on September 21, 2021. The bill adds definitions to Chapter 2907 and includes increased penalties for repeat offenses of Voyeurism (the current M3 offense is an M2 if repeated and an M1 if repeated twice; the current M2 offense is increased to an M1, which is an F5 if repeated and an F4 if repeated twice).

UPDATES

SB207 HAMILTON COUNTY DRUG COURT (THOMAS, WILSON)

The Hamilton County Drug Court, created in 1995, is Ohio's first drug court and the only one created by statute. The bill removes language creating the court, which inadvertently also limited court activities to a 1995 model of a drug court. Under the bill, the court will operate under Supreme Court certification like other specialized docket courts. The bill had a second hearing in the Senate Judiciary Committee on September 21, 2021.

HB44 INCREASE PENALTIES - ASSAULT (ROEMER)

The bill was introduced on February 2, 2021, and increases the penalties for assault if the victim is acting as a sports official or the assault is committed in retaliation for the victim's actions as a sports official. On June 25, 2021, the bill was passed by the House, 83-10 and it was referred to the Senate Judiciary Committee on September 8, 2021.

SB25 ENACT RELAPSE REDUCTION ACT; DRUG TRAFFICKING, DEFRAUDING DRUG TESTS (GAVARONE)

The bill enhances penalties for most drug trafficking offenses when committed on the premises or within the vicinity of a substance addiction services provider's facility, if the offender recklessly disregards whether the offense is being committed within that vicinity. The bill also prohibits defrauding an alcohol, drug, or urine screening test through the use or likelihood of use of synthetic urine, a urine additive, or another person's urine. On May 25, 2021 at the bill was amended to change the offense based on whether it occurs on the premises of the facility or within 500 feet, reduced from 1,000 feet. It also changed the offense to whether the offender knew or should have known it was in the vicinity of a substance abuse facility instead of the offender's being reckless, and added an additional element to include an elevated offense if an offender is targeting and selling to someone in treatment or has recently been in treatment within the last 30 days. The substitute bill was passed by Senate on September 15, 2021, 29-1.

HB22 EXPAND OFFENSE OF OBSTRUCTING JUSTICE LaRe, WILKIN

The bill was introduced on February 3, 2021, and expands the offense of obstructing justice to include failure to follow a lawful order from a law enforcement officer or diverting a law enforcement officer's attention. The House Criminal Justice Committee accepted a substitute, amended bill at the fourth hearing on April 22, 2021. On June 25, 2021, the bill was passed by the House, 61-33 and referred to the Senate Judiciary Committee on September 8, 2021.

SUPREME COURT OF OHIO COURT DECISIONS

ANNOUNCEMENT

THE OHIO SENTENCING DATA PLATFORM

We are pleased to share that on Monday October 4, 2021 at 11:00 a.m. Chief Justice Maureen O'Connor and President Neville Pinto of the University of Cincinnati will formally announce the partnership and Launch Phase to create the Ohio Sentencing Data Platform.

This event will be [live-streamed on the Ohio Channel](#). Please tune in and join us for this groundbreaking event.

[An Ad Hoc Committee of the Commission](#) created the Uniform Sentencing Entry and companion documents to give judges a reliable, up-to-date source with the current case law and statutory provisions needed to impose lawful sentences and to empower courts with accessible information.

Recently the Commission also developed the [Ohio Sentencing Data Platform \(OSDP\) website](#).

The OSDP website is designed to provide detailed information about the project and the implementation of the Uniform Sentencing Entry and Method of Conviction entries into existing court processes.

[DeVore v. Black, Slip Opinion No. 2021-OHIO-3153](#), decided September 15, 2021. The defendant sought relief in habeas for a denial of an application to reopen their appeal under App.R. 26(B), which was dismissed by the appeals court following a Civ.R. 12(B)(6) motion to dismiss by Black. The Court upheld dismissal of the habeas petition for failure to state a claim for which relief can be granted.

[State v. Williams, Slip Opinion No. 2021-OHIO-3152](#), decided September 15, 2021. Defendant's attorney represented both the defendant and their spouse in related drug cases at the trial level. The trial court did not conduct a colloquy with either defendant about the potential conflict of interest that defense counsel could have in representing both defendants. The Court reiterated its prior holdings that in these circumstances the reviewing court must first decide if the trial court was aware, or should have reasonably been so, of a potential conflict, and if so remand the case to determine whether such conflict actually exists. In the absence of such a finding there must be a showing of "an actual conflict of interest that adversely affected [their] lawyer's performance." The Court found no such conflict in the facts of this case, and while acknowledging that best practices would be for the trial court to conduct a colloquy about the potential conflict in cases like these, the Court further stated that the constitution does not require that inquiry to occur. The Court stated that such a requirement "should be done by rule or by legislation."

[State ex rel. Ellison v. Black, Slip Opinion No. 2021-OHIO-3154](#), decided September 16, 2021. Ellison sought a writ of habeas corpus to challenge the evidence presented at their post-release control revocation hearing. The law enforcement officer responsible for the arrest which led to the revocation was not available to testify and instead submitted a notarized statement, which Ellison alleged violated their right to confront witnesses against them. However, the Court held that the defendant must first seek mandamus relief for such a claim, and that relief in habeas was not proper in these circumstances.

OTHER COURT NEWS

The Supreme Court of Ohio will accept public comment on [proposed amendments for the annual update to the Rules of Practice and Procedure](#). Several of the proposals intend to modernize courts and maximize the use of technology. Read more at [Court News Ohio](#).

The Court is also accepting public comment on [changes to the Rules of Superintendence](#) regarding modernization, efficiency, and delivery methods of state courts. The proposed changes also address expectations for litigants, counsel, and the public about how technology will be used in courthouses. [Read more here](#).

Chief Justice Maureen O'Connor delivered her [11th State of the Judiciary speech](#) at the annual meeting of the Ohio Judicial Conference in Columbus on September 2, 2021.

[Prejudice and Progress: A History of Racial Justice in Ohio](#)

The legal journey of African Americans in our state examined in a series of videos
Episode 2: 'Crying Out For Answers'
Ron Adrine and the House Select Committee on Assassinations

Next Meeting of the Full Commission

(location TBA)

Thursday December 16, 2021 10:00 a.m.

2022 Full Commission Meeting Dates (location TBA)

Thursday March 17, 2022

Thursday June 16, 2022

Thursday September 15, 2022

Thursday December 15, 2022

**Working committees meet between Full Commission meeting dates.*



Special Thanks to contributor:

Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference

Questions, Comments, Suggestions? Contact:

sara.andrews@sc.ohio.gov

Contact Us:

Ohio Criminal Sentencing Commission

65 South Front Street

Columbus, Ohio 43215-3431

www.supremecourt.ohio.gov/Boards/Sentencing

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