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TO: Ohio Criminal Sentencing Commission

FROM: Scott Shumaker, Criminal Justice Counsel

DATE: 11/16/2021

RE: SB 201 Appellate Decisions

As a continuation of our efforts to inform and educate practitioners on the implementation of 132 GA Senate Bill 201 “The Reagan Tokes Law” (SB201), and consistent with our statutory duty to review and evaluate changes to Ohio’s sentencing structure, we are tracking appellate cases related to the provisions of SB 201. Those cases are detailed below, and this document will continue to be updated as new decisions are rendered or cases are filed, and hosted on the Commission’s website under “SB201 Resources.”

Our tracking efforts are divided into three sections. The first is a list of cases accepted by the Supreme Court of Ohio for review which deal with SB201 issues. The second, labeled Appellate Decisions, are those cases in which an appellate court has rendered a decision addressing SB 201 directly, either through challenges to the constitutionality of the law, or to address any alleged errors in sentencing process. An endnotes section details appellate decisions that make mention of SB 201 but do not address its provisions, separated by district.

A previously included section detailing pending appeals raising SB 201 sentencing issues has been removed, as it remains difficult to track pending case issues within a jurisdiction and statewide due to lack of available data. We remain committed to incorporating such information should it become available in the future. We have included holdings finding the indefinite sentencing scheme unconstitutional at the trial court level at the end of the document, when we are made aware of such holdings.

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SUPREME COURT OF OHIO – SB 201 CASES ACCEPTED FOR REVIEW

1. [*State v. Singh, 2021-1005*](#). Jurisdictional Appeal accepted 10/26/21, held for [*State v. Maddox, 2020-1266*](#)
2. [*State v. Rodriguez, 2021-0996*](#). Jurisdictional Appeal accepted 10/26/21, held for [*State v. Maddox, 2020-1266*](#)
3. [*State v. Moran, 2021-0925*](#). Jurisdictional Appeal accepted 09/22/21, held for [*State v. Maddox, 2020-1266*](#)
4. [*State v. Moran, 2021-0902*](#). Jurisdictional Appeal accepted 08/30/21, consolidated with [*State v. Moran, 2021-0925*](#).
5. [*State v. Slye, 2021-0779*](#). Jurisdictional Appeal accepted 08/31/21, held for [*State v. Maddox, 2020-1266*](#).
6. [*State v. Hunter, 2021-0726*](#). Jurisdictional Appeal accepted 08/03/21, held for [*State v. Maddox, 2020-1266*](#).
7. [*State v. Hodgkin, 2021-0707*](#). Jurisdictional Appeal accepted 08/17/21, held for [*State v. Maddox, 2020-1266*](#).
8. [*State v. Mills, 2021-0662*](#). Jurisdictional Appeal accepted 08/03/21, held for [*State v. Maddox, 2020-1266*](#).
9. [*State v. Stevens, 2021-0629*](#). Jurisdictional Appeal accepted 07/06/21, held for [*State v. Maddox, 2020-1266*](#).
10. [*State v. Sinkhorn, 2021-0591*](#). Jurisdictional Appeal accepted 08/31/21, held for [*State v. Maddox, 2020-1266*](#).
11. [*State v. Noble, 2021-0589*](#). Jurisdictional Appeal accepted 07/06/21, held for [*State v. Maddox, 2020-1266*](#).
12. [*State v. Crawford, 2021-0585*](#). Certified Conflict accepted 06/30/21, held for [*State v. Maddox, 2020-1266*](#).
13. [*State v. Simmons, 2021-0532*](#). Jurisdictional Appeal accepted 07/06/21, held for [*State v. Maddox, 2020-1266*](#).
14. [*State v. Doughty, 2021-0458*](#). Jurisdictional Appeal accepted 07/06/21, held for [*State v. Maddox, 2020-1266*](#).
15. [*State v. Bothuel, 2021-0422*](#). Jurisdictional Appeal accepted 06/30/21, held for [*State v. Maddox, 2020-1266*](#).
16. [*State v. Ludwig, 2021-0383*](#). Jurisdictional Appeal accepted 06/08/21, held for [*State v. Maddox, 2020-1266*](#).
17. [*State v. Beatty, 2021-0374*](#). Jurisdictional Appeal accepted 06/08/21, held for [*State v. Maddox, 2020-1266*](#).
18. [*State v. Jones, 2021-0173*](#). Jurisdictional Appeal accepted 04/13/21, held for [*State v. Maddox, 2020-1266*](#).
19. [*State v. Stone, 2021-0086*](#). Jurisdictional Appeal accepted 04/13/21, held for [*State v. Maddox, 2020-1266*](#).
20. [*State v. Ferguson, 2021-0067*](#). Jurisdictional Appeal accepted 03/30/21, held for [*State v. Maddox, 2020-1266*](#).
21. [*State v. Dames, 2021-0063*](#). Jurisdictional Appeal accepted 03/30/21, held for [*State v. Maddox, 2020-1266*](#).
22. [*State v. Wolfe, 2021-0059*](#). Jurisdictional Appeal accepted 03/16/21, held for [*State v. Maddox, 2020-1266*](#).
23. [*State v. Cochran, 2021-0001*](#). Jurisdictional Appeal accepted 03/02/21, held for [*State v. Maddox, 2020-1266*](#).
24. [*State v. Hacker, 2020-1496*](#). Jurisdictional Appeal accepted 03/02/21, held for [*State v. Maddox, 2020-1266*](#).
25. [*State v. Hacker, 2020-1496*](#). Jurisdictional Appeal accepted 03/02/21, held for [*State v. Maddox, 2020-1266*](#).
26. [*State v. Maddox, 2020-1266*](#). Certified Conflict accepted 12/28/2020. Oral argument scheduled for Tuesday, June 29, 2021.

APPELLATE DECISIONS

FIRST DISTRICT COURT OF APPEALSⁱ

[**State v. Fikes, 2021-Ohio-2597, Decided July 30, 2021.**](#) Defendant argued that their plea was not knowingly, intelligently, and voluntarily made, alleging the trial court did not adequately explain the maximum penalty involved with regard to the non-life felony indefinite sentencing scheme. The trial court did not explain the SB 201 sentencing scheme during the plea, and imposed definite terms at the sentencing hearing but indefinite terms in the judgement entry. The Court found that the plea was invalid for an inadequate explanation of the maximum penalty, and remanded the case for new proceedings.

[**State v. Lee, 2021-Ohio-3918, Decided November 3, 2021.**](#) Defendant challenged the voluntariness of their plea, arguing that the trial court did not adequately explain the maximum penalty involved as required in the Crim.R. 11 plea colloquy. The trial court informed them that they would be subject to a maximum of eight years for the felony of the second degree charged, when the offense was an SB 201 qualifying offense subject to a term of eight to twelve years. The State conceded this error and the Court found that the defendant was not advised of the proper maximum penalty for the offense charged and remanded the case with instructions that the plea be vacated and the case proceed from there.

SECOND DISTRICT COURT OF APPEALSⁱⁱ

[**State v. Barnes, 2020-Ohio-4150, Decided August 21, 2020.**](#) Among other issues, the defendant challenged the constitutionality of their indefinite sentence under SB201 as unconstitutional violations of due process and separation of powers. The defendant failed to object to the constitutionality of SB201 at the time of sentencing, and as such waived the issue, but the court draws a distinction between the “bad time” statute ruled unconstitutional in *Bray* and the maximum term provisions of SB201.

[**State v. Ferguson, 2020-Ohio-4153, Decided August 21, 2020.**](#) Defendant challenged both the denial of a motion to suppress and the constitutionality of their SB201 indefinite sentence upon conviction as violation of separation of powers and of their constitutional right to due process. The Court upheld the constitutionality of SB201, likening its provisions to those of the post-release control statute and citing *Woods v. Telb*, 89 Ohio St.3d 504 (2000) and its progeny for the proposition that a sanction imposed by the court and later executed upon by the executive does not violate separation of powers. It also held that SB201 imposes sufficient limitations on ODRC’s discretion to impose time beyond the minimum term. The court directly addresses the holding in *State v. ONeal*, the Hamilton County Common Pleas decision which first held SB201 indefinite sentencing provisions to be unconstitutional.

[**State v. Leet, 2020-Ohio-4592, Decided September 25, 2020.**](#) Defendant appealed their indefinite sentence arguing that SB201 unconstitutionally violates the separation of powers doctrine and the right to due process. The Court distinguished SB201 sentences from the “bad time” provisions stricken down by *State ex rel. Bray v. Russell* 89 Ohio St.3d 132 (2000) holding that extension of incarceration beyond the minimum term is merely executive execution of a judicially imposed maximum term. The Court cited its holding in *State v. Ferguson* above and held that SB201 does not violate the right to due process.

[**State v. Wallace, 2020-Ohio-5109, Decided October 30, 2020.**](#) Defendant appealed both the length of their sentence under R.C. 2953.08(G)(2) and the constitutionality of SB201 as to the indefinite portion of their sentence, specifically as a violation of the separation of powers doctrine and their right to due process. The defendant raised the issue of the constitutionality of SB201 by objecting prior to sentencing. The Court cited its decisions in *State v. Ferguson*, *State v. Barnes*, and *State v. Leet*, upholding the constitutionality of the SB201 indefinite sentencing scheme.

[**State v. Sinkhorn, 2020-Ohio-5359, Decided November 20, 2020.**](#) Defendant challenged both the sufficiency of the evidence supporting their conviction for the charges as well as the constitutionality of SB201 as violative of due process and separation of powers. The Court cited its prior decision in *Ferguson* above, upholding the constitutionality of the

indefinite sentencing statutes as providing the defendant sufficient notice and opportunity to be heard before their incarceration could be extended beyond the minimum term.

[**State v. Baker, 2021-Ohio-140, Decided January 22, 2021.**](#) The State appealed a trial court finding that SB 201's indefinite sentencing scheme was unconstitutional as violative of separation of powers. The Court, citing its decision in *Ferguson*, upheld the constitutionality of SB 201, finding that the separation of powers doctrine was not violated. The Court found that as the trial court imposes both the minimum and maximum term at sentencing, and the power to extend incarceration beyond the minimum term is merely the delegation of the administrative task of sanctioning the defendant to the executive branch.

[**State v. Keith, 2021-Ohio-518, Decided February 21, 2021.**](#) As with Baker above, the State appealed a trial court finding that SB 201's indefinite sentencing scheme was unconstitutional as violative of separation of powers. The Court, citing its decision in *Ferguson*, again upheld the constitutionality of SB 201.

[**State v. Ross, 2021-Ohio-1337, Decided April 16, 2021.**](#) The trial court held that the SB 201 indefinite sentencing scheme was unconstitutional and imposed a definite sentence for an SB 201 qualifying offense. The state appealed, and the Court upheld the constitutionality of SB 201, finding the definite sentence imposed to be contrary to law, and remanded the case for resentencing under the indefinite sentencing scheme.

[**State v. Compton, 2021-Ohio-1513, Decided April 30, 2021.**](#) The Court upheld the constitutionality of SB 201 against challenges that it violates separation of powers, the right to due process, and the right to trial by jury. It held that the statutes provide sufficient notice and the opportunity to be heard before incarceration can be extended beyond the minimum term, and again likened the decision to extend incarceration to that of granting or denying parole.

[**State v. Fletcher, 2021-Ohio-1515, Decided April 30, 2021.**](#) Defendant appealed their non-life felony indefinite sentence, arguing that the sentencing scheme is unconstitutional and that the indefinite sentencing scheme made explanation of the "maximum penalty involved" impossible in a Crim. R. 11 plea colloquy. The Court cited its prior holdings above in upholding the constitutionality of SB 201, and noted accurate explanations of the potential minimum and maximum terms in the record of the plea. The Court went on to find the plea knowing, intelligently, and voluntarily made, and overruled the defendant's argument as to being deprived a fair trial due to discovery issues. The Court remanded the case for issuance of new sentencing entries to correct an error with the type of plea that was entered.

