



STAFF UPDATE

March 16, 2023



OHIO

CRIMINAL SENTENCING COMMISSION

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Table of Contents

Felony Sentence Appeals Project Update.....3

As outlined in R.C. 181.25, the Commission staff monitors the impact of the sentencing structure and the sentence appeals provisions by collecting and studying information regarding sentence-based appeals. This ongoing work is conducted with the help of our legal interns and externs. Once the bulk of the information related to sentence-based appeals is collected, the Commission staff reviews, compiles, and contextualizes the results for the Commission’s consideration.

Reference Guides Update.....6

The Commission staff regularly creates and updates reference guides for use by criminal justice practitioners across the State of Ohio. These guides are created in accord with the Commission’s statutory obligations to study existing criminal statutes, review existing criminal sentencing guidelines, and assist the General Assembly with the implementation of the enacted aspects of the sentencing structure.

Legislative Update.....10

Consistent with R.C. 181.23 and 181.25, the Commission staff regularly monitors, analyzes, and summarizes all bills that are introduced in the General Assembly that provide for new criminal offenses, change the penalty of any criminal offense, impact the sentencing structure in Ohio, and impact the number and type of offenders who are imprisoned. Additionally, the Commission staff monitors, analyzes, and summarizes all bills that impact the provisions outlined in R.C. 181.27.

Felony Sentence Appeals Project Update

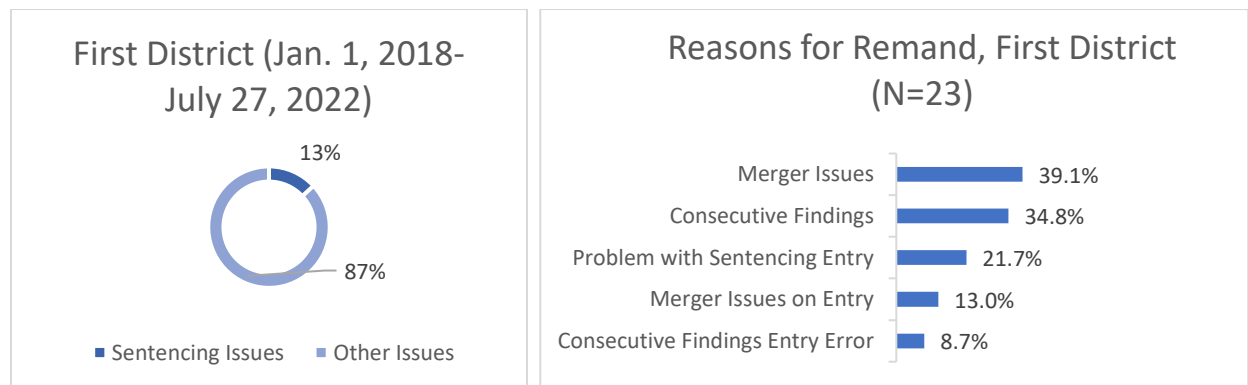
First District Court of Appeals

In the First District Court of Appeals there were 534 criminal appeals decided in the period between January 1, 2018 and July 27, 2022. Looking at those 534 decisions, we have identified 70 cases dealing with sentencing issues (13.11%). Out of the 70 decisions related to sentencing issues, 2 were from municipal court (2.86%) and 2 were from juvenile court (2.86%). Of the remaining 66 common pleas cases, 23 were remanded (34.85%).

5 of the 23 remanded cases (21.74%) were for issues directly related to the sentencing entry.

A recurring issue related to sentencing in the identified remanded cases dealt with merger issues at sentencing. Out of the 23 remanded cases 9 were for merger-related issues (39.13%). 3 of these 9 cases were remanded because of merger issues on the sentencing entry (33%). These sentencing entry errors would likely have been avoided had the trial court judge utilized the uniform sentencing entry.

Consecutive sentence findings were another recurring sentencing issue in the remanded cases. In total, 8 out of the 23 remanded cases (34.78%) were due to the trial courts' failure to properly impose consecutive sentences. 2 of these 8 (25%) were due to errors with the entry. These sentencing entry errors would have likely been avoided had the trial court judge utilized the uniform sentencing entry.



