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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

House Bill 20 (Swearingen) Enact the Computer Crimes Act

House Bill 20 (HB 20) was introduced on February 16, 2023. The fourth hearing before the House Criminal Justice Committee is scheduled on March 28, 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. The bill creates the new felony of the fourth-degree offense of electronic computer services interference. The bill creates the new felony of the fourth-degree offense of electronic data tampering. The bill creates the new felony of the fourth-degree offense of electronic data manipulation. The bill creates the new felony of the fourth-degree offense of electronic data theft. Finally, the bill creates the new felony of the fourth-degree offense of unauthorized data disclosure. 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. The second hearing before the House Criminal Justice Committee was held on March 21, 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).

For F1 Aggravated Vehicular Homicide offenses when the offender was OVI at the time of the offense, the bill makes modifications to the criteria necessary for the imposition of mandatory prison terms. Under the bill, an offender being sentenced on an aggravated vehicular homicide offense (involving an OVI) is subject to a mandatory prison term of fifteen, sixteen, seventeen, eighteen, nineteen, or twenty years, if the offender has a delineated prior conviction. The bill states that the fine for the offense of aggravated vehicular homicide (involving an OVI) is mandatory and shall not exceed \$25,000.

For OVI offenses, the bill increases both the mandatory minimum and possible maximum fines for OVI offenses. 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 fourth hearing before the House Criminal Justice Committee was held on March 21, 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.



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

House Bill 56 (HB 56) was introduced on February 16, 2023. The second hearing before the House Criminal Justice Committee is scheduled on March 28, 2023. 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.

NEWS**NEW COMMISSION MEMBERS**

The first 2023 meeting of the Ohio Criminal Sentencing Commission was held on March 16, 2023, at the Ohio Judicial Center and by Zoom. In addition to introducing Chief Justice Sharon L. Kennedy as the new chair of the Commission the following new members were introduced: Senator Vernon Sykes, Judge Helen Wallace, Judge Kristen Johnson, and Teri LaJeunesse.

MARCH 16 COMMISSION MEETING

Reginald Wilkinson, EdD and Judge Bob Nichols updated the Commission on the draft version of the "Felony Sentencing in Ohio: Then, Now, and Now What?" report. The members of the Commission also received a [document](#) that included a copy of the received public comments, the revised report, and a list of key summaries and takeaways. The full list of materials provided for the March 16, 2023 Commission meeting can be found [here](#).

OSDP USAGE UPDATE

The Ohio Sentencing Data Platform has seen an increase in usage over the course of the last 3 months. The most used entry is the Uniform Sentencing Entry (USE). In addition to the USE, courts are regularly using the other Uniform Entry Templates in their courtrooms. The most recent update regarding OSDP usage can be found [here](#).

SB 288: ILC AND CBCF SUPERVISION

SB 288 (134th GA), effective April 4, 2023, made additions and changes to a wide array of criminal justice provisions. One of these changes is a sunset provision that will allow, for a two-year period, Community-Based Correctional Facilities to supervise offenders who are placed in an Intervention in Lieu of Conviction program.

REFERENCE GUIDE UPDATE

The Commission is pleased to announce the publication of the most recent reference guide, the [Adult Competency Reference Guide](#).

In addition to working on the new guide, the Commission staff has been completing the necessary updates to the published guides. Many of these updates were necessitated by the passage of SB 288 in December of 2022. SB 288 will take effect on April 4, 2023.

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

LEGISLATION continued

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 first hearing before the House Criminal Justice Committee is scheduled on March 28, 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 new 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 110 (Young, Roemer) Regards the sale of used catalytic converters

House Bill 110 (HB 110) was introduced on March 14, 2023. The first hearing before the House Criminal Justice Committee is scheduled on March 28, 2023. The bill modifies the penalty of theft if the property involved is a catalytic converter. Under the bill, theft of a catalytic converter is a felony of the fifth degree. If an offender has previously been convicted of a violation of Chapter 2911., 2913., or 2923., theft of a catalytic converter is a felony of the fourth degree. If the offender is a business entity, the offense is enterprise theft of a catalytic converter and is punishable by a fine of not less than \$10,000.00 and not more than \$50,000.00. The bill also modifies the penalty of receiving stolen property if the property involved is a catalytic converter. Receiving a stolen catalytic converter is a felony of the fifth degree. If an offender has previously been convicted of a violation of Chapter 2911. or 2913., receiving a stolen catalytic converter is a felony of the fourth degree. If the offender is a business entity, the offense is enterprise receipt of a catalytic converter and is punishable by a fine of not less than \$10,000.00 and not more than \$50,000.00.

LEGISLATION continued

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.

Senate Bill 88 (Smith, Cirino)**Expand offense of aggravated menacing for utility workers**

Senate Bill 88 (SB 88) was introduced on March 21, 2023. The bill introduces a new subdivision to aggravated menacing that states that no person shall knowingly cause a utility worker, cable operator worker, or broadband worker to believe that the offender will cause serious physical harm with a deadly weapon. The offense is, generally, a first-degree misdemeanor. However, if the offender has previously been convicted of aggravated menacing, a violation of this new provision is a felony of the fifth degree.

UPCOMING LEGISLATIVE SESSIONS

Senate: March 29, April 19, April 26, May 3, May 10, May 17, May 24, May 31.

House: March 29, April 19, April 26, May 10, May 17, May 24.

**OHIO STATE MORITZ COLLEGE OF LAW
SB 288 PANELS**

The Ohio State University Moritz College of Law is hosting two panels focused on SB 288. The panels will be from 12:00 - 2:45 p.m. on April 12, 2023. Alex Jones, Criminal Justice Counsel, will participate in Panel 1, Understanding SB 288: Key Provisions and Likely Impacts. Director Sara Andrews will be moderating Panel 2, Prosecutor Initiated Record Sealing.

Click [here](#) for more information or to register for the event.

FELONY SENTENCE APPEALS PROJECT

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 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. An [update on this project](#) was provided in the meeting materials for the March 16, 2023 Commission meeting.

Next Meeting of the Full Commission:

Thursday, June 15, 2023 at 10:00 a.m.

Ohio Judicial Center 65 S. Front Street Columbus, Ohio 43215
Room 101 and remote (details to be posted)

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



With gratitude and thanks to primary contributor:
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Ohio Criminal Sentencing Commission

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

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

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