[**State v. Hall, 2021-Ohio-1894, Decided June 4, 2021.**](#) The Court found that the defendant had the maximum penalty adequately explained to them during the Crim.R. 11 plea colloquy, as the record showed the trial court substantially complied with the required notifications regarding post-release control and SB 201 indefinite sentencing earned credit, and that the defendant failed to show required prejudice necessary to challenge the plea. The Court further held that the notifications regarding the defendant's duties with regard to the Violent Offender Database were also in substantial compliance with Crim.R. 11, and that the sentences imposed were supported by the record in the case. Finally, the Court overruled the defendant's constitutional challenges to SB201, finding the law to be constitutional and the trial counsel's failure to object to SB201's constitutionality to not meet the requirements for an ineffective assistance claim.

[**State v. Massie, 2021-Ohio-3376, Decided September 24, 2021.**](#) The trial court did not give the RC 292919(B)(2)(c) notices during the defendant's plea colloquy or at sentencing. The defendant challenged the sentence, arguing the plea was not knowingly, intelligently, and voluntarily made and the sentence was contrary to law. The Court reviewed the record and found the explanation of the maximum penalty sufficient to support accepting the plea, but held that the statutory notifications must be provided at sentencing and remanded the case for resentencing for the sole purpose of providing the notices.

[**State v. Massie, 2021-Ohio-3525, Decided September 30, 2021.**](#) Defendant was convicted of both an SB 201 qualifying felony as well as a misdemeanor. There was no challenge to the SB 201 sentence, however, the defendant alleged that the trial court improperly sentence them to post-release control on the misdemeanor charge. The Court sustained the

argument and remanded the case for issuance of a corrected journal entry. A claim as to merger was dismissed as the defendant had already completed all time for the misdemeanor conviction.

[**State v. Thompson, 2021-Ohio-4027, Decided November 12, 2021.**](#) The Court rejected a challenged by the defendant to SB 201's constitutionality citing their prior holdings on the issue. However, the Court remanded the case for resentencing for the sole purpose of providing the required R.C. 2929.19(B)(2)(c) notifications, as they found on review of the record that the trial court failed to notify the defendant at the sentencing hearing about the rebuttable nature of the presumption of release, the extension beyond the minimum term, that extension could occur more than once, and that the defendant would be released at the expiration of the maximum term. Similarly to its holding in *Massie* above, the Court rejected the State's argument that the journal entry provided sufficient notification on these issues – it cited other districts where full recitation of the R.C. 2929.19(B)(2)(c) factors were required at the hearing itself.

[**State v. McElroy, 2021-Ohio-4096, Decided November 12, 2021.**](#) In review of an *Anders* brief on appeal of an SB 201 sentence imposed for aggravated robbery, felonious assault, and failure to comply, the Court reviewed the record of the Crim.R. 11 plea hearing and found that the trial court substantially complied with the advisements regarding the maximum penalty, including explanation of the SB 201 indefinite minimum and maximum terms. The sentence was upheld.

THIRD DISTRICT COURT OF APPEALSⁱⁱⁱ

[**State v. Hacker, 2020-Ohio-5048, Decided October 26, 2020.**](#) Constitutional challenge to SB 201 indefinite sentencing scheme as violative of their right to a jury trial, to due process, and of the separation of powers doctrine. The defendant filed an objection to the imposition of the SB201 indefinite sentence prior to their sentencing at the trial level, however that objection failed to raise the issue of the right to trial by jury, and the Third District held that portion of the argument to be waived. The Court upheld the constitutionality of SB201 on due process and separation of powers grounds, distinguishing the indefinite sentencing scheme from the "bad time" provisions of 1996 SB 2 overturned in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), and rejecting the analysis of the Hamilton County Common Pleas decision in *State v. Oneal*, Hamilton C.P. No. 1903 562 (Nov. 20, 2019).

[**State v. Kepling, 2020-Ohio-6888, Decided December 28, 2020.**](#) Defendant argued at sentencing that SB201's indefinite sentencing procedures were unconstitutional as violative of both separation of powers and their right to due process. The Court followed its decision in *Hacker* above, holding that the law does not violate separation of powers, and went on to hold that the due process issue was not yet ripe for review.

[**State v. Anderson, 2020-Ohio-6891, Decided December 28, 2020.**](#) Defendant appealed their guilty plea was not knowingly, intelligently, or voluntarily made, alleging that the trial court did not adequately explain that they would be subject to indefinite sentencing or the procedures involved. The Court reviewed the record and found an adequate record of explanation both of the maximum penalty involved as well as the indefinite sentencing procedures. The relevant portion of the plea transcript is quoted in the opinion for reference.

[**State v. Crawford, 2021-Ohio-547, Decided March 1, 2021.**](#) Defendant appealed their SB 201 indefinite sentence as violative of separation of powers, argued that trial counsel was ineffective for failing to object to the constitutionality at the trial court level, as well as arguing that restitution imposed for funds used as part of a undercover drug buy was improper. The Court cited its decision in *Hacker* holding that that the indefinite sentencing statute is constitutional, but the court found that due process arguments about the potential imposition of time beyond the minimum term are not ripe for review. The Court went on to overrule the ineffective assistance argument holding that the defendant did not show that but for the failure by defense counsel to object to the statute's constitutionality the outcome of the case would have been different. Finally. The Court held that local law enforcement was not entitled to restitution for the monies used in undercover drug buys to build a case against the defendant.

[**State v. Foster, 2021-Ohio-1454, Decided April 26, 2021.**](#) Several issues were alleged in an appeal of a non-life felony indefinite sentence, including an argument that Engaging in a Pattern of Corrupt Activity under R.C. 2923.32 was not a SB 201 qualifying offense, as well as challenges to the sentences imposed, the order of restitution, and the trial court's denial of a motion to withdraw the guilty plea. Defendant argued that since R.C. 2923.32 was not included in the list of statutes making up the "Reagan Tokes Law" in R.C. 2901.011, it was not a qualifying offense. The Court dismissed this argument as misplaced given the definition of a qualifying offense in R.C. 2929.144. All other arguments were also overruled.

[**State v. Hiles, 2021-Ohio-1622, Decided May 10, 2021.**](#) Defendant challenged their non-life felony indefinite sentence, arguing that their F1 conviction was not a "qualifying offense," as well as arguing that consecutive sentences were improper and not made with proper consideration of R.C. 2929.11 and 2929.12. In support of the SB 201 argument, the defendant claimed that as R.C. 2903.04 Involuntary Manslaughter was not included in the list of statutes making up the "Reagan Tokes Law" in R.C. 2901.011, it was not a qualifying offense for indefinite sentencing. The Court cited R.C. 2929.144's definition of qualifying offense and overruled the argument, and also found adequate consideration of R.C. 2929.11 and 2929.12, and that the consecutive sentence findings were properly made and supported by the record.

[**State v. Reed, 2021-Ohio-1623, Decided May 10, 2021.**](#) Similarly to the arguments in *Foster* and *Hiles* above, the defendant challenged their sentences alleging that they were contrary to law for failure to consider the purposes and principles of felony sentencing in R.C. 2929.11 and 2929.12. They also alleged that the non-life felony indefinite sentence imposed was improper as R.C. 2911.12 Burglary as a felony of the second degree was not a qualifying offense as the statute was not included in the R.C. 2901.011 statutory definition of the "Reagan Tokes Law." The Court again cited the definition of qualifying offense in R.C. 2929.144 in finding that the conviction did qualify for indefinite sentence. The Court also upheld the trial court's sentences, finding the sentences to be within the statutory range and made with the necessary statutory considerations.

[**State v. Conner, 2021-Ohio-1769, Decided May 24, 2021.**](#) Challenge to the validity of a Crim.R. 11 plea colloquy alleging that the trial court failed to properly advise the defendant of all of the provisions of SB 201 indefinite sentencing. Specifically, the defendant alleged that the court failed to explain the process by which ODRC could extend incarceration beyond the minimum term. The Court held that as these were non-constitutional advisements, only substantial compliance was necessary, and noted that they were reviewing on a plain error standard as the defendant did not ask to withdraw their plea or object to the sentence at the trial level. After reviewing the record, the Court found no error with the court's plea advisements, and further stated that the necessary prejudice had also not been shown by the defendant.

[**State v. Gossman, 2021-Ohio-1928, Decided June 7, 2021.**](#) The defendant was placed on community control for Felonious Assault, a felony of the second degree, but challenged the constitutionality of the SB 201 sentence that was reserved in their case. The Third District panel cited their previous holdings and upheld the constitutionality of the indefinite sentencing scheme as providing adequate due process and not violative of separation of powers.

[**State v. Floyd, 2021-Ohio-1935, Decided June 7, 2021.**](#) The defendant appealed challenging both the consecutive sentences imposed in their case as well as the constitutionality of the non-life felony indefinite sentencing scheme. The Court, on review of the record, found the necessary RC 2929.14(C)(4) consecutive sentence findings were made and supported by the record, and dismissed the defendant's constitutional challenge, holding that the law provides adequate due process and does not violate separation of powers, citing their previous decisions on the topic.

[**State v. Rodriguez, 2021-Ohio-2295, Decided July 6, 2021.**](#) The Court cited previous holdings in finding a challenge to the constitutionality of SB201 not yet ripe for review, but found an error with regard to imposition of appointed counsel fees in the judgement entry, and ordered that small portion of the judgement vacated.

[**State v. Mitchell, 2021-Ohio-2802, Decided August 09, 2021.**](#) The defendant argued their sentence was contrary to law under R.C. 2953.08(G)(2) as the SB 201 sentence imposed was unconstitutionally violative of the separation of powers

doctrine and of the right to due process. The Court held that the failure to raise these issues at the trial court level forfeited the arguments for appeal, but cited their previous holdings that the law is, in fact, not violative of due process or separation of powers.

[**State v. Barnhart, 2021-Ohio-2874, Decided August 23, 2021.**](#) The defendant challenged the constitutionality of SB201, arguing that it deprived them of due process, the right to trial by jury, and violated the separation of powers doctrine. The defendant also argued that defense counsel was ineffective for failure to raise the issue at the trial level. The Court cited its previous holdings that the law did not violate separation of powers, and similarly that the due process and right to a jury trial arguments were not ripe for review. With regard to the ineffective assistance claim, the Court held that the defendant failed to establish they were prejudiced by the failure to object to the sentencing scheme's constitutionality given their holdings on the issues involved.

[**State v. Rebarck, 2021-Ohio-3142, Decided September 13, 2021.**](#) The Court cites its holdings in *Hacker* and *Kepling* above finding that SB 201 is constitutional and dismissing defendant's sole assignment of error.

[**State v. Morici, 2021-Ohio-3406, Decided September 27, 2021.**](#) The Court rejected an appeal claiming abuse of discretion in denying a motion to withdraw a guilty plea, as well as an ineffective assistance claim and a constitutional challenge to SB 201. The SB 201 issue was decided based on the Court's earlier holdings on the issue.

[**State v. Coykendall, 2021-Ohio-3407, Decided September 27, 2021.**](#) Defendant challenged their SB 201 sentence's constitutionality as well as the imposition of consecutive sentences in two cases. The Court dismissed the SB 201 challenge based on its prior holdings, but found that failure to issue a sentence on one charge in one of the cases meant there was no final appealable order for the court to review the consecutive sentences.

[**State v. Coykendall, 2021-Ohio-3875, Decided November 1, 2021.**](#) Defendant challenged their SB 201 sentence's constitutionality as well as the imposition of consecutive sentences in two cases. The Court reviewed the record and found that the trial court adequately explained the required R.C. 2929.14(C)(4) consecutive sentence findings and rejected the defendant's claim they were not supported by the record. The Court dismissed the SB 201 challenge based on its prior holdings.