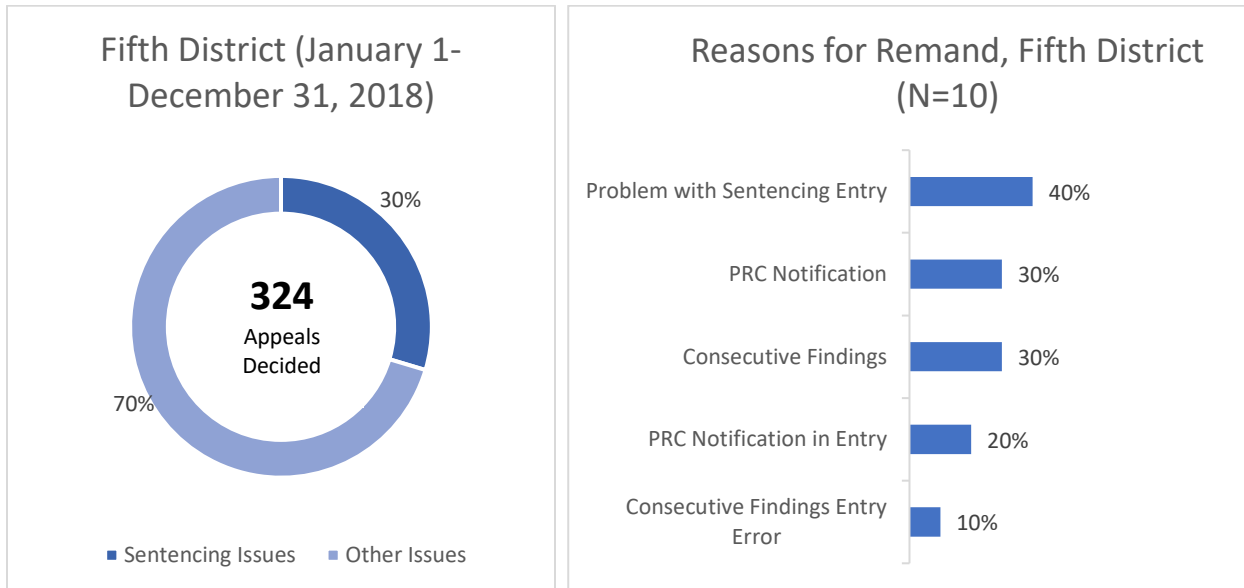
Fifth District Court of Appeals

In the Fifth District Court of Appeals there were 324 criminal appeals decided in the period between January 1, 2018 and December 31, 2018. Looking at those 324 decisions, we have identified 96 cases dealing with sentencing issues (29.63%). Out of the 96 decisions related to sentencing issues, 2 were from municipal court (2.08%) and 1 was from juvenile court (1.04%). Of the remaining 93 common pleas cases, 10 were remanded (10.75%).

4 of the 10 remanded cases (40%) were for issues directly related to the sentencing entry.

A recurring issue related to sentencing in the identified remanded cases dealt with consecutive sentence findings. In total, 3 out of the 10 remanded cases (30%) were due to the trial court’s failure to properly impose consecutive sentences. 1 of these 3 (33.33%) was due to errors with the entry. This sentencing entry error would have likely been avoided had the trial court judge utilized the uniform sentencing entry.

Issues with post-release control notifications were another recurring sentencing issue in the remanded cases. 3 out of the 10 remanded cases (30%) were due to the trial court failing to properly notify a defendant about PRC. 2 of these 3 (66.66%) were issues directly related to the sentencing entry. These sentencing entry errors would have likely been avoided had the trial court judge utilized the uniform sentencing entry.



Eighth District Court of Appeals

In the Eighth District Court of Appeals there were 140 criminal appeals decided in the period between January 1, 2018 and March 28, 2018. Looking at those 140 decisions, we have identified 59 cases dealing with sentencing issues (42.14%). Out of the 59 decisions related to sentencing issues, 1 was from municipal court (1.6%). Of the remaining 58 cases, 19 were remanded (32.20%).

10 of the 19 cases (52.63%) were remanded for the creation of a new entry or a nunc pro tunc entry. 4 of these cases (40%) were to fix findings that were made on the record but not captured in the journal entry. 3 cases (30%) involved sentencing issues related to post-release control.

Sentencing issues related to community control were also recurring. 3 of the 19 remanded cases (15.79%) involved community control sentencing issues. Specifically, compliance with the requirements



