



CRIMINAL SENTENCING COMMISSION

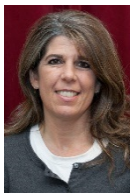
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Legislative & Judicial Brief

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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LEGISLATION IMPACTING SENTENCING – RECENTLY INTRODUCED



LEGISLATION IMPACTING SENTENCING – SIGNED BY THE GOVERNOR

SB5 PROMOTING PROSTITUTION PENALTIES (KUNZE, DOLAN)

The bill was introduced February 13, 2019 and signed by the Governor on December 12, 2019. The bill increases penalties for the crime of Promoting Prostitution and also changes provisions of the Certificate of Qualification for Employment: it caps the fee for a CQE at \$50; it creates a rebuttable presumption for a CQE unless the petitioner is found to have not been rehabilitated.

SB237 DUTY TO RETREAT (JOHNSON)

The bill was introduced November 12, 2019 and had a third hearing in the Senate Government Oversight and Reform Committee on December 11, 2019. This bill is similar to **HB381 STAND YOUR GROUND (HOOD, KELLER)**, which provides that a person who is not engaged in illegal activity and is lawfully present in a location has no duty to retreat before using or threatening to use reasonable force, including deadly force, in self-defense, defense of another, or defense of that person's residence, even if an alternative course of action is available. The bill grants immunity to a person who is found to be justified in using or threatening to use deadly force, and establishes procedures for a pretrial immunity hearing. The bill provides that a person has a right to a pretrial immunity hearing – if a person files such a motion the court is required to hold one. The court must rule for the movant unless the state (in a criminal case) or the plaintiff (in a tort action) shows that the immunity provided in this bill does not apply.

SB239 PROHIBIT SEXTING (MANNING)

The bill was introduced November 20, 2019 and referred to the Senate Judiciary Committee on December 4, 2019. The bill prohibits the electronic dissemination of a nude photograph (also known as "sexting") between two juveniles. For anyone younger than 19, the offense is a misdemeanor requiring diversion. The bill requires all juvenile, municipal, county, and common pleas courts to utilize a diversion programs in these cases.

SB247 PROHIBIT PROSTITUTION (SCHAFFER, FEDOR)

The bill was introduced November 26, 2019 and referred to the Senate Judiciary Committee on December 11, 2019. The bill prohibits a person from engaging in prostitution and receiving proceeds of prostitution, modifies certain soliciting offenses and penalties and creates the Sexual Exploitation Public Database, and makes an appropriation. Similar bills include **HB431 SEXUAL EXPLOITATION DATABASE (ABRAMS, CARFAGNA)** was also introduced on November 26, 2019. The bill authorizes the Attorney General to create and maintain a Sexual Exploitation Database. Whenever a person is convicted of certain prostitution offenses, the clerk of courts must send the offender's record to the Attorney General. The database does not require registration; names stay on the database for 5 years, unless there is a repeat offense. This database is in addition to any sex offender registration that may be required. **HB415 PROCEEDS FROM PROSTITUTION (POWELL)** was introduced on November 14, 2019. The bill prohibits a person from knowingly receiving proceeds of prostitution. The bill makes it an F3 on first offense and an F2 if the prostitution involved someone younger than 18.

HB403 TRANSITIONAL CONTROL VETO (GALONSKI, HILLYER)

The bill was introduced on November 12, 2019 and eliminates a sentencing court's transitional control veto. The bill was referred to the House Criminal Justice Committee on November 18, 2019.

LEGISLATION IMPACTING SENTENCING – RECENTLY INTRODUCED (continued)

HB413 ABORTION MURDER (HOOD, KELLER)

The bill was introduced November 14, 2019. The bill creates two new capital offenses: aggravated abortion murder (purposefully and with a prior plan perform or have an abortion; or purposely perform an abortion while committing certain other violent felonies) and abortion murder (purposefully perform or have an abortion; or proximately cause an abortion while committing certain other violent felonies). A physician can be immune from criminal or civil liability in certain circumstances; a patient can claim an affirmative defense only if compelled to have an abortion and must submit a report to that effect to law enforcement. Juveniles who violate the new sections (RC 2904.03 and 2904.04, respectively) are subject to mandatory bindover and an SYO designation; they cannot have records of those charges sealed.

