

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



Contents

COVID-19	2
Legislation Impacting Sentencing	2-3
ICYMI	3
Court Decisions	3-4
Notable & New	5
Working Committees of the Commission	6
Commission Roster	6
Commission Meeting Dates	6



RECENTLY INTRODUCED LEGISLATION IMPACTING SENTENCING

SB296 ABOLISH DEATH PENALTY (ANTONIO, LEHNER)

The bill was introduced on March 24, 2020 and abolishes the death penalty.

HB604 SEALING CRIMINAL RECORDS (ROGERS)

The bill was introduced April 10, 2020 and expands eligibility for sealing, shortens the waiting times, and puts time limits around hearings (45-90 days).

HB610 CRIME VICTIM RIGHTS (CUPP)

The bill was introduced April 16, 2020 and aims to conform Ohio Revised Code to the Marsy's Law provisions adopted in the Ohio Constitution.

COVID-19

The Ohio Department of Health (ODH) has a public hotline open for information on the coronavirus, COVID-19 – it is available seven days a week from 9 a.m. to 8 p.m. The number is 1-833-4-ASK-ODH (1-833-427-5634). There is also a website www.coronavirus.ohio.gov.

HB197 (MERRIN, POWELL) Emergency COVID-19 Measures was *signed by the Governor* on March 26, 2020. The bill includes tolling all statutory deadlines and a provision allowing electronic meetings as compliant with the Public Meetings Act. It has a retroactive effective date of March 9, 2020.

Chief Justice Maureen O'Connor [issued an order](#) in conjunction with the emergency legislation allowing for the delay of a variety of legal deadlines imposed by Supreme Court Rules. [The Supreme Court has prepared a FAQ on tolling and the recent changes.](#)

Resources responding to COVID-19 are available on the [Ohio Judicial Conference website](#), including a library of emergency orders, sample continuing operations plans, a no-cash bail policy, suggestions for jails, and sample signs for public spaces.

A variety of bills have been introduced to address COVID-19 circumstances, including:

HB557 (SOBECKI) to allow electronic public meetings;

SB297 (ANTONIO, CRAIG) & HB562 (LELAND, CROSSMAN) prohibiting foreclosures and evictions;

SB299 (CRAIG) requiring mandatory paid leave during the state of emergency; and

HB566 (ROGERS, CROSSMAN) increasing local government funding.

The legislature is currently working from home and none of these bills have been referred to committee.

The Ohio State University, Drug Enforcement and Policy Center has published a paper, [Documenting the Challenges \(and Documents\) As Ohio Courts Respond to COVID-19](#). The research project sought to review and summarize the formal responses of Ohio courts in the weeks during which the state began shutting down non-essential services in response to the COVID pandemic and was written April 13, 2020.

On April 17, 2020, Governor DeWine commuted the sentences of 7 inmates as part of an effort to reduce prison crowding during the pandemic. On April 14, 2020, the Correction Institution Inspection Committee approved the emergency release (Ohio Revised Code §2967.18) of 141 inmates for the same reason. The Governor has said releases per this provision will be “rolling”.

LEGISLATION IMPACTING SENTENCING – INTRODUCED (continued)

HB552 LIFE SENTENCES – JUVENILES (GALONSKI, MANNING, D.)

The bill was introduced on March 12, 2020 and provides parole eligibility dates for persons serving a prison sentence for an offense other than an “aggravated homicide offense” committed when under age 18, or serving consecutive prison sentences for multiple offenses, none of which is an aggravated homicide offense, committed when under age 18. It requires the Parole Board to consider specified mitigating factors for persons eligible for parole under either provision. The bill specifies that if the Parole Board denies release it must conduct a subsequent release review not later than five years after the denial. The bill further specifies that if a person is convicted of rape, terrorism, aggravated murder or murder, or any other felony committed when under age 18, or if a person is sentenced under the Sexually Violent Predator Sentencing Law for an offense committed when under age 18, the court may not sentence the person to life imprisonment without parole. The bill outlines a number of factors that must be considered as mitigating factors, in addition to other factors that currently must be considered, when a court is sentencing a person who is convicted of a felony committed when under age 18.

SUPREME COURT OF OHIO COURT DECISIONS

State v. Ramirez, SLIP OPINION NO. 2020-OHIO-602 – Decided February 25, 2020. After a finding of guilt by the jury, the trial court granted a motion for a new trial on the basis of insufficient evidence under Crim.R. 33(A)(4). The state appealed this decision, but the appellate court denied the appeal based on double-jeopardy concerns. The court held that this was not a double-jeopardy violation as the order for a new trial is not a final verdict for ORC §2945.97 purposes.