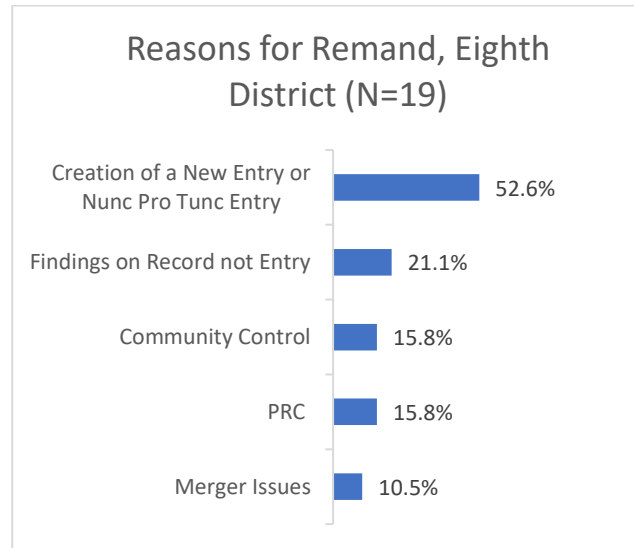
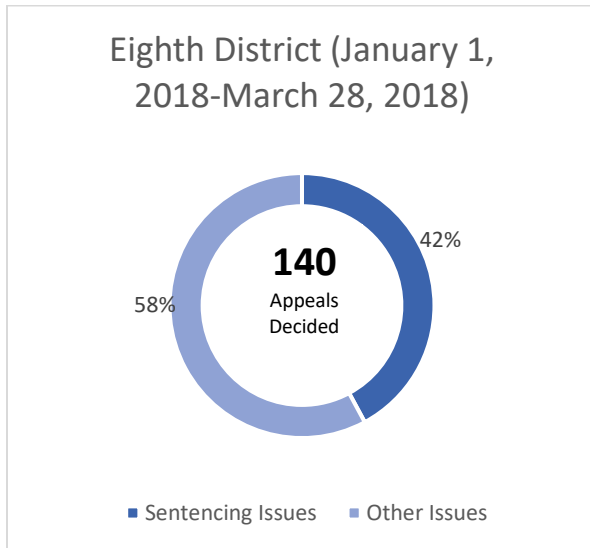
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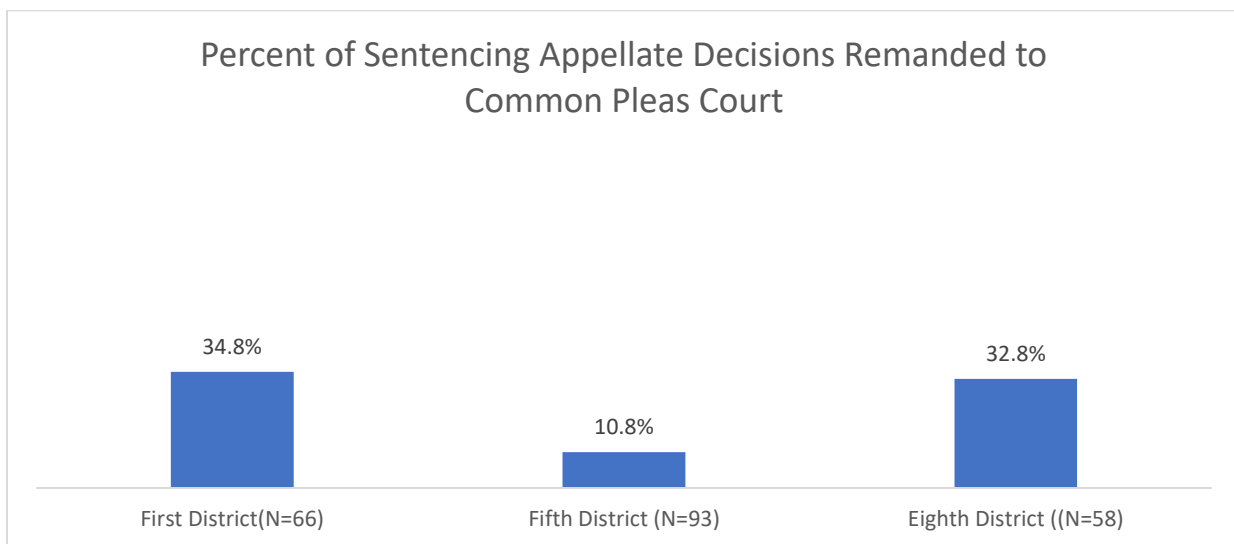
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for imposing a particular sanction. 1 of the community-control sanction cases (33.33%) was remanded for lack of notification of a specific prison term.

Merger at sentencing was an issue in 2 of the 19 cases (10.53%) that were remanded. Each of these cases involved circumstances where the trial court imposed individual sentences on counts that should have been merged.



Combined First, Fifth, and Eighth Analysis





Reference Guides Update

The Commission staff regularly creates and updates reference guides for use by criminal justice practitioners across the State of Ohio. The published guides include the:

- Felony Sentencing Reference Guide
- Drug Offense Quick Reference Guide (in collaboration with the Supreme Court of Ohio Law Library)
- Senate Bill 231 – Sierah’s Law – Violent Offender Database Reference Guide
- Adult Rights Restoration & Record Sealing Reference Guide (in collaboration with the Ohio Judicial Conference)
- Adult Competency Reference Guide (first published March 2023)

Currently, with the continued assistance of the Competency and Not Guilty by Reason of Insanity Workgroup, the Commission staff is working to finalize and publish the:

- Juvenile Competency Reference Guide
- Not Guilty by Reason of Insanity Reference Guide

Felony Sentencing Reference Guide

The [Felony Sentencing Reference Guide](#) provides an in-depth overview of the felony sentencing structure in Ohio. Each section contains an outline of the relevant considerations at each stage of the sentencing process, and the guide is updated as necessary to reflect new legislative and Supreme Court of Ohio changes to the law.