FOURTH DISTRICT COURT OF APPEALS^{iv}

[**State v. Conant, 2020-Ohio-4319, Decided August 27, 2020.**](#) Defendant challenged the constitutionality of SB201 as part of his appeal. However, as the defense did not raise the issue at the time of sentencing, the Court held that the defense forfeited all but plain error review on appeal, and no plain error argument was included in the appeal.

[**State v. Ramey, 2020-Ohio-6733, Decided December 15, 2020.**](#) The defendant appealed their SB201 sentence as unconstitutionally violative of due process, separation of powers, and the right to trial by jury. An objection to the indefinite sentence was raised at the trial level. The Court conducted a review of decisions made by the other appellate districts, ultimately agreeing with the Fifth District decisions in *Downard* and *Manion* below and holding that the issues of SB201's constitutionality is not yet ripe for review.

[**State v. Benge, 2021-Ohio-152, Decided January 14, 2021.**](#) Defendant alleged a number of errors on appeal of their convictions for sexual assault charges, including an argument that the SB 201 indefinite sentence imposed in their case was unconstitutional as violative of due process and separation of powers. The Court, noting its holding in *Conant* above, held that the failure to object to the indefinite sentencing scheme at the trial level waived all but plain error analysis on appeal, and declined to address the argument. All arguments on the appeal were overruled.

[**State v. Halfhill, 2021-Ohio-177, Decided January 20, 2021.**](#) Defendant appealed their SB 201 indefinite sentences for an aggravated vehicular homicide conviction arguing that the indefinite sentencing scheme unconstitutionally violates separation of powers and denied the right to due process and trial by jury. The Court dismissed the appeal as not yet ripe for review pursuant to its holding in *Ramey* above.

[**State v. Hearn, 2021-Ohio-594, Decided February 22, 2021.**](#) Defendant appealed the SB 201 sentence received following their plea to two counts of felonious assault, arguing that the plea was involuntary as the defendant did not adequately understand the indefinite sentencing scheme, and that the sentencing scheme unconstitutionally violates the doctrine of separation of powers. The defendant also argued that two corrected sentencing entries issued by the trial court were null and void as the trial court lacked jurisdiction to resentence the defendant after the first entry was issued. As the defendant had filed a notice of appeal after the first entry was filed and before the second or third entries correcting the sentence, the Court held those entries were invalid. The Court then overruled the argument regarding the voluntariness of the defendant's plea, holding that the record showed an adequate colloquy regarding the indefinite sentencing provisions, and that defendant failed to show they would not have entered into the plea but for the inaccuracy. Finally, the Court found that the constitutional issue was not yet ripe for review, pursuant to its holding in *Ramey*.

[**State v. Walker, 2021-Ohio-2693, Decided August 02, 2021.**](#) The Court rejected challenges to the non-life felony indefinite sentence imposed in the case, holding that there was sufficient evidence that the trial court considered RC 2929.11 and 2929.12 in fashioning the sentence, and that constitutional challenges to the sentencing scheme were not yet ripe for review.

[**State v. Long, 2021-Ohio-2672, Decided August 04, 2021.**](#) Defendant challenged the non-life felony indefinite sentences imposed as unconstitutional violations of separation of powers and their rights to due process and a trial by jury, challenged the plea as not knowingly, intelligently, and voluntarily made, and finally argued that the sentences was contrary to law as the trial court failed to give the required SB 201 sentencing notifications. The Court held that SB 201's constitutionality was not ripe for review, consistent with its prior holdings. It further found that the plea colloquy substantially complied with Crim.R. 11 and that the defendant failed to show any prejudice from the alleged deficiencies. As the state conceded error on the notification issue, the court found the sentences contrary to law and remanded the case for resentencing.

[**State v. Hughes, 2021-Ohio-3127, Decided September 01, 2021.**](#) The Court dismissed an argument regarding the constitutionality of SB 201's indefinite sentencing scheme as not yet ripe for review but sustained an argument that imposition of a no-contact order in addition to a prison sentence was contrary to law, and remanded the case for the limited purpose of issuing an amended judgement entry without the no-contact order.

[**State v. Smith, 2021-Ohio-4028, Decided November 8, 2021.**](#) Defendant was indicted for drug charges on December 6, 2019 for crimes committed on July 28, 2018. They plead and were sentenced by the trial court in April of 2020 after first attempting to withdraw their guilty plea. The trial court imposed an indefinite SB 201 sentence for the F2 possession charge. Defendant challenged both the trial court's rejection of the request to withdraw their guilty plea and the imposition of a non-life felony indefinite sentence under SB 201. Upon review of the record, the Court upheld the denial of the motion to withdraw the guilty plea. However, the Court found the sentence imposed was contrary to law as the indefinite sentencing provisions of SB 201 only applied to crimes which were committed on or after March 22, 2019. The sentence was reversed, and the case was remanded for resentencing.

FIFTH DISTRICT COURT OF APPEALS^v

[**State v. Shelton, 2020-Ohio-1218, Decided March 27, 2020.**](#) The defendant was not sentenced to a minimum or maximum term in compliance with SB201 for a qualifying F1 Failure to Provide Notice of Change of address. The State conceded error on that issue. Appellate decision goes on to hold that the defendant's juvenile adjudication for rape could be used as a basis for the sex offender registration requirements of R.C. 2950.

[**State v. Manion, 2020-Ohio-4230, Decided August 25, 2020.**](#) The defendant challenged the constitutionality of SB201's indefinite sentencing provisions as violative of their rights to trial by jury and due process, and of the separation of powers doctrine. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio's "bad time" provisions in *State ex rel.*

Bray v. Russel 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201's maximum sentence provisions would be via a habeus writ after incarceration had been extended.

[**State v. Downard, 2020-Ohio-4227, Decided August 26, 2020.**](#) The defendant challenged the constitutionality of SB201's indefinite sentencing provisions as violative of due process and separation of powers, and also argued defense counsel was ineffective for failing to raise the constitutionality issue at trial. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio's "bad time" provisions in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201's maximum sentence provisions would be via a habeus writ after incarceration had been extended. The ineffective assistance of Counsel claim was not addressed.

[**State v. Kibler, 2020-Ohio-4631, Decided September 25, 2020.**](#) The defendant challenged the constitutionality of SB201's indefinite sentencing provisions as violative of due process, and argued ineffective assistance of counsel for failure to raise the issue in the trial court. Citing their decision in *Downard* above, the Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. The ineffective assistance of counsel claim was not addressed.

[**State v. Clark, 2020-Ohio-5013, Decided October 20, 2020.**](#) Constitutional challenge to SB201 indefinite sentencing provisions found not to be ripe for review, citing the above decisions in *Downard* and *Manion*.

[**State v. Cochran, 2020-Ohio-5329, Decided November 18, 2020.**](#) Fifth District followed the above holdings in *Downard* and *Manion* holding that the issue of the constitutionality of SB201 was not ripe for review. Judge Gwin, in a dissenting opinion, lays forth his reasons for both finding the issue ripe and for upholding the constitutionality of the statute.

[**State v. Wolfe, 2020-Ohio-5501, Decided November 30, 2020.**](#) Defendant challenged the constitutionality of SB201 on as well as a challenge to the consecutive sentences imposed and an argument on effectiveness of trial counsel. The Court cited its prior holdings that the constitutionality question was not ripe for review, and further held that the failure by trial counsel to object to the constitutionality of SB201 did not constitute ineffective assistance. The sentence was found to be contrary to law as the trial judge did not give the requisite R.C. 2929.19(B)(2)(c) advisements regarding the indefinite sentencing scheme at sentencing. The case was remanded for resentencing.

[**State v. Buckner, 2020-Ohio-7017, Decided December 30, 2020.**](#) Defendant appealed the constitutionality of their indefinite sentence as violative of their due process rights. The majority cites their previous decisions in *Clark*, *Downard*, and *Manion* in finding the issue not ripe for appeal. Judge Gwin again dissents as he did in *Cochran*, finding the issue ripe and opining that the law is constitutional.

[**State v. Beatty, 2021-Ohio-355, Decided February 8, 2021.**](#) Defendant appealed numerous issues including the constitutionality of their SB 201 indefinite sentence. The Court cited its decision in *Downard* holding again that the issues is not ripe for review. Defendant also argued ineffective assistance of trial counsel for a failure to raise an objection on the constitutionality of the SB 201 sentence at the trial level. The Court held that the holdings on ripeness meant the defendant had not shown a reasonable probability the object would have changed the outcome.

[**State v. Ludwig, 2021-Ohio-383, Decided February 10, 2021.**](#) Defendant appealed their SB 201 indefinite sentence and argued ineffective assistance of trial counsel for a failure to raise an objection on the constitutionality of the SB 201 sentence at the trial level. The defendant also argued the trial court improperly imposed a mandatory fine without considering their ability to pay. The Court cited its decision in *Downard* holding again that the issue of SB201's constitutionality is not ripe for review, and found that based on the record the trial court sufficiently considered the defendant's ability to pay in imposing the mandatory fine.

[**State v. Haser, 2021-Ohio-460, Decided February 19, 2021.**](#) Defendant appealed a merger issue and argued that their SB 201 indefinite sentence was unconstitutional. The Court held that the merger issue was waived when the defendant

agreed to the terms of a negotiated guilty plea, and cited its previous decisions holding that SB 201's constitutionality is not yet ripe for review.

[**State v. Doughty, 2021-Ohio-651, Decided March 5, 2021.**](#) Defendant appealed arguing that the court failed to merge allied offenses and that the SB 201 indefinite sentencing imposed in the case unconstitutionally violates the rights to due process and a trial by jury, as well as the doctrine of separation of powers. The Court overruled the merger argument but ordered a remand for the trial court to correct an error in the journal entry. The Court then reiterated its holding from *Downard* that the issues of SB 201's indefinite sentencing provision's constitutionality is not ripe for review.

[**State v. Kimes, 2021-Ohio-650, Decided March 5, 2021.**](#) Defendant appealed the denial of a motion to suppress based on a 4th Amendment argument surrounding the search of their cell phone and recovery of evidence, as well as arguing insufficiency of the evidence, manifest weight, and the constitutionality of their SB 201 indefinite sentence. The Court found no issue with the search and denied both the insufficiency of the evidence and manifest weight arguments as well. The Court again cited its decision in *Downard* that the issues of SB 201's constitutionality was not ripe for review.

[**State v. Chester, 2021-Ohio-918, Decided March 22, 2021.**](#) Defendant challenged the verdicts in their convictions as insufficient and against the manifest weight of the evidence and also argued that the SB 201 indefinite sentence they received is unconstitutional. The Court reviewed the record and upheld the convictions, and found the SB 201 issue not ripe for review, citing its decision in *Downard*.

[**State v. Stevens, 2021-Ohio-1156, Decided April 5, 2021.**](#) Defendant claimed that the trial court violated their rights by refusing to let private counsel step in at a late stage of the proceedings, along with a claim of ineffective assistance, a constitutional claim regarding an SB 201 indefinite sentencing, and an argument regarding the trial court's refusal to waive a mandatory fine. The Court upheld the refusal to allow new counsel five days before trial based on the record, and rejected the argument on the mandatory fine, holding that the defendant did sufficiently demonstrate their indigency. The argument on SB 201's constitutionality, and the ineffective assistance claim for failing to raise that issue at sentencing, were both rejected as not yet ripe for review under the Court's prior holdings.

[**State v. Mills, 2021-Ohio-1180, Decided April 6, 2021.**](#) The Court again held that the constitutionality of the indefinite sentencing provisions of SB 201 were not yet ripe for review, and also rejected an argument that trial counsel was ineffective for failing to raise the issue at sentencing. The Court also rejected a challenge to the plea, finding that the record did not support the defendant's claim that the trial court inadequately explained their rights.