LEGISLATION IMPACTING SENTENCING – UPDATES

SB13 JUVENILE HUMAN TRAFFICKING VICTIMS (FEDOR)

The bill was introduced February 12, 2019. The bill requires a juvenile court to hold a delinquency complaint in abeyance in human trafficking cases and provides that the same elements for the offense of trafficking in persons that apply to a victim younger than 16 also apply to a victim who is age 16 or 17. The bill was passed by the Senate July 17, 2019, 31-0. The bill had a first hearing in the House Criminal Justice Committee November 7, 2019.

SB28 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)

The bill increases the penalties for aggravated menacing and menacing if the victim is a person that the offender knows is a “protected person” and defines “protected person” as a person protected by a civil or criminal protection order. The bill passed by the Senate on September 18, 2019, 33-0 and had a first hearing in the House Criminal Justice Committee November 21, 2019.

SB55 ENHANCE PENALTIES-DRUG TRAFFICKING (GAVARONE)

The bill enhances the penalties for most drug trafficking offenses when committed on the premises of a substance addiction services provider’s facility, or within 1,000 feet of the premises of such a provider’s facility, if the offender recklessly disregards whether the offense is being committed within that vicinity. The bill sets the new penalty enhancements at the same level as existing penalty enhancements for the same drug trafficking offenses when committed in the vicinity of a school or juvenile. The bill is also referred to as the “Relapse Reduction Act” and was passed by the Senate on May 15, 2019, 31-2. The bill was reported out of House Criminal Justice on October 31, 2019. On December 13, 2019 the Senate Judiciary Committee accepted amendments to remove portions and insert them into **SB3 DRUG SENTENCING REFORM (EKLUND, O’BRIEN)**, but those provisions were removed on December 17, 2019.

SB58 NONVIOLENT CRIMINALS WITH MENTAL ILLNESS (GAVARONE)

The bill expresses the intent of the General Assembly to reform the process of restoring the competency of individuals with serious mental illness charged with nonviolent crimes and to provide alternatives for treatment. The bill was passed by the Senate, 30-1 on October 23, 2019. The bill had a first hearing in the House Health Committee on December 10, 2019.

HB285 LICENSE REINSTATEMENT FEE AMNESTY (BRENT, GREENSPAN)

The bill passed the House on November 6, 2019, 91-1 and had a first hearing on December 3, 2019 in the Senate Local Government, Public Safety and Veterans Affairs Committee. The bill makes the License Reinstatement Fee Amnesty permanent; the amnesty started as a pilot in 132nd **HB336** and was extended to the end of 2019 in 133rd **HB166**.

COURT DECISIONS

State v. Soto SLIP OPINION NO. 2019-OHIO-4430

Decided October 31, 2019. Defendant had an involuntary manslaughter charge dismissed pursuant to a plea agreement in a homicide case involving his son. After his release from prison on that plea he confessed to authorities that the killing was intentional, and he was charged with aggravated murder and murder for the homicide. The Court held that jeopardy did not attach to the involuntary manslaughter charge that was dismissed from the initial indictment, and that Soto could be tried for the homicide.

State v. Ford SLIP OPINION NO. 2019-OHIO-4593

Decided November 7, 2019. Defendant claimed intellectual disability as part of his capital murder case. The Court held that the trial court failed to apply the proper standard in finding the defendant was not intellectually disabled, and vacated the death sentence, remanding the case for a determination under the proper standards.

State v. Gwynne SLIP OPINION NO. 2019-OHIO-4761

Decided November 21, 2019. Plurality decision where Court narrowly held that the 5th District Court of Appeals erred in considering the purposes and principles of sentencing in 2929.11 and 2929.12 when reviewing a large number of consecutive sentences – a 65 year stated prison term for a 55-year-old non-violent offender.