The latest revised edition of the Felony Sentencing Reference Guide will be published prior to April 4, 2023, the effective date of SB 288. While many of the pre-sentencing and sentencing phase sections were unchanged by SB 288, the Release & Sentence Reduction Mechanisms section was greatly impacted. Some of the changes to this section include updates to reflect the following SB 288 changes:

- The modification of the 80% release mechanism, notably the creation of a presumption in favor of release if recommended by DRC.
- The modification of the transitional control statute. For instance, transitional control was modified by reducing the reach of the judicial veto. Currently, the judicial veto is applicable to sentences of 2 years or less. Under the bill, the judicial veto of transitional control is only available when an offender is sentenced to 1 year or less.
- The addition of an emergency release mechanism for prisoners when the governor declares a state of emergency due to a pandemic or any other public health crisis.
- The expansion of earned credit. Inmates who are eligible can earn up to 15% off their sentence (current law only allows for a maximum of an 8% reduction of a prison term.)

- Offenders who are placed in an Intervention in Lieu of Conviction program can now be supervised by a Community-Based Correctional Facility.

Drug Offense Quick Reference Guide

The [Drug Offense Quick Reference Guide](#) was updated in February of 2023. This guide was originally created in collaboration with the staff of the Supreme Court of Ohio Law Library. The guide provides a detailed overview of the drug offense sentencing structure. Largely presented in chart form, the information in this guide gives practitioners a thorough understanding of the complex scheme by which different controlled substances, in different amounts, and possessed, sold or manufactured in different areas, constitute the many differing levels of offenses.

The Drug Offense Quick Reference Guide covers the sentencing schemes for the following offenses:

- Drug Trafficking (R.C. 2925.03)
- Drug Possession (R.C. 2925.11)
- Illegal Assembly or Possession of Chemicals (R.C. 2925.041)
- Drug Manufacturing and Cultivation (R.C. 2925.04)

Sierah’s Law – Violent Offender Database Reference Guide

The [Violent Offender Database Reference Guide](#) details Senate Bill 231, effective on March 20, 2019, which created a statewide “Violent Offender Database”. The law instituted a presumptive 10-year duty of enrollment for offenders convicted of specified violent offenses upon their release from confinement. The law also established procedures by which offenders may overcome the enrollment presumption, through proof they were not the principal offender in the offense.

This guide covers all aspects of Sierah’s Law, including: offenders that qualify for enrollment, enrollment duties, notice requirements, and the details of the procedure for an offender to overcome the presumption of the duty to enroll.

Adult Rights Restoration & Record Sealing Reference Guide

The [Adult Rights Restoration & Record Sealing Reference Guide](#) was created in collaboration with the Ohio Judicial Conference. Due to recent changes in the law, the guide is currently in the final stages of updating and, like the Felony Sentencing Reference Guide, will be published prior to the effective date of SB 288.

The most recent updates will not only reflect the SB 288 changes to record sealing but will also provide some additional insight into the factors, considerations, and other relevant information needed for courts and attorneys to properly apply the law to this increasingly complex structure. Some of the changes to this guide include updates to reflect the following SB 288 changes:

- Record sealing and expungement pursuant to R.C. 2953.32 no longer requires that an applicant to be an “eligible offender”, the new law merely requires that the subject offense be an eligible offense.
- The list of excepted offenses for record sealing and expungement has been streamlined to now cover 6 categories of offenses.
- For record sealing and expungement, trial courts now must set the hearing within 90 days of the filing of the application, prosecutors are now required to file any objection within 30 days of the filing of the application, and the victim must be notified no less than 60 days prior to the date of the hearing.
- The applicability of the expungement of records has been expanded. Other than timing, the eligibility requirements for expungement are the same as the requirements for sealing.
- Prosecutors are now able to initiate the sealing and expungement process for certain low-level drug offense convictions.

[Adult Competency Reference Guide](#)

[Juvenile Competency Reference Guide](#)

[Not Guilty by Reason of Insanity Reference Guide](#)

The Competency/Not Guilty by Reason of Insanity Workgroup has met consistently over the course of the last year to draft 3 new reference guides: the Adult Competency Reference Guide, the Juvenile Competency Reference Guide, and the Not Guilty by Reason of Insanity Reference Guide. The first of these guides to be completed is the Adult Competency Reference Guide. The other two guides are in the final stages of drafting and are anticipated to be fully published by June of 2023.