[**State v. Hunter, 2021-Ohio-1424, Decided April 22, 2021.**](#) Defendant appealed the length of their sentences as contrary to law, the imposition of court costs, and the constitutionality of the non-life felony indefinite sentencing scheme. The Court dismissed the constitutionality argument and an attendant ineffective assistance claim as not yet ripe for review pursuant to their holding in *Downard*. The arguments as to the length of the sentence and imposition of costs were also overruled.

[**State v. Slye, 2021-Ohio-1581, Decided May 6, 2021.**](#) Defendant challenged their non-life felony indefinite sentence, alleging the sentencing scheme unconstitutionally violates the rights to due process, trial by jury, and separation of powers. The Court reiterated its prior holding that the constitutionality of R.C. 2967.271 and the non-life felony indefinite sentencing scheme is not yet ripe for review.

[**State v. King, 2021-Ohio-1636, Decided May 12, 2021.**](#) In an appeal of both manifest weight and sufficiency of the evidence following a jury trial, the defendant also challenged the constitutionality of the indefinite sentencing scheme. The Court upheld the verdict and overruled the SB201 argument as not yet ripe for review, consistent with its prior holdings.

[**State v. Tupuola, 2021-Ohio-2577, Decided July 29, 2021.**](#) Defendant presented several arguments on appeal, including challenges to the constitutionality of SB201, ineffective assistance claims (including for failure to object to the SB 201 sentence) as well as challenges surrounding their required enrollment in the Violent Offender Database. The Court

reiterated its holdings that SB201 is not ripe for constitutional review, that failure to object at trial waived all but plain error on the issue and did not constitute ineffective assistance of counsel. The Court went on to find no issues with the explanation of Violent Offender Database duties during the plea, and to hold that defense counsel was not ineffective for failing to file motions to challenge whether the defendant was the principal offender.

[**State v. Waggle, 2021-Ohio-3457, Decided October 4, 2021.**](#) The Court again rejected constitutional challenges to SB 201 based on their earlier ripeness holdings. Challenges to consecutive sentences and ineffective assistance of counsel were also struck down, but the Court found that the defendant was not properly notified regarding the violent offender database as required by law, and remanded the case on that ground.

[**State v. Williams, 2021-Ohio-3579, Decided October 5, 2021.**](#) Defendant argued that their SB 201 indefinite sentence was unconstitutional and that they received ineffective assistance of counsel, that counts should have been merged, that the consecutive sentences imposed were unlawful, and that they were improperly required to enroll in the violent offender database. The Court summarily overruled the SB 201 challenge based on their previous holdings that it was not ripe for review. The Court found no issues with the consecutive sentences imposed, or with merger, or trial counsel's performance. The Court did, however, find that the trial court failed to provide all the required notifications regarding the violent offender database, and vacated the defendant's registration requirement, remanding the case.

[**State v. Meachem, 2021-Ohio-3796, Decided October 8, 2021.**](#) The Court rejected defendant's claims regarding the constitutionality of their SB 201 indefinite sentence based on earlier ripeness holdings. The Court also rejected an argument that the sentences imposed were contrary to law as unsupported by R.C. 2929.11 and 2929.12.

[**State v. Waltz, 2021-Ohio-3895, Decided November 1, 2021.**](#) The defendant challenged their 70-75.5 year aggregate indefinite prison term as unconstitutional, and challenged the consecutive nature of the sentences imposed. The Court rejected the challenges to SB 201's constitutionality based on their earlier holdings on the ripeness issue. Upon review of the record, the Court found that the trial court failed explicitly made one of the required 2929.14(C)(4) findings and vacated the sentence, remanding the case for the trial court to determine if that finding could be made.

[**State v. Brazo, 2021-Ohio-4006, Decided November 9, 2021.**](#) The Court rejected claims of an involuntary plea, of abuse of discretion in denying a motion to withdraw the plea, to the constitutionality of the SB 201 indefinite sentences, and of ineffective assistance of counsel. The plea challenges centered on protestations of innocence made by the defendant; however the Court rejected these arguments. The court rejected the SB 201 arguments and the ineffective assistance of counsel claim based on failure to object to the sentence at the trial level based on its prior holdings. However, the Court found that the required R.C. 2929.19(B)(2)(c) notifications were not fully made on the record, and the case was remanded for resentencing on that issue.

SIXTH DISTRICT COURT OF APPEALS^{vi}

[**State v. Maddox, 2020-Ohio-4702, Decided September 30, 2020¹.**](#) Defendant appealed after an *Alford* plea and subsequent imposition of an indefinite sentence on the basis of both plain error arguing that SB201 sentences are unconstitutional, and ineffective assistance for defense counsel's failure to object to the SB201 sentence at the time of sentencing. The Court held that the constitutionality argument was not yet ripe for review, as the defendant had not yet been subject to continued incarceration. Citing the challenges to Ohio's "bad time" provisions in *State ex rel. Bray v. Russel* 89 Ohio St.3d 132 (2000), the Court held that the proper method the constitutionality of SB201's maximum sentence provisions would be via a habeas writ after incarceration had been extended. The ineffective assistance of Counsel claim was not addressed.

[**State v. Veliquette, 2020-Ohio-4855, Decided October 9, 2020.**](#) Defendant appealed denial of motion to suppress and their indefinite prison sentence under SB201, arguing that the sentencing scheme unconstitutionally violates the

¹ Due to a conflict, *Maddox* was decided by a panel of three Fifth District Court of Appeals judges. No members of the Sixth District took part in the case.

separations of powers doctrine and their right to due process. The Court cited its decision in *Maddox* above holding that the issue is not yet ripe for review, however, it also recognized that the Second and Twelfth Appellate Districts have both issued opinions finding the issue ripe and upholding the constitutionality of the law. Based on this conflict among the districts, the Court certified the question to the Supreme Court for further review.

[**State v. Montgomery, 2020-Ohio-5552, Decided December 4, 2020.**](#) Defendant challenged the voluntariness of their plea, as well as the constitutionality of SB 201's indefinite sentencing scheme. The Court found substantial compliance with Crim R. 11 sufficient to uphold the plea, and cited its decisions in *Maddox* and *Veliquette*, again certifying a conflict on the ripeness issue to the Supreme Court for review.

[**State v. Sawyer, 2020-Ohio-6980, Decided December 30, 2020.**](#) Defendant appealed their sentence following a no contest plea to child endangering, arguing insufficiency of the evidence based on the State's explanation of the facts in the indictment as well as challenging the constitutionality of the SB201 indefinite sentence imposed. The Sixth cited its decisions in *Maddox*, *Veliquette*, and *Montgomery* in finding the SB201 issue not yet ripe for review, and reiterated the conflict on the issue previously certified in *Maddox*.

[**State v. Acosta, 2021-Ohio-757, Decided March 12, 2021.**](#) Defendant appealed their sentences based on the constitutionality of the SB 201 and arguing the trial court erred by not complying with R.C. 2929.11 and 2929.12 in fashioning the sentence. The Court held that the failure to object to the constitutionality of the indefinite sentence waived all but plain error on appeal, and cited the certified question on the issues of ripeness as accepted by the Supreme Court in *Veliquette* above. The Court further held that the trial court properly considered the R.C. 2929.11 and 2929.12 factors at sentencing.

[**State v. Bothuel, 2021-Ohio-875, Decided March 20, 2021.**](#) Challenge to SB 201 indefinite sentences based on arguments that the sentencing scheme is unconstitutional and that the sentences were contrary to law for not complying with the R.C. 2929.11 and 2929.12 sentencing factors. The Court cited the Ohio Supreme Court decision in *State v. Jones* for the principle that R.C. 2953.08 does not permit appellate court weighing of the sentencing factors, and found that the trial court considered those factors at sentencing. It further held that pursuant to its decisions in *Maddox* and *Veliquette* that the issue of SB 201's constitutionality is not yet ripe for review, and re-certified the conflict with other districts on that issue to the Supreme Court.

[**State v. Savage, 2021-Ohio-1549, Decided April 30, 2021.**](#) Following multiple convictions and an indefinite sentence of 48.5-53.5 years in prison, defendant challenged the validity of the bill of information in their case as well as the constitutionality of the indefinite sentencing scheme. The Court held that the challenge to the bill of information was a procedural defect, for which the right to appeal was waived as a consequence of their *Alford* plea in the case. The Court also overruled the second argument, citing its holding in *Acosta* above that the constitutionality of the indefinite sentencing scheme is not yet ripe for review.

[**State v. Rottman, 2021-Ohio-1618, Decided May 07, 2021.**](#) Defendant challenged the verdict and sentence following a guilty verdict in their felonious assault trial and the 2-3-year non-life felony indefinite sentence imposed. They challenged the constitutionality of the indefinite sentence on separation of powers and due process grounds along with arguments on the sufficiency and manifest weight of the evidence. The Court declined to address the issue of the constitutionality of non-life indefinite sentencing as it had not been raised at the trial court level, and went on to find that the evidence was sufficient to support the conviction and not against the manifest weight of the evidence.

[**State v. Perry, 2021-Ohio-1748, Decided May 21, 2021.**](#) Challenge to the constitutionality of an SB 201 indefinite sentence overruled as not yet ripe for review pursuant to the Court's previous decisions.

[**State v. Shepard, 2021-Ohio-1844, Decided May 28, 2021.**](#) Challenge to the constitutionality of an SB 201 indefinite sentence overruled as not yet ripe for review pursuant to the Court's previous decisions. The Court also overruled a challenge to the sentence as violative of RC 2929.11(A)'s requirement that the "minimum sanctions necessary" be used

in sentencing. The Sixth District panel cited the Supreme Court of Ohio decision in *State v. Jones* in overruling the argument that the sentence was unsupported by RC 2929.11.

[**State v. Zambrano, 2021-Ohio-1906, Decided June 4, 2021.**](#) Defendant challenged the voluntariness of their plea and argued that SB 201 was unconstitutionally vague, and that trial counsel was ineffective for failing to object to the sentencing scheme. The Court held that on review of the record, the explanation of the maximum penalty required by Crim.R. 11 was sufficiently made at the plea hearing, and reiterated their earlier holdings that the constitutionality issue was not yet ripe for review. Finally, they overruled the ineffective assistance argument, as the issue of ripeness made the constitutionality objection meritless.

[**State v. Stenson, 2021-Ohio-2256, Decided June 30, 2021.**](#) The Court held that defendant's sentence was not contrary to law, citing the Supreme Court of Ohio's decision in *State v. Jones*, Slip Opinion No. 2020-Ohio-6729, and that the challenge to the constitutionality of the non-life felony indefinite sentence was not yet ripe for review pursuant to the Court's previous holdings and again certified the conflict amongst the appellate districts on the ripeness issue.

[**State v. Cook, 2021-Ohio-2619, Decided July 30, 2021.**](#) The Court again cited *State v. Jones*, Slip Opinion No. 2020-Ohio-6729 in rejecting a challenge to the sentence based on review of RC 2929.11 and 2929.12 sentencing factors, held that the challenge to the constitutionality of SB 201 was not yet ripe for review. The Court also again certified the conflict amongst the appellate districts on the ripeness issue.

[**State v. Figley, 2021-Ohio-2622, Decided July 30, 2021.**](#) Challenge to the constitutionality of SB201 dismissed as not yet ripe for review.

[**State v. Gifford, 2021-Ohio-2967, Decided August 27, 2021.**](#) The Court held that the trial court mistakenly calculated the defendant's maximum prison term. The trial court imposed 4-year minimum terms on 2 counts and ordered that they run consecutively, and then calculated the maximum term as 12 years. The Sixth District found this calculation to be in error, as R.C. 2929.144 dictated that the maximum term should be 10 years. The Court did not address the defendant's challenges to the constitutionality of the indefinite sentencing scheme, or to the imposition of consecutive sentences.