State v. Allen SLIP OPINION NO. 2019-OHIO-4757

Decided November 21, 2019. A trial court may order restitution to the bank that cashed a forged check as the banks were considered “victims” of the offenses under the common definition of the term.

State v. Pribble SLIP OPINION NO. 2019-OHIO-4808

Decided November 21, 2019. Defendant was convicted of an F3 violation of 2951.041 which mandates, with two prior convictions, that they be sentenced to an F3 punishment of not less than 5 years. The sentencing range for F3 offenses is 9-36 months generally and 9-60 months for specified offenses as laid out in 2929.14(A)(3). The Court held that the specific penalty in 2951.041 applies subjecting the Defendant to a 5-year term.

State v. Straley SLIP OPINION NO. 2019-OHIO-5206

Decided December 19, 2019. Defendant entered into a guilty plea with a joint recommendation that he receive a 35 year, 10 month sentence. The court accepted the joint recommendation and found the defendant guilty, however the plea form and colloquy both mistakenly informed the defendant that none of his sentences carried mandatory time. Defendant failed to raise the issue on direct appeal and subsequently filed a second appeal asking to withdraw his guilty plea. The court held that Straley failed to show a manifest injustice necessary to withdraw the guilty plea, and that the trial court was correct in ruling that res judicata barred raising this claim as it had not been raised on direct appeal. The majority opinion also held that the Court of Appeals misapplied the Court’s admittedly frustrating void-versus-voidable precedent when it found that res judicata should not apply, as Straley was not appealing the sentence he received but rather the validity of his guilty plea.



ICYMI

SUPREME COURT OF OHIO

The Supreme Court reconsidered and reversed its *State v. Braden* decision, in which it had originally ruled that court costs cannot be retroactively waived.

The public comment period for the Criminal Rule 46 (bail reform) has been expedited – it opened December 12, 2019 and will remain open until January 2. The proposals include:

---Requirements that a court utilize the least-restrictive bond conditions and least amount of monetary bail to secure a defendant’s appearance, and an expanded non-exclusive list of bond conditions

---Requirements that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a trial court during a bond hearing.

---Allowing a court the option of considering the results of a validated risk assessment tool, should the results be provided to the court.

The Court is also accepting comments on [other rules which are summarized here](#).

The state of Ohio has filed a memorandum in support of jurisdiction in the Supreme Court in the case of *State v. Dowdy (Case No. 2019-1430)*. That appellate court ruling is one of at least 15 cases in which it voided a homicide sentence. The state argues that an expansion of the void sentencing doctrine by appellate courts will prove to be costly and create emotional distress.

The Supreme Court has updated its [online information about fingerprinting and criminal reporting requirements](#) with matrices for each jurisdiction, flowcharts of the reporting process, a list of offenses that requirement fingerprints to be taken, and resources on audit compliance standards.

A memorandum in support of jurisdiction was submitted to the Ohio Supreme Court on October 28, 2019 to ask that the Court determine whether a denial of a Certificate of Qualification (CQE) requires judicial findings.

COMMUNITY CORRECTIONS

The Ohio Community Corrections Act was passed nearly 4 decades ago in an effort to divert felony offenders from state prisons and provide sanctions and services for these offenders locally. The University of Cincinnati has finalized its [Community Correction Act program study and the final report](#) is now posted on the UC Center for Criminal Justice Research reports website.

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.

Full Commission Meeting Dates

**Next Meeting of the Full Commission:
Thursday March 19, 2020 10:00 a.m.**

*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.

Special Thanks to contributor:

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Questions, Comments, Suggestions? Contact: sara.andrews@sc.ohio.gov

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MEMBERS

CHAIR

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VICE-CHAIR

Nick Selvaggio, *Common Pleas Court Judge*

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Cecil Thomas, *State Senator*

William Seitz, *State Representative*

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David Painter – *County Commissioner*

Chief Brandon Standley – *Law Enforcement*

Chief 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](#).