The [Adult Competency Reference Guide](#) details the statutory procedures that practitioners must follow to successfully navigate from the initial filing of a suggestion of incompetency to trial or the termination of any commitment. The guide details the competency evaluation process, the necessary components of the evaluation report, the findings the trial court must make at any hearings on the issue, the rights of the defendant, and the relevant case law. This extensive guide will serve practitioners throughout the state and will simplify a complicated and convoluted area of criminal law.

In addition to their work on the Adult Competency Reference Guide, the Competency/Not Guilty by Reason of Insanity Workgroup is nearing completion on the Juvenile Competency and Not Guilty by Reason of Insanity Guides. The bulk of the content-related work is finished, and each of these guides is currently being edited and formatted. The Workgroup’s most recent meeting was held at the end of February 2023, and the members discussed several changes to be made ahead of the next meeting. The Commission staff will make these changes and present the updated versions to the Workgroup. Once the members agree that the work is complete, the Commission staff will have a graphic design editor create the first draft of the guides for publication. The guides each follow the same start-to-finish approach that was taken with the Adult Competency Reference Guide. They will give practitioners the

tools necessary to successfully understand the broad topics covered, as well as serve as a resource for identifying and approaching the nuance and minutia contained within each area of the law.

The members of the Competency/Not Guilty by Reason of Insanity Workgroup are:

Philip Florian
*Court Coordinator, Mental Health/
Developmental Disabilities Court, Cuyahoga
County*

Hon. Hollie Gallagher
Cuyahoga County Court of Common Pleas

Dr. Lisa Gordish
*Director of Forensic Services, Ohio Department
of Mental Health and Addiction Services*

Hon. David Gormley
Delaware County Court of Common Pleas

Hon. Todd Grace
Athens County Municipal Court

Hon. David Hejmanowski
*Delaware County Court of Common Pleas,
Juvenile Division*

Lois Hochstetler
*Assistant Director for Community Treatment
Services, Ohio Department of Mental Health
and Addiction Services*

Hon. Jim Miraldi
Lorain County Court of Common Pleas

Marta Mudri
Legislative Counsel, Ohio Judicial Conference

Jeanne Newkirk
*Magistrate, Franklin County Court of Common
Pleas, Juvenile Division*

Dr. Shannon Porter
*Assistant Director of Forensic and Specialized
Assessment Services, Netcare Forensic Center*

Christina Shaynak-Diaz
*Associate CEO, Ohio Association of County
Behavioral Health Authorities*

Dr. John Tilley
*Behavioral Science Specialists, LLC and Forum
Ohio, LLC*

Dr. Meredith Veltri
*Director of Forensic and Specialized Assessment
Services, Netcare Forensic Center*

Hon. Gene Zmuda
Sixth District Court of Appeals

Legislative Update

134th General Assembly

Senate Bill 288 (Manning) Revise the criminal law

The Ohio General Assembly passed the omnibus criminal justice bill, Senate Bill 288 (SB 288), in the final months of 2022. The bill was passed in the Senate on November 30, 2022, and in the House on December 14, 2022. The bill was signed by Governor DeWine on January 3, 2023, and will go into effect on April 4, 2023.

SB 288 included the following changes:

- The bill expands when people convicted of crimes can seek to have their criminal records sealed and expands expungement eligibility.
- The bill removes minor misdemeanor marijuana paraphernalia convictions from criminal records, states that these convictions do not constitute a criminal conviction, and they need not be reported to employers or professional licensing agencies.
- The bill modifies the 80% release mechanism in several ways, notably by creating a presumption in favor of release if recommended by DRC.
- The bill also modifies the transitional control statute. One way the bill modifies transitional control is by reducing the reach of the judicial veto. Currently, the judicial veto is applicable to sentences of 2 years or less. Under the bill, the judicial veto of transitional control is only available when an offender is sentenced to less than 1 year.
- The bill adds an emergency release mechanism for prisoners when the governor declares a state of emergency due to a pandemic or any other public health crisis.
- The bill expands earned credit by allowing inmates who are eligible the ability to earn up to 15% off their sentence (currently only a maximum of an 8% reduction of a prison term is allowed).
- The bill expands the Good Samaritan law to allow for immunity from prosecution for possession of drug abuse instrument and drug paraphernalia offenses.
- The bill removes fentanyl testing strips from the possession of drug paraphernalia code section.
- The bill allows offenders who are placed in an Intervention in Lieu of Conviction program to be supervised by a Community-Based Correctional Facility.
- The bill reduces the penalty for underage drinking offenses from a first-degree misdemeanor to a third-degree misdemeanor.
- The bill changes the texting while driving law to include simply holding or supporting an electronic wireless communications device or entering letters, numbers, or symbols and makes this a primary offense.
- The bill creates a felony offense of strangulation, with penalties ranging from the fifth-degree level to the second-degree level.