[**State v. Wheeler, 2021-Ohio-3062, Decided September 3, 2021.**](#) Defendant challenged the constitutionality of their SB 201 sentence and argued ineffective assistance of counsel for failure to object to the sentence at trial. The Court reiterated its holding that the constitutionality issue is not yet ripe for review, and found that the defendant failed to establish the necessary prejudice on the ineffective assistance claim.

[**State v. Leak, 2021-Ohio-3139, Decided September 10, 2021.**](#) Ripeness holdings again cited by the Court in dismissing defendant's challenge to the constitutionality of SB 201, along with dismissal of an ineffective assistance of counsel argument based on a failure to argue the issue at the trial court level.

[**State v. Brown, 2021-Ohio-3762, Decided October 22, 2021.**](#) Defendant challenged the constitutionality of their SB 201 sentence and alleged ineffective assistance of counsel for the failure to raise the issue at the trial level. The Court rejected both arguments, citing their previous holding in *Maddox* that the issue of constitutionality is not yet ripe for review, and as such the defendant could not establish that the alleged ineffectiveness of defense counsel was outcome determinative.

[**State v. Hodges, 2021-Ohio-3853, Decided October 29, 2021.**](#) The Court rejected the defendant's constitutional claims regarding their SB 201 indefinite sentence, holding that the defendant failed to raise the issue at the trial level and citing its previous holdings on the issue's ripeness for review.

[**State v. Perry, 2021-Ohio-3855, Decided October 29, 2021.**](#) Defendant challenged the constitutionality of their SB 201 sentence and claimed that the sentence was also void for failure to properly impose post-release control at the time of sentencing. The Court rejected the SB 201 argument based on the prior holdings on ripeness, and the Court found that the PRC error was clerical in nature and remanded the case for issuance of a nunc pro tun entry correcting the record.

[State v. Soto, 2021-Ohio-3859, Decided October 29, 2021.](#) Defendant challenged the constitutionality of their SB 201 sentence and claimed that the sentence was also void for failure to properly impose post-release control at the time of sentencing. Defendant’s claim was rejected based on the Court’s prior holdings on ripeness. The Court reviewed the record and found that the trial court failed to impose an indefinite sentence for all qualifying offenses and found the sentence contrary to law. The judgement was reversed, and the case remanded for resentencing on that count.

[State v. Brown, 2021-Ohio-4034, Decided November 5, 2021.](#) The defendant challenged their SB 201 sentences as unconstitutionally violative of the doctrine of separation of powers and due process, and the state cross-appealed alleging that the trial court failed to impose a minimum sentence on each count as well as a maximum term.

[State v. Davis, 2021-Ohio-4035, Decided November 5, 2021.](#) The defendant challenged the constitutionality of their 3-4.5-year SB 201 sentence as unconstitutionally violative of the doctrine of separate of powers and due process. The Court rejected the appeal as not yet ripe for review pursuant to its previous holdings on the issue.

[State v. Martinez, 2021-Ohio-3994, Decided November 10, 2021.](#) Defendant was sentenced following an *Alford* plea to two counts of F1 rape, both qualifying SB 201 offenses. The trial court imposed a sentence of 10 years on one count and five years on the other, and ordered the sentences to run consecutively. However, the trial court did not impose those terms as “minimum” terms, and did not impose an aggregate minimum or maximum term as required by R.C. 2929.144. The defendant challenged the constitutionality of the non-life felony indefinite sentencing scheme on appeal, which the Court rejected as not yet ripe for review under its precedent in *Maddox*. The Court also rejected defendant’s ineffective assistance of counsel claims. The State challenged the sentence itself on cross-assignment, and the Court found the sentence improper for failure to impose minimum and maximum terms, and remanded the case for resentencing to correct that error.

SEVENTH DISTRICT COURT OF APPEALS^{vii}

[State v. Jones, 2020-Ohio-1164, Decided March 26, 2021.](#) The Court held that the failure to impose a maximum term as required by SB 201 rendered the definite sentence imposed contrary to law, and remanded the case for resentencing to both a minimum and maximum term. The constitutionality of SB201 was not addressed, nor was its ripeness for review.

EIGHTH DISTRICT COURT OF APPEALS^{viii}

[State v. Young, 2020-Ohio-4135, Decided August 20, 2020.](#) **DECISION VACATED BY STATE V. YOUNG 2021-OHIO-215 BELOW.** The defendant was found not guilty by reason of insanity for a first degree felony, and committed for a term of up to 11 years pursuant to statute. The Appellate Court held that the “maximum term of imprisonment” for these purposes was actually 11-16.5 years pursuant to SB 201 and R.C. 2929.144, and remanded the case for resentencing. The Court further held that the defendant’s failure to raise the issue of the constitutionality of SB201 at the trial level forfeited the issue on appeal, and as such the Court made no holding on that issue.

[State v. Dames, 2020-Ohio-4991, Decided October 22, 2020.](#) Defendant appealed challenging the indefinite portion of their seven to a ten-and-a-half-year prison term imposed under SB201 as unconstitutional. As the defendant failed to object at trial, the court held that all but plain error was forfeit, and since the defendant failed to raise a plain error argument they declined to issue a ruling on the constitutionality of those provisions. The court also declined to weigh in on the ripeness argument raised by the state (citing *Downard* and *Manion* from the Fifth District).

[State v. Stone, 2020-Ohio-5263, Decided November 12, 2020.](#) As with their decision in *State v. Dames* above, as the defendant failed to raise the issues of the constitutionality of SB201 at the trial court level the Court declined to address the issue as plain error on appeal.

[State v. Hollis, 2020-Ohio-5258, Decided November 12, 2020.](#) Defendant challenged an 18-22-year sentence imposed for rape, kidnapping, and felonious assault arguing that consecutive sentences were improperly imposed and that the

indefinite sentencing provisions of SB201 are unconstitutional as violative of separations of powers and the rights to due process and a trial by jury. Defendant did not raise the constitutionality issue at the trial level or raise a plain error argument on appeal, and as such the Court, citing its decision in *State v. Dames* above, declined to address the constitutionality issue or the state's argument that the issue of constitutionality was not ripe for review.

[*State v. Doss, 2020-Ohio-5510, Decided December 3, 2020.*](#) Defendant challenged the voluntariness of his plea citing an error at the first of two plea hearings which took place in his case, wherein the court failed to initially inform the defendant of the indefinite sentence that would be imposed in the case, but corrected the error at a later Crim R. 11 hearing. The court upheld the plea as knowingly, intelligently and voluntarily made. The Court also found no errors in the fourth amendment issues raised on appeal.

[*State v. Jenkins, 2021-Ohio-123, Decided January 21, 2021.*](#) The Court held that failure to object at the trial level to the SB 201 indefinite sentence imposed forfeited all but plain error and declined to address the issue on appeal. The Court also affirmed the trial courts verdict based on a manifest weight of the evidence challenge.

[*State v. White, 2021-Ohio-126, Decided January 21, 2021.*](#) The Court upheld the SB 201 indefinite sentence calculation, and held that sentence was not reviewable as it was a joint recommendation accepted by the court and authorized by the statute. The Court further noted that the defendant's failure to raise the issue of constitutionality at the trial court level forfeited all but plain error analysis on appeal.

[*State v. Young, 2021-Ohio-215, Decided January 28, 2021.*](#) On motion for reconsideration of 2020-Ohio-4135. The defendant was found not guilty by reason of insanity (NGRI) for a first-degree felony, and committed for a term of up to 11 years pursuant to statute. The Court initially held in 2020-Ohio-4135 that the "maximum term of imprisonment" for these purposes was 11-16.5 years pursuant to SB 201 and R.C. 2929.144, and remanded the case for resentencing. On reconsideration, the Court upheld the trial court determination that 11 years was the maximum term of commitment for the NGRI finding, as only ODRC has authority to extend incarceration pursuant to SB 201, and they would have no basis to make determinations as the defendant would not be incarcerated in a state prison. The Court noted that the state failed to object to the maximum term of supervision at trial and therefore forfeited all but plain error analysis in the appeal.

[*State v. Wilburn, 2021-Ohio-578, Decided March 4, 2021.*](#) Constitutional challenge to an SB 201 indefinite sentence as violative of separation of powers and due process. The state argued in response that the issue is not yet ripe for review, citing the holdings on that issue. The Eighth District panel held that the issue is ripe for review, citing Judge Gwin's dissents in the Fifth District decisions in *Cochran* and *Wolfe*, and that the issues of SB 201's constitutionality are "sufficiently developed to allow the court to produce a fair adjudication," and that the defendant would suffer hardship from being required to wait to address the issue. The Court then upheld the constitutionality of the statute, first finding that separation of powers is adequately protected as potential sanction the executive branch could impose was included in the trial court's original sentence. The Court also found no due process issues with the indefinite sentencing scheme, finding that adequate notice is provided of the factors by which the defendant could have their incarceration extended, and noting changes to the Ohio Administrative Code which set forth procedures and standard for hearings on the issue.

[*State v. Whitehead, 2021-Ohio-847, Decided March 19, 2021.*](#) Defendant argued on appeal that the trial court failed to merge allied offenses as required by law, that the consecutive sentences imposed were improper, that the trial court did not consider the R.C. 2929.11 and 2929.12 factors at sentencing, and that the sentence was further contrary to law as the sentencing entry differed from the sentence handed down at the hearing. The Court found that the record supported the consecutive sentences and that the trial court considered the R.C. 2929.11 and 2929.12 factors at sentencing. However, it found that the trial court erred in sentencing in failing to merge those offenses that the state conceded would merge at the plea. The Court further found that the trial court did not impose an SB 201 indefinite sentence during the hearing, as it failed to inform the defendant that the terms imposed were the minimum term, failed

to impose a maximum term, and failed to give the required indefinite sentencing notices under R.C. 2929.19(B)(2)(c). The case was remanded for resentencing on the merger and SB 201 issues.

[**State v. Simmons, 2021-Ohio-939, Decided March 25, 2021.**](#) State's appeal of a trial court ruling that the SB 201 indefinite sentencing scheme unconstitutionally violates the right to due process and separation of powers. The Court upheld the constitutionality of SB 201, holding that the law does not allow the executive branch to increase the offender's sentence, and that the processes in place for extension of the prison term adequately provided due process to an offender. Case remanded to the trial court for resentencing.

[**State v. Medina, 2021-Ohio-1727, Decided May 25, 2021.**](#) Defendant challenged the validity of their plea alleging that the court did not ensure that it was knowingly, intelligently, and voluntarily made, as well as the constitutionality of their SB 201 indefinite sentence. The Court reviewed the record and found the plea colloquy to be in compliance with rule 11, and overruled the SB 201 challenge as waived for failure to object at the trial level.

[**State v. Delvallie, 2021-Ohio-1809, Decided May 27, 2021.**](#) On an appeal of their SB 201 sentence for aggravated robbery, the defendant alleged the sentencing scheme violated their constitutional rights to a trial by jury and to due process, as well as the separation of powers doctrine and a fair hearing. The Court found that the issue was properly preserved through objection, and ripe for review. It held that the scheme violates the right to a trial by jury as it the factors to be considered in extending incarceration beyond the minimum term will not be decided by a jury. It further likened the indefinite sentencing process to "bad time" as enacted under Senate Bill 2 in 1996, and held that SB 201 violated the same constitutional separation of powers concerns as the unconstitutional "bad time" statute. Finally, the Court held that the statute violated due process citing provisions it found to be unconstitutionally vague for failing to provide adequate notice and "virtually unreviewable" executive branch determinations made during the extension of incarceration process. The Court vacated the sentence and remanded for resentencing. Contrast this holding with *Gamble* below, issued the same day.

