

Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Legislative & Judicial Brief is designed to share information and spark conversation. The Commission strives to move ideas to solutions that advance public safety, realize fairness in sentencing, preserve judicial discretion, provide a meaningful array of sentencing options and distinguish the most efficient and effective use of correctional resources.

-Sara Andrews



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LEGISLATION IMPACTING SENTENCING

**Special thanks to Nathaniel G. Ecker, Juris Doctor Candidate, Class of 2022 The Ohio State University, Moritz College of Law for his work on this edition.*

SB3 DRUG SENTENCING REFORM (EKLUND, O'BRIEN)

The bill was introduced on February 12, 2019, and modifies the controlled substance possession and trafficking prohibitions, penalties, and the drug and alcohol abuse civil commitment mechanism. Most felony drug possession charges are converted to misdemeanors; an amendment added to the bill before Senate passage requires these charges be brought in common pleas court. An additional amendment altered pending changes to Ohio Revised Code Sections 2929.15, requiring 90-day and 180-day caps to be reduced by any jail-time credit. A sentencing court retains jurisdiction over an offender who violates community control, even after a revocation that sends the offender to prison. The Senate passed the bill on June 30, 2020, by a vote of 25-4. The bill was referred to the House Criminal Justice Committee on August 31, 2020.

SB10 THEFT IN OFFICE PENALTIES (WILSON)/ HB272 EXTENDING OHIO LONG-ARM STATUTE (OELSLAGER, HILLYER)

The bill was introduced on February 12, 2019, and expands the penalties for theft in office based on the amount stolen and includes restitution to cover the costs of auditing the entity that suffered the loss. The bill was passed by the Senate on March 13, 2019, and amended then passed in the House on June 9, 2020. HB272 (extending Ohio's long-arm statute) was amended into SB10 on the House floor. The bill also includes an amendment clarifying the time period of March 9, 2020, until July 30, 2020, shall not be computed as part of the time limitation in the emergency tolling of HB197. On September 2, 2020, the Senate refused to concur on House amendments and on September 21, 2020, the bill was referred to a Conference Committee.

SB18 PROHIBIT CONFINING PREGNANT CRIMINALS (ANTONIO, LEHNER)

The bill was introduced on February 12, 2019, and prohibits restraining or confining a woman or child who is a charged or adjudicated criminal offender or delinquent child at certain points during pregnancy or postpartum recovery. On November 13, 2019, the Senate passed the bill by a 31-0 vote. It was referred to the House Criminal Justice Committee on May 12, 2020.

SB55 ENHANCE PENALTIES – DRUG TRAFFICKING (GAVARONE)

The bill was introduced on February 19, 2019, and enhances penalties for certain drug trafficking offences committed in the vicinity of community addiction services providers to the same level as if the offense was committed in the vicinity of a school or juvenile. The bill was amended on the floor to make violating an order of the Health Director or the Department of Health during a pandemic a minor misdemeanor for a subsequent offense (the statute currently prohibits violation of an order, but does not specify a penalty in Ohio Revised Code 3701.352). *The bill was vetoed by the Governor on July 17, 2020.*

SB103 GRANT CONCURRENT JURISDICTION – POLLUTION (DOLAN, YUKO)

The bill was introduced on March 12, 2019, and revises the jurisdiction of the Cleveland Housing Court regarding both criminal environmental pollution cases and administrative review and appeal of building, health, and safety codes. On December 11, 2019, the bill was passed by the Senate by a 31-0 vote. It was referred to the House Civil Justice Committee on May 12, 2020; the Committee had its first hearing on the bill May 19, 2020.



JUDICIAL NEWS

JUDICIAL ELECTIONS

There are nearly 300 judicial candidates for voter consideration on November 3, 2020. Court News Ohio summarizes here http://www.courtnewsOhio.gov/bench/2020/judicialElections_100220.asp#.X42h6dBKhBd.

NEW BENCHCARDS

The Supreme Court of Ohio issued two new benchcards on navigating hearing backlogs as a result of the pandemic. As reported by [Court News Ohio](#), the [Pathway Approach Benchcard](#) and [Strategies for Addressing a Backlog of Hearings Benchcard](#) were created to inform Ohio judges and staffers about procedures and ways to improve efficiency.

STATE OF THE JUDICIARY

On September 11, 2020, Chief Justice O'Connor delivered the State of the Judiciary address:

[Perseverance, Progression Paramount in Age of COVID-19, Social Reform](#)

LEGISLATION IMPACTING SENTENCING (continued)

SB134 PASSING SCHOOL BUSES (GAVARONE)

The bill was introduced on April 22, 2019, and changes the law governing passing a school bus to create a new offense for vehicular homicide and vehicular assault, related to improperly passing a school bus. This bill also makes an appropriation. On February 5, 2020, the bill was passed by the Senate by a 32-0 vote. It was referred to the House Criminal Justice Committee on May 5, 2020; the Committee had its first hearing on the bill on May 19, 2020.