- The bill also creates a new felony offense of fraudulent assisted reproduction, making it a third-degree or second-degree felony for a health provider to fraudulently or without consent use their own sperm during fertility treatment.
- The bill changes the offense of petty theft to misdemeanor theft.
- The bill adds firefighters and emergency medical workers to a special victim class for aggravated vehicular homicide offenses.
- The bill makes it a first-degree misdemeanor to disrupt or disquiet any assemblage of people meeting for a religious purpose.
- The bill modifies the look-back period for felony OVI offenders and adds harmful intoxicants to the definition of drug of abuse, thereby expanding the OVI code section to expressly include driving under the influence of harmful intoxicants.
- The bill modifies felony speedy trial rights by allowing the state to request an additional 14 days of speedy trial time. The bill allows county correctional officers the ability to carry guns.

House Bill 462 (Miller, K.)

To prohibit swatting

The General Assembly also passed House Bill 462 (HB 462) in the waning days of 2022. The bill was signed by Governor DeWine on January 2, 2023, and goes into effect on April 4, 2023. This bill creates the new offense of “swatting”. The bill makes it a fourth-degree felony to a second-degree felony to report or cause to be reported false or misleading information to law enforcement under circumstances where the report is reasonably likely to cause an emergency response and does cause an emergency response.

Senate Bill 16 (Schaffer)

Regards civil actions by, and crimes against, first responders

In addition to SB 288 and HB 462, the General Assembly also passed Senate Bill 16 (SB 16) in December of 2022. SB 16 was signed by Governor DeWine on January 3, 2023, and goes into effect on April 4, 2023. Changes of interest to the Commission include:

- The bill removes the statute of limitations for conspiracy to commit, attempt to commit, or complicity in committing aggravated murder or murder.
- The bill also creates the offense of unlawfully impeding public passage of an emergency service responder.
- The bill prohibits certain sex offenders from volunteering with organizations that support minors.
- The bill also modifies the penalties for assault when the victim is a first responder.



135th General Assembly

The General Assembly has introduced a number of bills over the course of the last 3 months that are of interest to, or directly impact the work of, the Commission. The bills outlined below are listed in the order of their introduction. Special attention should be given to House Bill 67 (HB 67) which directly impacts the work of the Commission. If passed, HB 67 would enact a new section (R.C. 181.26) requiring the Commission to perform additional duties.

House Bill 20 (Swearingen) Enact the Computer Crimes Act

House Bill 20 (HB 20) was introduced on February 16, 2023. The bill creates new criminal offenses that cover crimes committed using, or involving, computers.

- The bill creates the new felony of the fifth, fourth, third or second-degree offense of computer trespass, which means to knowingly and without authorization gain access to, or cause access to be gained to, a computer, computer system, or computer network under delineated circumstances.
- The bill creates the new felony of the fourth-degree offense of electronic computer services interference which prohibits an offender from knowingly and without authorization causing the transmission of data, a computer program, or an electronic command that interrupts or suspends access to or the use of a computer network or computer service with the intent to impair the functioning of a computer network or computer service.
- The bill creates the new felony of the fourth-degree offense of electronic data tampering which, under delineated circumstances, prohibits an offender from knowingly and without authorization altering data as it travels between two computer systems over an open or unsecure network or introducing malware into an electronic data, computer, computer system, or computer network.
- The bill creates the new felony of the fourth-degree offense of electronic data manipulation which prohibits an offender from knowingly and without authorization altering data as it travels between two computer systems over an open or unsecure network or introducing malware into any electronic data, computer, computer system, or computer network under circumstances that do not constitute the offense of electronic data tampering.
- The bill creates the new felony of the fourth-degree offense of electronic data theft which prohibits an offender from knowingly and without authorization obtaining electronic data with the intent to defraud, deceive, extort, or commit any crime OR to wrongfully control or obtain property or wrongfully gain access to electronic data.
- Finally, the bill creates the new felony of the fourth-degree offense of unauthorized data disclosure which prohibits an offender from knowingly and without authorization making or causing to be made a display, use, disclosure, or copy of data residing in, communicated by, or produced by a computer, computer system, or computer network. This new offense also prohibits

an offender from knowingly and without authorization disclosing a password, identifying code, personal identification number, or other confidential information that is used as a means of access to a computer, computer system, computer network, or computer service.

The bill makes several other changes to the Ohio Revised Code related to computer crimes. Notably, the bill adds the crime of “electronic computer service interference” to the list of offenses that, if committed by reason of the race, color, religion, or national origin of another person or group of persons, constitute the crime of ethnic intimidation.

House Bill 37 (Johnson, Miller, K.)
Increase penalties for OVI and aggravated vehicular homicide

House Bill 37 (HB 37) was introduced on February 15, 2023, and was referred to the House Criminal Justice Committee on February 16, 2023. The first hearing was held on March 7, 2023. The bill makes changes to 2903.06 (Aggravated Vehicular Homicide) and to 4511.19 (Operating a Vehicle Under the Influence of Alcohol or Drugs). The changes are best summarized by first examining existing law and then analyzing how the proposed changes differ from existing law.