[**State v. Gamble, 2021-Ohio-1810, Decided May 27, 2021.**](#) The Court upheld the constitutionality of the non-life felony indefinite sentencing scheme. It first went on to overrule a ripeness argument, citing the need for the constitutionality of the imposition of such a sentence to be addressed on direct appeal, and addressed the conflict on this issue throughout the appellate districts. Likening SB 201 to the parole system, the Court further held that SB 201 did not violate the separation of powers doctrine as the executive branch was merely administering a minimum and maximum sentence imposed by the trial court, and that it did not violate the right to trial by jury as the defendant was sentenced to that maximum term as a result of their finding of guilty at the trial level. The right to due process was also not violated as the defendant is afforded both notice and the opportunity to be heard in both in statute and in the process of extending incarceration beyond the minimum term.

[**State v. Sealy, 2021-Ohio-1949, Decided June 10, 2021.**](#) The trial court found the indefinite sentencing scheme unconstitutional and imposed a definite prison term. The State appealed, arguing that the law is constitutional. Consistent with their decision in *Delvallie*, above, the Eighth District found that SB 201 violates the right to due process and overruled the State's arguments.

[**State v. Daniel, 2021-Ohio-1963, Decided June 10, 2021.**](#) Defendant was sentenced to an indefinite term of 3-4 years in prison for robbery under SB 201, and the trial court also imposed a no-contact order with the victim in the case. They appealed, arguing that the indefinite sentence violates their constitutional rights and challenging the imposition of the no-contact order. The Court held, consistent with the *Delvallie* decision above, that the non-life felony indefinite sentencing scheme does not provide sufficient due process and is therefore unconstitutional. The state conceded that imposition of a no-contact order was an error, as such an order is a community control sanction and under *State v. Anderson* prison terms and community control are mutually exclusive sentence options on a given count.

[**State v. Driffin, 2021-Ohio-2264, Decided July 1, 2021.**](#) Defendant challenged the voluntariness of their plea, claiming that the trial courts erroneous statement regarding the percentage reduction of their SB 201 minimum term rendered

the plea involuntary, and that the trial court pressured them to accept the plea. The Court reviewed the record, and, as only substantial compliance was required as to the erroneous explanation of the maximum penalty, found that now prejudice could be shown from the trial court's error. It also found no evidence of undue pressure on the defendant in the plea process.

[**State v. White, 2021-Ohio-2441, Decided July 16, 2021.**](#) The Court refused to hear a challenge to the constitutionality of SB201 as the defendant did not preserve the issue by objecting in the trial court. The Court also cited the defendant's plea agreement and that the sentence imposed was within the range jointly recommended as part of that agreement.

[**State v. Aarons, 2021-Ohio-3671, Decided October 14, 2021.**](#) Defendant plead guilty to F1 involuntary manslaughter, F3 failure to comply, and misdemeanor OVI, as well as to F5 drug possession in a separate case. They were initially sentenced in court to "6 to 11 years" with a two-year consecutive term, and the trial court called the sentence "an aggregate sentence of 8 to 11 years." However, the trial court did not indicate which terms were being imposed for which counts as required by law. The OVI charge and drug possession case were run concurrently. Two days later, a sentencing entry was issued which did not specify the sentence per count. The defendant filed a notice of appeal, and the trial court subsequently issued two "corrected" sentencing entries within a day of each other, and a third corrected entry two months after those. As the record of the sentencing hearing and the initial entry failed to delineate a sentence on each count, the Court held that there was no final, appealable order which would grant the appellate court jurisdiction to hear the appeal. The Court cited precedent prohibiting the trial court from issuing nunc pro tunc entries during the pendency of a criminal appeal, and found that only the third and final corrected entry would have constituted a final, appealable order as it properly laid out a sentence for each count; however that entry did not reflect what occurred on the record at the sentencing hearing. The appeal was dismissed for lack of a final appealable order, meaning the trial court will need to resentence the defendant, specifically delineating the sentence on each count, and issue a journal entry memorializing that resentencing hearing.

[NINTH DISTRICT COURT OF APPEALS^{ix}](#)

[TENTH DISTRICT COURT OF APPEALS](#)

[**State v. McFadden, 2021-Ohio-2204, Decided June 29, 2021.**](#) McFadden plead guilty to a rape charge, and was not informed by the trial court of their Tier III SORN requirements during the Crim.R. 11 plea colloquy. The trial court also sentenced the defendant to a definite term, despite the offense being a qualifying offense under SB 201 and did not impose a maximum term as required by law. An amended sentencing entry imposing a minimum and maximum term was issued by the trial court two days after the initial entry was filed. On appeal, McFadden challenged the voluntariness of their plea and the jurisdiction of the trial court to issue the amended sentencing entry. The state filed their own appeal, alleging that the failure to impose a maximum and minimum term rendered the sentence contrary to law. The Court held that the plea was knowing, intelligently, and voluntarily made, even in the absence of the SORN notification or explanation of the indefinite sentencing scheme, as the record of the plea showed partial compliance with the explanation of the maximum penalty and explanation of SORN duties, and the defendant did not show prejudice on the issues or that they would not have entered the plea but for the deficient explanations. The Court went on to find the sentence contrary to law and that the trial court lacked the jurisdiction to issue an amended entry which substantially changed the sentence imposed on the record. The sentence was reversed case was remanded for resentencing.

[ELEVENTH DISTRICT COURT OF APPEALS^x](#)

[**State v. Ferguson, 2020-Ohio-5578, Decided December 7, 2020.**](#) Defendant appealed the voluntariness of his plea as well as the constitutionality of his SB201 sentence. He also argued that trial counsel was ineffective, in part due to their failure to object to the constitutionality of the SB201 indefinite sentence required by law. The Court declined to address the constitutionality issue as no plain error argument was made on appeal citing similar decisions in the Fourth District and Eighth District Courts of Appeals. The Court did not find defense counsel ineffective for failure to object to SB201's

constitutionality at the trial level, citing Twelfth and Second District decisions upholding the law as well as Fifth and Sixth District decisions finding the law not yet ripe for review.

[**State v. Johnson, 2020-Ohio-6807, Decided December 21, 2020.**](#) Defendant failed to object to the constitutionality of the SB201 sentence imposed at trial, and the Court held that they therefore waived all but a plain error argument on the issue in their appeal. As they did not allege plain error and statutes are presumed to be constitutional, the Court found the appeal to be meritless.

[**State v. Miles, 2020-Ohio-6921, Decided December 28, 2020.**](#) Defendant appealed their sentence following a guilty plea to one F5 and two SB201 qualifying F1 offenses with firearm specifications. They alleged the two felonies of the first degree should have merged as allied offenses of similar import, and further that the court failed to properly impose the minimum term on those counts and to advise the defendant of indefinite sentencing procedures pursuant to R.C. 2929.19(B)(2)(c). The Court rejected the merger argument, but found discrepancies between the sentencing entry and the record as to the minimum and maximum terms imposed. The state conceded error on the failure to properly calculate the maximum term as well as the failure to provide the necessary advisements. The matter was remanded for resentencing for those purposes.

[**State v. Jones, 2020-Ohio-7002, Decided December 31, 2020.**](#) Defendant challenged the constitutionality of their SB201 sentence but did not raise the issue at the trial court level. The Court held that the failure to raise the issue meant they had waived the right to appeal.

[**State v. Stanley, 2021-Ohio-108, Decided January 19, 2021.**](#) Defendant appealed alleging that several counts should have been merged at sentencing, as well as alleging that their SB 201 indefinite sentence on those counts was unconstitutional. The Court held that the defendant's failure to raise the issue at the trial level forfeited the SB 201 issue for appeal, and declined to consider the constitutionality arguments. The court further found no issue with the trial court's failure to merge the counts in question.

[**State v. Cassell, 2021-Ohio-661, Decided March 8, 2021.**](#) Defendant appealed following denial of a motion to suppress and a no contest plea resulting in an SB 201 indefinite sentence. The defendant argued issues with the stop and search of their vehicle and that the trial court erroneously calculated the maximum term in the case by including time on the firearm specification. The Court held that the trial court correctly calculated the maximum term without including the specification, and that the specification in the case runs consecutively to the minimum and maximum term imposed by operation of law.

[**State v. Noble, 2021-Ohio-1062, Decided March 31, 2021.**](#) Defendant raised a number of arguments on appeal, including sufficiency and manifest weight of the evidence issues, errors in imposing consecutive sentences, and the constitutionality of the SB 201 indefinite sentence imposed for attempted murder. The Court rejected the sufficiency and weight arguments and upheld the consecutive sentences as well. The Court refused to address the arguments on SB 201's constitutionality as the defendant did not raise the issue at the trial court level and did not assert plain error on appeal.

[**State v. Lavean, 2021-Ohio-1456, Decided April 26, 2021.**](#) The Court declined to address several arguments on the constitutionality of the non-life felony indefinite sentencing scheme, citing its prior holdings that the issues is not yet ripe for review. Defendant made several other arguments related to the sufficiency of the evidence surrounding their trial and self defense claim, all of which were rejected by the Court.

[**State v. Moran, 2021-Ohio-1987, Decided June 15, 2021.**](#) After entering guilty pleas, the defendant asked the trial court to declare the SB 201 indefinite sentencing scheme unconstitutional. The motion was denied, and the defendant appealed, arguing that the statute was ripe for review and unconstitutional on a number of grounds; vagueness, separation of powers, due process, and the right to trial by jury. They also challenged the consecutive sentence in the case. The Court cited previous holdings that SB201 was not ripe for review and overruled those arguments, and found that the record supported the trial court's decision to impose consecutive sentences.

[**State v. Woods, 2021-Ohio-3173, Decided September 13, 2021.**](#) Denial of defendant’s challenge to the constitutionality of SB 201 at the trial level was upheld by the Eleventh District, holding that the provisions are not yet ripe for review, consistent with the Court’s previous holdings.

[**State v. Joyce, 2021-Ohio-3476, Decided September 30, 2021.**](#) The court rejected a challenge to SB 201’s constitutionality based on their prior holdings that its maximum term provisions are not ripe for review.

[**State v. Freetage, 2021-Ohio-4050, Decided November 15, 2021.**](#) The defendant challenged the sufficiency and manifest weight of the evidence leading to their felonious assault convictions as well as the constitutionality of their SB 201 sentence. They further alleged that their sentence was void as the trial court failed to impose mandatory post-release control. The Court vacated one of the three counts of felonious assault as insufficiently supported by the evidence but upheld the other two counts. It rejected the defendant’s constitutional challenge to SB 201, citing its prior holdings on ripeness and the fact that the defendant failed to raise the issue at the trial level. Finally, the court found that while the trial court failed to impose PRC at the sentencing hearing, the journal entry did impose PRC and as such the issue was remanded for the trial court to provide proper notice of PRC, and to impose the indefinite sentence for remaining counts. The Court expressly rejected defendant’s request for a blanket resentencing on these issues.

TWELFTH DISTRICT COURT OF APPEALS^{xi}

[**State v. Guyton, 2020-Ohio-3837, Decided July 27, 2020.**](#) Defendant was convicted and sentenced to and indefinite 9 to 13.5-years in prison on a qualifying felony of the first degree, run concurrently to two other prison terms. Defense counsel made a general objection to the constitutionality of SB201 at the time of sentencing. Defendant’s appeal argued that the imposition of additional prison time beyond the minimum term was violative of due process at it was being imposed by the executive branch rather than a court. The Twelfth District likened the provisions of rebutting the presumption of release to those made by a parole board, noting that the statute provides the defendant with notice of the rebuttal hearing and an opportunity to be heard in the same manner as a parole-eligible inmate, and overruled the appeal.

[**State v. Alexander, 2020-Ohio-3838, Decided July 27, 2020.**](#) Defendant appealed constitutionality of SB201, but failed to raise the issues before or after trial or object at the time of sentencing. The Court held that the defendant forfeited the right to challenge the constitutionality of SB201 by failing to raise the issues at trial.

