



CRIMINAL SENTENCING COMMISSION

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Legislative & Judicial Brief

News, Information, and Resources Regarding Criminal Sentencing in Ohio

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.

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RETIREMENT OF DIRECTOR SARA ANDREWS

Sara Andrews, Director of the Ohio Criminal Sentencing Commission since 2015, retired at the end of June. Sara had previously served as the deputy director of parole and community services at the Ohio Department of Rehabilitation and Correction. Niki Hotchkiss has been named Interim Director while the Sentencing Commission works to fill the director position.

LEGISLATION IMPACTING SENTENCING

House Bill 33 (Edwards)

Establishes operating appropriations for fiscal years 2024-2025

House Bill 33 (HB 33) was this biennium's budget bill. The bill modified many aspects of the revised code. Notably, HB 33 clarified that, for purposes of R.C. 2953.32 expungements, all entities other than the bureau of criminal identification and investigation must destroy, delete, and erase the official records so that the records are permanently irretrievable.

House Bill 122 (Pavliga, Miller, A.)

Expand intimidation offenses to include guardians ad litem

House Bill 122 (HB 122) was introduced on March 21, 2023. HB 122 was passed by the House on June 21, 2023. The bill modifies both R.C. 2921.04 (Intimidation of attorney, victim, or witness in criminal case or delinquent child action proceeding) and R.C. 2921.03 (Intimidation). The bill adds guardians ad litem to the list of special victim classes for these offenses. Additionally, the bill expands the prohibited behaviors to include attempts to abuse, threaten, or harass the victim (in addition to the existing prohibitions against attempts to influence, intimidate, or hinder.) Under the bill, when the victim of the offense is a guardian ad litem the violation is a misdemeanor of the first degree.

House Bill 124 (Galonksi, Miranda)

Eliminate period of limitation – rape prosecution or civil action

House Bill 124 (HB 124) was introduced on March 21, 2023. HB 124 was referred to the House Criminal Justice Committee on March 28, 2023. The bill modifies R.C. 2901.13(A)(2) by adding R.C. 2907.02 (Rape) to the list of offenses with no statute of limitations for criminal prosecution.

House Bill 139 (Roemer, Miller, J.)

Increase assault penalties if the victim is a sports official

House Bill 139 (HB 139) was introduced on March 28, 2023. HB 139 was referred to the House Criminal Justice Committee on April 18, 2023. The second hearing was held on June 13, 2023. The bill adds sports officials to the list of special victim classes for assault offenses. To qualify as a special victim, the sports official must be engaged in their official duties at the time of the offense, or the offense must be committed in retaliation for an action taken by the sports official when they were engaged in their official duties. Under the bill, assaults of this type are misdemeanors of the first degree and require courts to impose mandatory fines of \$1,500 and 40 hours of community service, in addition to other penalties allowed by law. When the offender has previously been convicted of assault with a qualifying sports official as the victim, the offense is a felony of the fifth degree. The bill also creates statutory definitions for "sports official" and "sports event".

LEGISLATION continued

House Bill 230 (Abrams, Swearingen)**Regards drug trafficking, organized trafficking of persons**

House Bill 230 (HB 230) was introduced on June 27, 2023. The bill creates the new offense of participating in an organization or operation for trafficking in persons, a felony of the first degree. The bill modifies R.C. 2925.03 (Trafficking, aggravated trafficking in drugs) in several ways. The bill increases the existing third-degree felony offense level for trafficking in cocaine to the second-degree felony offense level and increases the existing second-degree felony offense level for trafficking in cocaine to the first-degree felony offense level. The bill increases the existing fourth-degree felony offense level for trafficking in heroin to the second-degree felony offense level, increases the existing third-degree felony offense level for trafficking in heroin to the first-degree felony offense level, and increases the existing second-degree felony offense level for trafficking in heroin to the first-degree felony offense level. The bill increases the existing fifth-degree felony offense level trafficking in a fentanyl-related compound to the second-degree felony offense level, increases the existing fourth-degree felony offense level for trafficking in a fentanyl-related compound to the first-degree felony offense level, increases the existing third-degree felony offense level for trafficking in a fentanyl-related compound to the first-degree felony offense level, and increases the existing second-degree felony offense level for trafficking in a fentanyl-related compound to the first-degree felony offense level. The bill creates the new offense of trafficking in methamphetamine. The bill creates a new specification applicable to indictments for R.C. 2903.04 (Involuntary manslaughter) when the victim's death was consistent with opioid overdose or when a fentanyl-related compound was present in the victim's body in lethal amounts.