2903.06 Aggravated Vehicular Homicide (OVI at the time of offense)

For F1 offenses, the bill makes modifications to the criteria necessary for the imposition of one of the two available mandatory prison terms.

Under current law, an offender being sentenced on an aggravated vehicular homicide offense (involving an OVI) is subject to a mandatory prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years if the offender has previously been convicted of:

- three or more OVI offenses within the previous ten years,
- three or more aggravated vehicular homicide offenses (involving an OVI) within the previous ten years,
- three or more aggravated vehicular assault offenses (involving an OVI) within the previous ten years,
- three or more involuntary manslaughter offenses (involving an OVI) within the previous ten years,
- a combination of three or more of the preceding offenses within the previous ten years, or
- two or more felony OVI offenses.

Under the bill, an offender being sentenced on an aggravated vehicular homicide offense (involving an OVI) committed after the effective date of the amendment is subject to a mandatory prison term of fifteen, sixteen, seventeen, eighteen, nineteen, or twenty years if the offender has previously been convicted of:

- one OVI offense within the previous ten years,



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- one aggravated vehicular homicide offense (involving an OVI),
- one aggravated vehicular assault offense (involving an OVI),
- one involuntary manslaughter offense (involving an OVI), or
- one felony OVI offense.

The bill states that the fine for the offense of aggravated vehicular homicide (involving an OVI) is mandatory and shall not exceed \$25,000.

4511.19 OVI

The bill increases both the mandatory minimum and possible maximum fines for OVI offenses. Under current law, an offender convicted of an OVI offense is fined as follows:

Type of Offense	Fine
1 st offense in 10 years	\$375-\$1,075
2 nd offense in 10 years	\$525-\$1,625
3 rd offense in 10 years	\$850-\$2,750
Felony OVI Offense	\$1,350-\$10,500

Under the bill, an offender convicted of an OVI offense is fined as follows:

Type of Offense	Fine
1 st offense in 10 years	\$750-\$1,250
2 nd offense in 10 years	\$1,200-\$2,000
3 rd offense in 10 years	\$2,000-\$2,750
Felony OVI Offense	\$2,300-\$10,500

The bill also creates a new notification judges must give at an OVI sentencing. The court must “warn” a person convicted of an OVI that any subsequent OVI conviction that results in the death of another/another’s unborn could result in the person being convicted of aggravated vehicular homicide. The judge must also “warn” the person of the possible penalties for an aggravated vehicular homicide (involving an OVI) offense.

House Bill 50 (Humphrey, Seitz)

Create mechanism to allow relief-collateral sanction for housing

House Bill 50 (HB 50) was introduced on February 15, 2023. The bill creates a mechanism by which persons previously convicted of a criminal offense may seek relief from the collateral sanctions for housing of that conviction by applying for a Certificate of Qualification for Housing (CQH). The CQH may be granted by the common pleas court if the court finds by a preponderance that: 1) granting the petition will materially assist the individual in obtaining housing; 2) the individual has a substantial need

for the requested relief in order to live a law-abiding life and; 3) the granting of the petition would not pose an unreasonable risk to the safety of the public or any individual.

- If convicted of a felony, an offender may petition the court for the CQH at least 1 year after the offender's release from incarceration and all periods of supervision imposed after that release have ended or, if the offender was not incarcerated, at least 1 year after the offender's final release from all other sanctions imposed for the offense.
- If convicted of a misdemeanor, the offender may petition the court for the CQH at least 6 months after the offender's release from incarceration and all periods of supervision after that release have ended or, if the offender was not incarcerated, at least 6 months after the offender's final release from all other sanctions imposed for that offense.

House Bill 56 (Plummer, White) **Increase penalty-fleeing police; regards motor vehicle pursuit**

House Bill 56 (HB 56) was introduced on February 16, 2023. With some modifications, this bill incorporates portions of bills that were introduced during the 134th General Assembly but not enacted. HB 56 increases the penalties for the offense of failure to comply with an order or signal of a police officer, creates the new offenses of hooning and complicity to hooning, and requires law enforcement entities to adopt a written policy governing the pursuit of a motor vehicle based on statutorily delineated criteria.

For the offense of failure to comply, the bill increases the 2921.331(B) offense level from a first-degree misdemeanor to a fourth-degree felony if the offender willfully eludes or flees police after receiving a visible or audible signal to stop. Under these circumstances, if the offender was fleeing immediately after the commission of a felony, the bill increases the offense level from a fourth-degree felony to a third-degree felony. The bill also states that, if an offender is sentenced to prison for violating 2921.331(B), the prison term shall be served consecutively to any other prison term.