[**State v. Rogers, 2020-Ohio-4102, Decided August 17, 2020.**](#) Defendant appealed their sentence arguing a failure to comply with Criminal Rule 11 during the plea colloquy, and challenging the constitutionality of their SB201 indefinite sentence. The Court found fault with the plea colloquy and remanded the case on that basis, mooting the SB201 issue in the process. Judge Piper’s dissent cites the decision in *Guyton* above for the holding that SB201’s indefinite sentencing scheme is constitutional.

[**State v. Morris, 2020-Ohio-4103, Decided August 17, 2020.**](#) Defendant appealed constitutionality of their indefinite sentence imposed under SB201. The Court cites the decision in *Guyton* above for the holding that SB201’s indefinite sentencing scheme is constitutional.

[**State v. Teasley, 2020-Ohio-4626, Decided September 28, 2020.**](#) Defendant appealed constitutionality of their indefinite sentence imposed under SB201 as violative of due process and separation of powers. The Court cited *Alexander* above as well as *State v. Young*, 2020-Ohio-4135 (8th Dist.) and held that the defendant forfeited the right to challenge the constitutionality of SB201 by failing to raise the issues at trial.

[**State v. Tutt, 2021-Ohio-96, Decided January 19, 2021.**](#) Defendant appealed challenging the validity of their plea and asking for their conviction to be vacated as they did not sign any waiver acknowledging that their case would be subject to SB 201 indefinite sentencing, and because the trial court overstated the maximum penalty they could be subject to at

the time of the plea. The Court held that SB 201 does not require any written waiver to be signed by the defendant. It further held that under *State v. Dangler* 2020-Ohio-2765, the error in overstating the maximum penalty did not invalidate the guilty plea as it was not a complete failure to comply with Crim R. 11, and that the defendant had not established the necessary prejudice to have the plea vacated.

[*State v. Suder*, 2021-Ohio-465, Decided February 22, 2021](#). Defendant's appeal argued that the trial court should have merged two convictions at sentencing as allied offenses of similar import, and challenged the constitutionality of their SB201 indefinite sentence as violative both their due process rights and of the separation of powers doctrine. The Court cited its previous decision in *State v. Guyton* as precedent for holding that the sentencing scheme does not violate due process. It then went on to cite several Second District cases and hold that the scheme also does not violate the separation of powers doctrine.

[*State v. Van Maurice Jackson*, 2021-Ohio-778, Decided March 16, 2021](#). Challenge to the constitutionality of an SB 201 indefinite sentence imposed for felonious assault with a firearm specification as violative of the right to due process. The court held that a general objection at the conclusion of the sentencing hearing sufficiently preserved the issue for appeal, but cited its decision in *Guyton* above in finding that the defendant failed to prove the law violates the right to due process and upheld the constitutionality of the sentencing scheme.

[*State v. Hodgkin*, 2021-Ohio-1353, Decided April 19, 2021](#). The Court declined to address the defendant's challenge to the constitutionality of the indefinite sentencing scheme as it was not raised at the trial court level, and further overruled an ineffective assistance of counsel claim based on trial counsel's failure to object to the indefinite sentence. However, the Court found that the necessary notifications under R.C. 2929.19(B)(2)(c) were not provided at sentencing, and remanded the case to the trial court for resentencing solely for the required notifications. The court rejected an argument by the state that because the notices were explained at the plea hearing they weren't necessary at sentencing – the Court cited the plain language of the law requires the advisements at sentencing.

[*State v. Paul*, 2021-Ohio-1628, Decided May 10, 2021](#). The defendant alleged that the consecutive sentences imposed in their aggravated vehicular homicide/assault case were not supported by the record and were made without a presentence investigation, and that they were not properly advised on the indefinite nature of their SB 201 sentence as required by law. The Court found that the sentencing court considered the R.C. 2929.11 and 2929.12 factors in fashioning the individual sentences, and that it made the necessary consecutive sentence findings. The Court also found that no presentence investigation was required, as neither party requested a PSI following the trial court's inquiry. Finally, the Court found that the trial court did not inform the defendant of all 5 of the necessary advisements in R.C. 2929.19(B)(2)(c), and remanded the case for resentencing with those notifications.

[*State v. Paul*, 2021-Ohio-2158, Decided June 28, 2021](#). The Court overruled a number of challenges the defendant made, including: that it was based on insufficient evidence and against the manifest weight, that the trial court erred in allowing child victims to testify and denying a motion to suppress, that the consecutive sentences imposed were unlawful, that counts should have merged, that defense counsel was ineffective for failure to raise objections including an objection to the SB201 indefinite sentences imposed, and that SB 201 was unconstitutional. The Court noted the failure to object to the constitutionality of SB 201 at trial, and cited its previous decisions upholding the constitutionality of the sentencing scheme.

[*State v. Brown Suber*, 2021-Ohio-2291, Decided July 6, 2021](#). Failure to challenge the constitutionality of SB 201 at the trial level waived all but plain error on appeal, but the trial court's error in not providing all required notifications under R.C. 2929.19(B)(2)(c) led to a partial reversal and remand of the judgment in the case.

[*State v. Blaylock*, 2021-Ohio-2631, Decided August 2, 2021](#). The Court rejected the defendant's constitutional challenge to their SB 201 sentence as they failed to raise the issue at the trial court level. The Court further held that there was no merit to the defendant's ineffective assistance claim.

[**State v. Jividen, 2021-Ohio-2720, Decided August 9, 2021.**](#) Again, the Court held that failure to object to the constitutionality of SB 201 forfeited the issue for appeal. The Court also overruled an argument as to the manifest weight and sufficiency of the evidence presented at trial.

[**State v. Broughton, 2021-Ohio-2987, Decided August 30, 2021.**](#) The defendant challenged the voluntariness of their plea, arguing that the court inaccurately advised them that they would be eligible for the earned reduction of their minimum term under R.C. 2967.271. The defendant was not eligible for that reduction as the charges involved were sexually oriented offenses, which are excluded from such reduction. The plea form in the case informed the defendant that they would not be eligible for such credit. The Court held that the defendant needed to show prejudice as they were adequately advised of the maximum penalty involved, and that the defendant failed to show that prejudice and they would not have entered the plea but for the misstatement on earned reduction.

[**State v. Stapleton, 2021-Ohio-3281, Decided September 20, 2021.**](#) Defendant failed to object to the constitutionality of SB 201 in the trial court but challenged both that and the trial courts alleged failure to consider RC 2929.11 and 2929.12 at sentencing. The Court held that the SB 201 challenge was forfeited for the lack of preserving the issue, and found that the record showed the court considered the purposes and principles of sentencing, dismissing the appeal.

[**State v. Rogers, 2021-Ohio-3282, Decided September 20, 2021.**](#) The Court dismissed the appeal of an SB 201 sentence challenged on constitutional grounds, holding that no provision of the law impermissibly delegated any other branch of government to impose a sentence. The Court found that rebuttal of the presumption of release is not the executive branch imposing a sentence, but that it “merely administers the sentence already imposed by the trial court...”

[**State v. Lemmings, 2021-Ohio-3285, Decided September 20, 2021.**](#) Defendant challenged their SB 201 sentence on 8th amendment grounds and based on the record not supporting RC 2929.14(C)(4) consecutive sentence findings. The Court overruled both arguments.

[**State v. Henderson, 2021-Ohio-3564, Decided October 04, 2021.**](#) The Court overruled a challenge to SB 201 on constitutional grounds, citing its earlier holdings that the rights to a trial by jury and due process as well as the doctrine of separation of powers are not violated by the law.

[**State v. Gabbard, 2021-Ohio-3646, Decided October 12, 2021.**](#) Defendant plead guilty to F2 aggravated possession of drugs but was sentenced to a definite five-year prison term despite the offense being a “qualifying offense” for SB 201 non-life felony indefinite sentencing. The trial court also erroneously held that the prison term on the count was mandatory. The defendant challenged the sentence as contrary to law, and argued that their plea was not knowingly, intelligently, and voluntarily made as the trial court failed to explain that they would be subject to SB 201 indefinite sentencing for the count. The state conceded error on the sentencing being contrary to law, and the Court ordered the case remanded for resentencing to an indefinite prison term. The Court went on to examine the argument on the validity of the guilty plea and held that although there was not a proper explanation of the maximum penalty involved, the defendant failed to show that but for that error they would not have pleaded guilty and upheld the trial court’s denial of the request to withdraw the guilty plea. The state conceded error on the issue of the validity of the guilty plea, but the Court declined to accept that concession absent proof of prejudice by the defendant.

[**State v. Roberson, 2021-Ohio-3705, Decided October 18, 2021.**](#) Defendant challenged their conviction and sentence for SB 201 qualifying aggravated robbery charge. They alleged that their jury waiver was invalid, that the conviction following a bench trial was against the manifest weight of the evidence. The Court rejected both of these arguments based on the record of the case. The defendant also challenged the constitutionality of their SB 201 sentence, argued that counsel was ineffective for failing to object to the issue at sentencing, and finally that the sentence was contrary to law as the trial court failed to provide the required R.C. 2929.19(B)(2)(c) notices when sentencing the defendant. The Court rejected the constitutionality argument as the issue was not raised at the trial court level, and found that counsel was not ineffective for failing to raise the issue as the Twelfth District had already upheld the law’s constitutionality by

the time defendant was sentenced. However, the issue regarding the mandatory notifications at sentencing was sustained, and the case was remanded to the trial court for those notifications to be provided.

ENDNOTES: APPELLATE DECISIONS REFERENCING SB201

ⁱ First District Decisions Referencing SB 201

ⁱⁱ Second District Decisions Referencing SB 201

[**State v. Shields, 2020-Ohio-3204, Decided June 5, 2020.**](#) Refers to SB 201 indefinite sentencing but issues are unrelated to indefinite sentencing. The appeal was based on a defense argument that a prison sentence was not mandatory on an aggravated robbery charge with an attendant firearm specification.

[**State v. Dapice, 2020-Ohio-4324, Decided September 4, 2020.**](#) Appeal of indefinite sentence under SB 201 rejected as result of it being jointly recommended by the parties and accepted by the trial court. Ineffective assistance claims also rejected. The state and defense were initially incorrect in calculating the maximum term of incarceration under SB 201, were advised of the error by the court and agreed to the corrected joint recommendation at the time of the plea.

[**State v. Green, 2021-Ohio-15, Decided January 8, 2021.**](#) *Anders* appeal of the indefinite sentence imposed under SB 201, The Court found no problems with the plea colloquy and rejected defendants argument that the length of his sentence was excessive. While the constitutionality of SB 201 was not challenged, per *Anders* the Court reviewed the record for any potential issues and found none.

[**State v. Lough, 2021-Ohio-230, Decided January 29, 2021.**](#) *Anders* brief challenging the imposition of consecutive sentences and alleging failure to comply with R.C. 2929.11 and R.C. 2929.12 in imposing an SB 201 indefinite sentence. No challenge to the SB 201 indefinite sentence itself.

[**State v. Deberry, 2021-Ohio-2532, Decided July 23, 2021.**](#) *Anders* appeal of an SB 201 sentence. No error found.

[**State v. Meek, 2021-Ohio-2535, Decided July 23, 2021.**](#) Defendant challenged the denial of their request to withdraw their guilty pleas. The Court upheld the trial courts decision to deny the withdrawal.

[**State v. Miller, 2021-Ohio-2606, Decided July 30, 2021.**](#) The Court upheld the trial court's refusal to allow the defendant to withdraw their guilty plea before sentencing. The defendant was sentenced to a non-life felony indefinite term.

ⁱⁱⁱ Third District Decisions Referencing SB 201

[**State v. Tyson, 2020-Ohio-5049, Decided October 26, 2020.**](#) Defendant was sentenced to 25-29.5 years in prison for crimes which took place when they were age 17 and challenged the length of the sentence imposed and the imposition of consecutive sentences. The sentences were upheld. There was no challenge to the indefinite sentencing scheme under SB 201.