House Bill 234 (Williams, Rogers)**Regards imposing sentence on offender who entered an Alford plea**

House Bill 234 (HB 234) was introduced on June 30, 2023. HB 234 modifies R.C. 2929.12 (Seriousness of crime and recidivism factors) and R.C. 2929.22 (Determining appropriate sentence for misdemeanors) by prohibiting courts from considering an offender's Alford plea when determining whether the offender shows genuine remorse for the offense. The bill also adds that "[t]he general assembly...hereby declares the purpose of the amendment is to address that Alford pleas are generally disfavored by courts of this state because Alford pleas do not determine the guilt or innocence of the offender."

Senate Bill 101 (Antonio, Huffman)**Abolish death penalty; modify juror challenges in certain cases**

Senate Bill 101 (SB 101) was introduced on March 29, 2023. SB 101 was referred to the Senate Judiciary Committee on April 19, 2023. The first hearing was held on May 9, 2023. The bill abolishes the death penalty in Ohio and, accordingly, modifies many aspects of the revised code related to the death penalty. The bill also modifies the sentencing structures for the existing offenses that allow for a death penalty sentence.

NEWS

NEW COMMISSION MEMBERS

The following new members have been appointed to the Ohio Criminal Sentencing Commission: Mayor Nicole Condrey, Rep. Latyna Humphrey, Rep. Josh Williams, Darren Shulman, and Commissioner Donnie Willis.

NEW COMMITTEES

At the May 2023 meeting of the full Ohio Criminal Sentencing Commission, the Commission voted to establish two new standing committees. These are the Juvenile Justice Committee and the Adult Criminal Justice Committee. The Juvenile Justice Committee will be chaired by Judge Helen Wallace of the Montgomery County Juvenile Court. The Adult Criminal Justice Committee will be chaired by Director Annette Chambers-Smith, Director of the Ohio Department of Rehabilitation and Correction.

CRIME VICTIMS "MARSY'S LAW" RIGHTS FORMS

The Supreme Court of Ohio has recently published its Crime Victims Rights Forms. These forms include the Crime Victim Restitution Amount Summary Form and the Victim Rights Request Form. They are available [here](#).

UPCOMING LEGISLATIVE SESSIONS

Senate: September 13, September 20, September 27, October 4, October 11, October 25.

House: September 13, September 20, October 18, October 25.

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 continues to update the published guides as needed.

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

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
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SUPREME COURT OF OHIO DECISIONS

***State v. Hacker*, Slip Opinion No. 2023-Ohio-2535**, decided July 26, 2023. The Court held that the “Reagan Tokes Law” is not void for vagueness and is not facially unconstitutional. The defendant (Hacker) pled guilty to one count of aggravated robbery, a felony of the first degree. The trial court sentenced the defendant in accordance with the “Reagan Tokes Law” and imposed a minimum prison term of six years and a maximum prison term of nine years. The defendant was also ordered to serve an additional one-year prison term for a related firearm specification. The defendant challenged the “Reagan Tokes Law” on three grounds, positing that the law violated the separation-of-powers doctrine, procedural due process, and the right to a jury trial. The Court held that the “Reagan Tokes Law” does not give the Ohio Department of Rehabilitation and Corrections (the DRC) the authority to extend a prison term beyond the maximum range imposed by the trial court and, thus, does not exceed the power given to the executive branch. Likewise, this extension beyond the minimum as a form of prison discipline does not interfere with the judiciary’s authority because the trial court imposed the maximum range at the time of sentencing. The Court also declined to adopt the defendant’s facial due process challenges, holding that the law is not void-for-vagueness and that because the law required the DRC to hold a hearing before extending the prison term beyond the minimum but within the maximum range there is not a facial procedural due process violation. Finally, the Court determined that the defendant’s right to a jury trial was not violated because the imposed “Reagan Tokes Law” sentence range is not changed by the DRC at the hearing, the maximum amount of the defendant’s sentence is always capped at the maximum amount of time the trial court imposed.

Next Meeting of the Full Commission:

Thursday, September 21, 2023, at 10:00 a.m.
Ohio Judicial Center 65 S. Front Street Columbus, Ohio 43215
(details to be posted)

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



With gratitude and thanks to primary contributor:
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Questions, Comments, Suggestions? Contact: ocsc@sc.ohio.gov

Contact Us:

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MEMBERS

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Sharon L. Kennedy, *Chief Justice*

VICE-CHAIR

Nick Selvaggio, *Common Pleas Court Judge*

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Vernon Sykes, *State Senator*
Josh Williams, *State Representative*
Latyna Humphrey, *State Representative*
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Tyrone Yates, *Municipal Court Judge*
Sean Gallagher, *Appellate Court Judge*
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Helen Wallace, *Juvenile Court Judge*
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Gwen Howe-Gebers, *County Prosecutor*
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Tim Young, *State Public Defender*
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Chief Brandon Standley, *Law Enforcement*
Chief Charles Chandler, *Peace Officer*
Robert Krapenc, *Defense Attorney*
Brooke Burns, *Public Defender*