SB156 DRUG SCREENINGS (GAVARONE)

The bill was introduced on May 28, 2019, and prohibits defrauding an alcohol, drug, or urine screening test. The manufacture, sale, possession, or use of fake urine, in order to prevent people from using it to pass drug tests (an M2, with a repeat offense an M1), is banned. This bill also makes it illegal to use someone else's urine to pass a drug test or to fail to report the use of fake or borrowed urine in a drug test. On May 12, 2020, the bill was referred to the House Criminal Justice Committee; the Committee held its second hearing on May 28, 2020.

SB290 CRIMINAL TRESPASS (COLEY)

The bill was introduced on March 4, 2020, and amends the law governing criminal trespass to specify that placing purple paint marks on trees or posts constitutes posting notice against unauthorized access to land in a manner reasonably calculated to come to the attention of potential intruders. On May 6, 2020, the bill was referred to the Senate Local Government, Public Safety and Veterans Affairs Committee; the Committee had its first hearing on May 20, 2020 and a second hearing on September 22, 2020.

SB296 ABOLISH DEATH PENALTY (ANTONIO, LEHNER)

The bill was introduced on March 24, 2020, and abolishes the death penalty for the State of Ohio. On May 6, 2020, the bill was referred to the Senate Judiciary Committee.

SB337 PROSECUTE POLICE-CAUSED DEATHS (WILLIAMS)

The bill was introduced on July 13, 2020, and establishes the duties and authority of the Attorney General to investigate and prosecute cases relating to the death of an unarmed person, regardless of detention status, caused by a peace officer under Ohio Revised Code Section 109.021. The Ohio Attorney General is required to investigate all such deaths, providing a report to the Governor if the Attorney General declines to refer evidence to a grand jury or a grand jury declines to issue an indictment. This report must include an explanation of the outcome and any systemic reform recommendations. The bill was referred to the Senate Judiciary Committee on July 21, 2020.

SB338 PROHIBIT BIASED POLICING (WILLIAMS)

The bill was introduced on July 13, 2020, and prohibits police officers from engaging in biased policing and other status-based profiling. The Ohio Attorney General is required to establish rules and training regarding such police practices. The bill was referred to the Senate Judiciary Committee on July 21, 2020.

ICYMI

OHIO DEPARTMENT OF REHABILITATION & CORRECTION REVIEWING CASES

State ex rel. Fraley v. Ohio Dept. of Rehab. & Corr. (SLIP OPINION NO. 2020-OHIO-4410), decided September 15, 2020 holds that if a sentencing entry does not specify that a firearm specification is to run consecutively to another firearm specification, then ODRC is required to treat the specifications as concurrent.

[To conform to Fraley, ODRC is reviewing inmate sentences and will be contacting sentencing judges in cases where a nunc pro tunc entry from the judge could clarify whether a specification is to be served concurrently or consecutively.](#)

PUBLIC COMMENT

The Supreme Court of Ohio is accepting public comment on proposed changes to the Rules of Practice and Procedure. Changes are proposed to: CivR 37; CrimR 1, 3, 7, 13; TrafR 2, 3, 13; CrimR 11, 41; CrimR 33; AppR 21 and others.

Submit comments by November 5, 2020 to ruleamendments@sc.ohio.gov.

PRISON POPULATION

As of October 14, 2020 Ohio's prison population was 44,599 inmates, its lowest level since 2005.

Through the use of the state's overcrowding statute, as this writing 168 inmates have been granted emergency early release. Inmates not incarcerated for serious violent crimes, who have 90 days or less remaining on their sentences, have had no prior incarcerations and have had no serious infractions while behind bars are being released once they enter the 90-day window.

And, ODRC data on COVID is available here: <https://coronavirus.ohio.gov/static/reports/DRCCOVID-19Information.pdf>

LEGISLATION IMPACTING SENTENCING (continued)

SB353 BAIL, BOND REFORM MEASURES (HUFFMAN, MANNING)

The bill was introduced on August 19, 2020, and modifies the pretrial detention and release laws. Specifically, it requires the use of a validated risk assessment tool and prohibits a bond schedule (unless a judicial officer is not available to make a bond determination) under Ohio Revised Code Sections 2903.212 (offenses of menacing by stalking, etc.) and 2919.251 (offenses of violence). The Supreme Court will determine what constitutes a validated risk assessment tool; a list will be posted on their website. A task force is required to convene to create this list. Every court (municipal, county, and common pleas) is required to adopt a “continuum of pretrial supervision options” to be considered when setting bail. Courts are encouraged to consider expanded use of technology in the bail process and courts are required to “utilize existing justice system partners for pretrial supervision services.” In July 2019, the Supreme Court’s Task Force to Examine the Ohio Bail System produced a [report with bail reform recommendations](#). The bill was referred to the Senate Judiciary Committee on September 1, 2020 and had a first hearing on September 23, 2020.