[**State v. Richcreek, 2021-Ohio-636, Decided March 8, 2021.**](#) Defendant argued that their conviction for voluntary manslaughter was not supported by the manifest weight of the evidence and that the sentence imposed was contrary to law as not supported by R.C. 2929.11 and R.C. 2929.12 findings. The Court overruled the manifest weight argument and held that the Ohio Supreme Court holding in *State v. Jones, 2020-Ohio-6729* precluded appellate review of the R.C. 2929.11 and .12 factors. The SB 201 indefinite sentence imposed was not challenged.

[*State v. Denoyer, 2021-Ohio-886, Decided March 22, 2021.*](#) Defendant appealed arguing that their two felonious assault convictions should have merged for sentencing purposes, and challenging the imposition of maximum terms within the range and consecutive indefinite SB 201 sentences under R.C. 2929.14(C)(4). The Court overruled all the arguments and upheld the trial court's sentence.

[*State v. Oliver, 2021-Ohio-1002, Decided March 29, 2021.*](#) Defendant's appeal of their SB 201 indefinite sentence as contrary to law due to improper consecutive sentences and inadequate assistance of counsel were overruled by the court.

[*State v. Contreras, 2021-Ohio-1356, Decided April 19, 2021.*](#) Defendant appealed their SB 201 indefinite sentence claiming the trial court did not consider R.C. 2929.11 and 2929.12. The Court held that the record showed that the trial court made the necessary considerations, and cited *State v. Jones, 2020-Ohio-6729* for the principle that they were not permitted to review the record for support of those considerations.

iv Fourth District Decisions Referencing SB 201

[*State v. Rothwell, 2021-Ohio-1700, Decided May 21, 2021.*](#) Defendant challenged the imposition of a maximum indefinite SB 201 sentence alleging the trial court did not incorporate necessary findings on the record. Upon review, the Court found no errors in the sentence.

[*State v. Jones, 2021-Ohio-2601, Decided July 26, 2021.*](#) Successful argument by the defendant regarding merger led the Court to reverse the judgement in part and to remand the case for resentencing. This rendered defendant's arguments as to an erroneous SB 201 indefinite sentence moot.

[*State v. Willoughby, 2021-Ohio-2611, Decided July 30, 2021.*](#) The Court found no issues with the search leading to the defendant's plea and SB 201 sentence, and also upheld the no contest plea to the charges as knowingly, intelligently, and voluntarily made.

v Fifth District Decisions Referencing SB 201

[*State v. Grove, 2019-Ohio-1627, Decided April 29, 2019.*](#) Refers to SB 201 indefinite sentencing only tangentially. The facts of the case occurred prior to effective date of amendment, and the defendant was given a definite sentence.

[*State v. Horner, 2020-Ohio-5530, Decided December 2, 2020.*](#) *Anders* appeal alleging a discrepancy between the record and the sentencing entry. Defendant was sentenced to an indefinite term under SB 201. No error was found.

[*State v. Wolfe, 2021-Ohio-3223, Decided September 16, 2021.*](#) New appeal of case already remanded for SB 201 errors. No challenge to SB 201 in this appeal.

[*State v. Harris, 2021-Ohio-4007, Decided November 9, 2021.*](#) Defendant challenged their SB 201 sentence based on fourth amendment and brady issues, as well as based on its proportionality, all of which were rejected by the court on appeal.

vi Sixth District Decisions Referencing SB 201

[*State v. Polley, 2020-Ohio-3213, Decided June 5, 2020.*](#) Defendant appealed their indefinite 10 to 15-year sentence for attempted murder and felonious assault as "contrary to law" under R.C. 2953.08(G)(2). No issues were presented related to the SB 201 sentence, appellate court found that the record supported the sentence.

[*State v. Hunter, 2021-Ohio-3138, Decided September 10, 2021.*](#) Defendant was sentenced to an SB 201 minimum and maximum term along with two three-year firearm specifications. They argued on appeal that the trial court erred in failing to merge the firearm specifications as arising from the same transaction. The Court found no error in failing to merge the terms, as they were required by law under R.C. 2929.15(B)(1)(g).

vii Seventh District Decisions Referencing SB 201

viii Eighth District Decisions Referencing SB 201

[**State v. Walker, 2021-Ohio-580, Decided March 4, 2021.**](#) Defendant challenged the order that they be required to enroll in the Violent Offender Database pursuant to 132 GA SB 231 “Sierah’s Law” after plea to attempted murder, as well as several attendant charges. The Court found that the defendant was not properly notified as required by statute of their ability to challenge the duty to enroll, as the trial court did not comply with the required statutory notifications prior to the sentencing hearing. The Court also held that the trial court incorrectly applied a presumption of a duty to enroll, despite a concession from the state that the defendant was not the principal offender in the offense. Finally, the Court held that the defendant’s failure to object to the constitutionality of the statute’s retroactive application waived their right to raise the argument on appeal, citing their similar previous holding in a SB 201 indefinite sentencing case.

[**State v. Kauffman, 2021-Ohio-1584, Decided May 06, 2021.**](#) Defendant entered a guilty plea mid-trial to a non-life felony indefinite sentencing qualifying offense, but the trial court erroneously imposed a definite sentence. After discovery of the error, defendant was brought back for resentencing and entered a new plea to a non-qualifying offense. The Court upheld the sufficiency of the Crim. R. 11 plea colloquy but the case was remanded for issuance of a nunc pro tunc entry as the sentencing entry mistakenly included firearm specifications that had been dismissed pursuant to the plea agreement.

[**State v. Beard, 2021-Ohio-2512, Decided July 22, 2021.**](#) The Court held that failure to properly inform the defendant of their right to contest their enrollment in the Violent Offender Database prior to the imposition of an SB 201 sentence was error, and reversed the judgement, remanding the case for the defendant to be properly notified and have the opportunity to rebut the enrollment presumption.

[**State v. Brown, 2021-Ohio-3035, Decided September 10, 2021.**](#) The Court upheld a trial court ruling allowing questioning regarding prior convictions and held that trial counsel was not ineffective and that the convictions were supported by the manifest weight of the evidence. The defendant did not challenge the SB 201 indefinite sentence imposed for the conviction.

[**State v. Lowell, 2021-Ohio-3098, Decided September 9, 2021.**](#) Defendant was found not guilty by reason of insanity in two cases which occurred nearly a year apart. The trial court imposed an 8-year civil commitment in one case and an 11 year civil commitment in the second, and ran the two commitment terms consecutively. The Court struck down the consecutive terms, citing their holding in *State v. Young, 2021-Ohio-215*, where the Court held that the maximum sentence provisions of SB 201’s indefinite sentencing scheme were not applicable to civil commitment proceedings, reiterating that criminal specific sentencing provisions do not apply to civil commitments arising from a criminal case.

[**State v. Kyle, 2021-Ohio-3346, Decided September 23, 2021.**](#) Defendant challenged trials court’s failure to hold a restitution hearing and the case was remanded on that ground. SB 201 constitutionality issue was withdrawn by defendant.

ix Ninth District Decisions Referencing SB 201

[**State v. Moore, 2019-Ohio-1872, Decided May 15, 2019.**](#) Refers to SB 201 indefinite sentencing only tangentially. Manifest weight of the evidence appeal for a case that occurred prior to SB 201 effective date.

[**State v. Finklea, 2019-Ohio-2199, Decided June 5, 2019.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with evidentiary issues and review of imposition of a maximum sentence within range, facts occurred prior to the effective date of SB 201.

[**State v. Sharier, 2019-Ohio-3533, Decided September 3, 2019.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with evidentiary issues and review of imposition of a maximum sentence within range, facts occurred prior to the effective date of SB 201.

[**State v. Roberts, 2019-Ohio-4393, Decided October 28, 2019.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with dealt with Criminal Rule 11 plea hearing and review of sentence imposed, facts occurred prior to the effective date of SB 201.

[**State v. Sprouse, 2020-Ohio-91, Decided January 15, 2020.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with manifest weight issues, facts occurred prior to the effective date of SB 201.

[**State v. Brundage, 2020-Ohio-653, Decided February 26, 2020.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with denial of motion to withdraw guilty plea and review of sentence imposed, facts occurred prior to the effective date of SB 201.

[**State v. Atkinson, 2020-Ohio-3522, Decided June 30, 2020.**](#) Refers to SB 201 indefinite sentencing only tangentially. Case dealt with 4th Amendment issues and elements of the offense, facts occurred prior to the effective date of SB 201.

× Eleventh District Decisions Referencing SB 201

[**State v. Shaibi, 2021-Ohio-660, Decided March 8, 2021.**](#) Defendant appealed the denial of a motion to withdraw a guilty plea made prior to sentencing in the case. Upon review, the Court upheld the trial court’s denial of the motion based on the record in the case. The SB 201 indefinite sentence imposed was not addressed in the appeal.

[**State v. Jordan, 2021-Ohio-1060, Decided March 31, 2021.**](#) Defendant plead and was erroneously not sentenced pursuant to SB 201, and the trial court vacated the plea. The defendant then entered a new guilty plea without any SB 201 qualifying offenses included, and challenged the definite sentence imposed as contrary to law and impermissibly consecutive. Both arguments were rejected by the Court.

xi Twelfth District Decisions Referencing SB 201

[**State v. Hubbard, 2020-Ohio-856, Decided March 9, 2020.**](#) Refers to SB 201 indefinite sentencing only tangentially. Challenge to the constitutionality and retroactive application of SB 231 Violent Offender Database enrollment duties.

[**State v. Combs, 2020-Ohio-5397, Decided November 23, 2020.**](#) Defendant argued prosecutorial misconduct during testimony at trial as well as challenging the length of his SB 201 indefinite sentence. The decision of the trial court was upheld. The issue of SB 201’s constitutionality was not raised.

[**State v. Lemmings, 2021-Ohio-3285, Decided September 20, 2021.**](#) Defendant challenged their SB 201 sentence on 8th amendment grounds and based on the record not supporting RC 2929.14(C)(4) consecutive sentence findings. The Court overruled both arguments.

SB 201 HOLDINGS IN COMMON PLEAS COURTS

[**State v. O’Neal, Hamilton County Common Pleas Court Case No. B 1903562.**](#) Issued 11-20-2019. Trial court judge found that SB 201 unconstitutionally violates the doctrine of separation of powers and does not provide adequate due process to defendants. The court likened the provisions of SB 201 to the unconstitutional “bad time” provisions included in Senate Bill 2.

[**State v. Tupper, Cuyahoga County Common Pleas Court Case No. CR-19-645523-A.**](#) Issued 02-28-2020. Trial court found SB 201 to be unconstitutional citing holding in *State v. O’Neal* above. However, the court did impose an indefinite sentence.

State v. Baker, Montgomery County Common Pleas Court Case No. 2019 CR 3008. Issued 03-19-2020. Trial court found SB 201 to be unconstitutional and did not impose a maximum term. Ruling overturned on appeal, as detailed above.

State v. Keith, Montgomery County Common Pleas Court Case No. 2020 CR 108. Issued 05-15-2020. Trial court found SB 201 to be unconstitutional and did not impose a maximum term. Ruling overturned on appeal, as above, subsequently resentenced to indefinite term.

State v. Ross, Montgomery County Common Pleas Court Case No. 2019 CR 2503. Issued 08-13-2020. Trial court found SB 201 to be unconstitutional and did not impose a maximum term. Ruling overturned on appeal, defendant resentenced to an indefinite term.

[State v. Hursey, Franklin County Common Pleas Court Case No. 20 CR 4459.](#) Issued 07-20-2021. Trial court held that the indefinite sentencing scheme is violative of a defendant's due process rights and of the separation of powers doctrine, sua sponte. The court issued those findings in a separate entry, available at the hyperlink.