The bill also creates two new offenses: hooning, and hooning complicity. Hooning, a misdemeanor of the first degree, means operating a motor vehicle in a reckless or dangerous manner to provoke a reaction from spectators by speeding, street racing, performing doughnuts, performing burnouts, drifting, rapid acceleration, squealing tires, engine revving, or allowing passengers to ride partially or fully outside of a motor vehicle. Hooning complicity, an unclassified misdemeanor, means being a spectator at a hooning event.

House Bill 62 (Humphrey) **Limit the locations at which a person has no duty to retreat**

House Bill 62 (HB 62) was introduced on February 21, 2023. Current law states that a person does not have a duty to retreat before using force in self-defense when that person is in any place in which they have a lawful right to be. The bill limits the locations at which a person has no duty to retreat

before using force in self-defense to the person’s residence, the person’s vehicle, or the vehicle of the person’s immediate family member, provided the person is lawfully in their residence or the vehicle. The bill also removes language stating that the trier of fact shall not consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.

House Bill 67 (Seitz, Williams)
Regards subsequent reduction in penalties for prior offenses

House Bill 67 (HB 67) was introduced on February 27, 2023. The bill states that a qualifying offender who has been sentenced for an offense may apply to the court in which the original penalty, forfeiture, or punishment was imposed if, after the original imposition, the penalty, forfeiture, or punishment for the offense is reduced by a change to the Ohio Revised Code or the Ohio Constitution. This relief is not available to offenders sentenced on an offense of violence. After application is made, the court shall grant the application and make the reduction if the court finds that the change in law is a reduction in a penalty, forfeiture, or punishment for an offense, that the offense is not an offense of violence, that the offender was sentenced for that offense, and that the penalty, forfeiture, or punishment was not imposed pursuant to a negotiated plea agreement.

HB 67 further provides that the Ohio Criminal Sentencing Commission shall prescribe a sample application form that may be used to make the application as described above. The bill also requires the Commission to review all enrolled acts enacted by the general assembly to determine whether the act may provide for a penalty, forfeiture, or punishment reduction. If an enrolled act may provide for one of these reductions, the Commission shall notify the state public defender, each county public defender, and the correctional institution inspection committee. This notification shall include all of the possible reductions in a penalty, forfeiture, or punishment for an offense and a sample application form.

House Bill 83 (Humphrey)
Remove criminal penalties for certain drug offenses

House Bill 83 (HB 83) was introduced on February 27, 2023. The bill changes the offense of possession of drug abuse instruments (R.C. 2925.12) to the offense of making drug abuse instruments. Current law states that it is a criminal offense for a person to “knowingly make, obtain, possess, or use any instrument, article or thing the...primary purpose of which is for the administration or use of a dangerous drug...when the instrument involved is a hypodermic or syringe...” Under the bill, it is only a criminal offense if a person knowingly makes such an instrument, article, or thing.

In addition, the bill also makes a change to R.C. 2925.14. Under current law, it is a criminal offense for a person to knowingly use, or possess with the purpose to use, drug paraphernalia. The bill removes this prohibition in its entirety. Thus, under HB 67, R.C. 2925.14 only prohibits a person from

dealing in drug paraphernalia (i.e., to knowingly sell, or manufacture with the purpose to sell, drug paraphernalia.)

House Bill 91 (Patton)
Prohibit tracking without consent

House Bill 91 (HB 91) was introduced on March 7, 2023. The bill creates the new misdemeanor of the first-degree offense of illegal use of a tracking device or application. The new offense prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. If the victim had previously consented to the installation of a tracking device or tracking application, the bill delineates circumstances that constitute a presumptive revocation of that original consent. The offense does not apply to:

- law enforcement use as part of a criminal investigation,
- parental use in order to track a minor child (under certain circumstances),
- the caregiver of an elder person or disable adult if the tracking is necessary to ensure the safety of the elderly person or disable adult,
- any person acting in good faith on behalf of a business entity for a legitimate business purpose (under certain circumstances), or
- the owner or lessee of a motor vehicle (under certain circumstances).

House Bill 111 (LaRe, Miller, K.)
Increase sentencing range for third degree felony domestic violence

House Bill 111 (HB 111) was introduced on March 14, 2023. The bill increases the penalty range for third-degree felony domestic violence and creates a presumption in favor of a prison term for the offense. Third-degree domestic violence still requires two or more prior convictions, but the sentencing range increases from the normal third-degree felony range (12 to 36 months) to the higher-level third-degree sentencing range (12 to 60 months) with a presumption in favor of the imposition of a prison term. The bill also increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions involving pregnant victims from 6 months to 12 months and increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions resulting in serious physical harm to a woman's unborn or termination of the pregnant woman's pregnancy from 12 months to 18 months.