State v. Bates, SLIP OPINION NO. 2020-OHIO-634 – Decided February 27, 2020. Defendant’s capital conviction for aggravated murder was overturned and remanded for a new trial on ineffective assistance of counsel grounds. After a potential juror expressed racial bias against the defendant’s race during voir dire, defense counsel both failed to inquire into those statements and failed to strike the juror from the panel. The Court held that racial bias need not be expressed against a defendant personally where the statement shows the jurors inability to be impartial to a defendant based on race or ethnicity.

State v. Horn, SLIP OPINION NO. 2020-OHIO-960 – Decided March 18, 2020. The Court held that a familial relationship between the defendant and the victim was a “mental or physical condition” sufficient to prove the elements of rape under ORC §2904.01(A)(1)(c). The General Assembly has not defined “mental or physical condition” and the Court stopped short of providing its own definition. The Court found that the requirement in ORC §2904.01(A)(1)(c) that the “mental or physical condition” was the cause of substantial impairment meant that a familial relationship would not be one of those conditions.

ICYMI

SUPREME COURT OF OHIO LAW LIBRARY

The Supreme Court of Ohio Law Library is closed to the public until further notice. The Library is still offering reference assistance via [Ask-A-Librarian](#), or you can email the reference staff directly at libref@sc.ohio.gov.

OHIO PUBLIC DEFENDER COMMISSION

The Ohio Public Defender Commission met March 19, 2020, to review comments regarding raising assigned-counsel rates and maximum fees. The Commission is not taking any further action regarding this topic. Thirty-six counties have already raised rates for assigned counsel.

[NEW MODEL UNIFORM TRAFFIC TICKET](#)

On April 20, 2020, the Ohio Supreme Court approved a new [Model Uniform Traffic Ticket](#) designed to collect more information for law enforcement as well as better inform the public.

The new ticket contains changes suggested by [Governor DeWine’s Warrant Task Force](#). These changes include more prominently showing the time, date, and place where the court hearing for an infraction is to take place.

As reported by [Court News Now](#), the new ticket will be effective July 1, 2020, while the old version of the ticket will still be accepted until July 1, 2021. The grace period for older tickets will allow courts and law enforcement time to use their existing supply of old tickets before switching to the new ones. It will also ensure there is plenty of time to order and produce new tickets.

SUPREME COURT OF OHIO COURT DECISIONS

(continued)

In Re A.W., SLIP OPINION NO. 2020-OHIO-1457

– Decided April 16, 2020. A juvenile court judge ordered the imposition of the adult portion of a Serious Youthful Offender sentence on May 22nd, one day before the offender’s 21st birthday. However, the entry was not filed until the next day. The Court held that failure to file the sentencing entry before the juvenile’s 21st birthday divested the sentencing court of jurisdiction to impose the sentence.

State v. Jeffries, SLIP OPINION NO. 2020-OHIO-1539

– Decided April 22, 2020. Defendant in a rape trial wished to cross-examine the victim regarding past non-consensual sexual activity, arguing that Ohio’s rape-shield law only prohibited questioning regarding consensual sexual activity. The Court upheld both the trial and appellate courts’ decisions that “sexual activity” as used in ORC §2907.02 and .05 includes both consensual and non-consensual activity.

State v. Boaston, SLIP OPINION NO. 2020-OHIO-1061 – Decided March 26, 2020. An expert witness is required by Crim.R. 16(K) to provide a written report of their findings. In this case, the coroner testified to certain facts which were not within the written autopsy report submitted through discovery and entered into evidence. The Court held that Crim.R. 16 mandated that any testimony outside the scope of that report must be excluded from evidence.

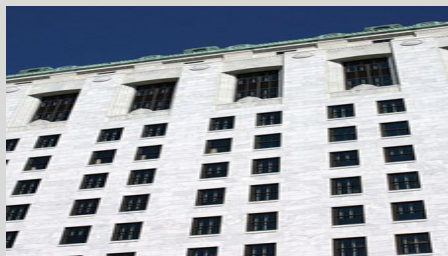
State v. Miller, SLIP OPINION NO. 2020-OHIO-1420 – Decided April 14, 2020. The Court held that while strict compliance is required of a court making the Crim.R. 11(C)(2)(c) advisements as to the constitutional rights being given up during a plea colloquy, the trial court is deemed to have strictly complied when the advisements were made “in a manner reasonably intelligible to the defendant” and need not be a literal recitation of the language of the rule or include specific verbiage.

State v. Fips, SLIP OPINION NO. 2020-OHIO-1449 – Decided April 15, 2020. Defendant’s case was overturned on appeal as against the manifest weight of the evidence. The appellate court then modified the judgement and found the defendant guilty of a lesser included offense. The Court held that the proper remedy for a successful manifest weight appeal is a new trial, and ordered the judgement reversed and the case remanded for that new trial.

State Ex Rel. Davis v. Janas, SLIP OPINION NO. 2020-OHIO-1462 – Decided April 16, 2020. The Court granted relief in through mandamus where the trial court erroneously issued a nunc pro tunc entry and altered defendant’s sentence in 1999. Davis did not learn about the nunc pro tunc entry until 2018, well after his appeals had been decided on the merits. The Court held that once the judgement against Davis had been affirmed on appeal, the trial court lacked jurisdiction to modify that judgement.

PRETRIAL SERVICES

In the summer of 2019, the Commission embarked on a groundbreaking survey of Ohio pretrial practices. We have now tallied the results and published the report. The survey, with 191 courts contacted and 158 participating, is likely the largest publicly available statewide survey of pretrial practices in the nation and documents first-hand, fresh, and powerful aggregate information about pretrial practices in Ohio. [Read the full report here.](#)



“AVERAGE JOE”

Criminal justice policy is too often driven by high-profile cases— heinous or egregious violent crimes that generate high publicity and media attention. However, the majority of offenders are not incarcerated for these extreme, outlier cases, and therefore, it is important to understand the typical profile of someone incarcerated in Ohio.

Thus, we are working on “Average Joe” profiles that summarize characteristics of people currently incarcerated in Ohio prisons who are parole-eligible or have been granted release by the parole board between 2014 and 2018. We expect to post this new resource to our website soon.

DATA

One of the Commission’s ongoing priorities is sensible criminal justice and drug reform in Ohio. We believe constructive conversation about treatment and program resources, capacity, and outcomes is critical to getting it right, but constructive conversation is not possible without movement towards a data-informed environment. Data at the aggregate level could provide Ohio with a framework designed to reduce criminal justice involvement and move people with drug dependency and mental health needs into treatment that works.

Thus, we are working with members of the General Assembly to include language authorizing (and obligating) the Sentencing Commission to regularly monitor and report on the implementation, application, and administration of legislation enacted that impacts sentencing. Empowering the Commission to collect aggregate criminal justice data will provide an unprecedented level of information for system practitioners and policy makers that can, in turn, be used to develop and implement new law enforcement interventions and policing strategies, to refine extant criminal justice policies, and to leverage resources and programming to improve outcomes. Robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system.

RESOURCES

RIGHTS RESTORATION: The 133rd General Assembly has introduced multiple bills to alleviate collateral consequences of conviction which expand eligibility for intervention in lieu of conviction, record sealing, and expungement. [We’ve detailed these efforts all in one place.](#)

FIREARM SENTENCING PENALTIES: We’ve compiled the suggested reforms currently pending in the 133rd General Assembly. [You can find it here.](#)

UNIFORM SENTENCING ENTRY AD HOC COMMITTEE

Felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehensible sentences is of the utmost import for the administration of justice and promoting confidence in the system. As such, Chief Justice O’Connor asked the Commission to convene a Uniform Sentencing Entry Ad Hoc Committee (for felony cases).

The Ad Hoc Committee approached its work with the premise that the uniform sentencing entry should prescribe the most concise minimum language to comply with Criminal Rule 32 and existing case law. It was also understood the entry should allow supplemental case specific information to be incorporated, when necessary. *The Ad Hoc Committee has drafted the Uniform Sentencing Entry and is seeking comment!* For more information, please contact Sara Andrews, sara.andrews@sc.ohio.gov.

The Ad Hoc Committee is now developing a Uniform Method of Conviction Entry and developing a reasoned, thoughtful roll-out strategy for implementation of the Uniform Sentencing Entry.

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 also strives to build and improve collaboration of the Commission with other criminal 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.

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 more 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 June 25, 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:

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

MEMBERS

CHAIR

Maureen O'Connor, Chief Justice

VICE-CHAIR

Nick Selvaggio, Common Pleas Court Judge

John Eklund, State Senator

Cecil Thomas, State Senator

William Seitz, State Representative

Kristin Boggs, State Representative

Jennifer Muench-McElfresh, Common Pleas Court Judge

Robert DeLamatre, Juvenile Court Judge

Beth Cappelli, Municipal Court Judge

Tyrone Yates, Municipal Court Judge

Sean Gallagher, Appellate Court Judge

Kenneth Spanagel, Municipal Court Judge

Steve McIntosh, Common Pleas Court Judge

Terri Jamison, Juvenile Court Judge

Robert Fragale, Juvenile Court Judge

Charles "Chip" McConville, County Prosecutor

Lara Baker-Morrish, Columbus City Solicitor General

Larry Sims, Sheriff

Aaron Montz, Mayor

Colonel Rick Fambro, Ohio State Highway Patrol

Ryan Gies,

Director, Department of Youth Services

Tim Young, State Public Defender

Annette Chambers-Smith, Director, Department of Rehabilitation and Correction

Elizabeth Poprocki, Victim Representative

Paula Brown, Ohio State Bar Association

Gwen Howe-Gebers – County Prosecutor (Juvenile)

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](#).