HB1 INTERVENTION IN LIEU OF CONVICTION (PLUMMER, HICKS-HUDSON)

The bill was introduced on May 21, 2019, and modifies the requirements for Intervention in Lieu of Conviction (ILC) and for sealing records of a conviction. This bill caps the length of treatment plans to five years, expands record sealing eligibility, and shortens the waiting period to apply for record sealing. The bill expands ILC use by requiring a hearing if the criminal conduct was the result of alcohol dependency and requires the judge, if denying ILC, to state the reasons for denial. On September 16, 2020, the Senate Judiciary Committee amended the bill at the fifth hearing.

HB3 AISHA’S LAW – DOMESTIC VIOLENCE (BOYD, CARRUTHERS)

The bill was introduced on May 16, 2020, and adds domestic violence offenses to aggravated murder and endangering children crimes, adds strangulation of a family or household member to the expanded domestic violence offense, and requires law enforcement officers to utilize a qualified lethality assessment screening tool (only if that assessment is available) to refer high risk victims to local domestic violence services. This bill also permits law enforcement officers, with victim consent, to request an emergency protection order (EPO) on the victim’s behalf during a period where the court is not open for regular business. The sub-bill no longer contains a requirement for courts to be open 24 hours a day. The sub-bill was passed by the House on May 20, 2020, by a vote of 94-0. On June 10, 2020, the sub-bill was referred to the Senate Judiciary Committee and had a first hearing on September 16, 2020.

HB33 ANIMAL ABUSE REPORTING (LANESE, CARRUTHERS)

The bill was introduced on February 12, 2019, and establishes animal abuse reporting requirements. On September 1, 2020, the Senate Agriculture and Natural Resources Committee had a second hearing on this bill.

HB83 SCHOOL BUS PHOTO EVIDENCE (BROWN, SCHAFFER)

The bill was introduced on February 19, 2019, and allows images captured by a camera installed on a school bus to be used as corroborating evidence for the offense of failing to stop for a school bus. On May 19, 2020, the House Criminal Justice Committee had its third hearing on this bill.

HB136 DEATH PENALTY – MENTALLY ILL (HILLYER)

The bill was introduced on March 19, 2019, and prohibits imposing the death penalty for aggravated murder when the offender had a serious mental illness at the time of the offense. The bill was reported out of the Senate Judiciary Committee at the seventh hearing on June 3, 2020.

HB178 CONCEALED WEAPONS REFORM (HOOD)

The bill was introduced on March 29, 2019, and modifies weapons law, permitting concealed carry without a license. This bill repeals the notice requirement applicable to licensees stopped for a law enforcement purpose, authorizing expungement of convictions for a violation of that requirement. This bill allows a person twenty-one years or older, if not prohibited by federal law, to concealed carry a deadly weapon, without needing a license subject to the same carrying laws as a licensee. On May 28, 2020, the bill had a second hearing in the House Criminal Justice Committee.

LEGISLATION IMPACTING SENTENCING (continued)

HB208 ASSAULT – SPORTS OFFICIALS (ROEMER, MILLER)

The bill was introduced on April 18, 2019, and increases the penalties for assault if the victim is acting as a sports official or the assault is committed in retaliation for the victim's actions as a sports official. On September 24, 2020, the bill informally passed in the House.

HB263 OCCUPATIONAL LICENSING – CRIMINAL CONVICTIONS (KOEHLER)

The bill was introduced on May 28, 2019, and revises the initial occupation licensing restrictions applicable to individuals convicted of criminal offenses. Licensing authorities are required to make a list of criminal convictions that would preclude a person from getting a license, relevant to the license type. The bill prohibits not issuing a license for a vague reason (i.e. "moral turpitude") for any conviction that is not on the list or at all after five years (with the exceptions of convictions for violent or sexually-oriented offenses). The bill prohibits withholding a license for criminal charges that do not result in convictions or guilty pleas. Further, this bill creates both an administrative and civil appeals process if the prohibitions in the bill are violated. On June 9, 2020, the bill was passed by the House by a 90-1 vote. It was referred to the Senate Transportation, Commerce and Workforce Committee on June 24, 2020; the Committee held its first hearing on September 2, 2020 and a second hearing on September 23, 2020.

HB277 ELECTRONIC RECORDING – CUSTODIAL INTERROGATIONS (PLUMMER, WEST)

The bill was introduced on June 6, 2019, and revises the law governing the electronic recording of custodial interrogations, requiring custodial interrogations to be electronically recorded in most circumstances. If the interrogation is not recorded, and one of the six exceptions listed in the statute apply (the prosecutor must show they apply by a preponderance of the evidence), the evidence can be admitted without a cautionary jury instruction. However, if the prosecutor does not prove that one of the exceptions applies, the bill requires a cautionary instruction to the jury that the jury may consider the failure to record the custodial interrogation in determining the reliability of the evidence. This bill was passed by the House on February 20, 2020, by a 92-0 vote; on June 3, 2020, the bill was referred to the Senate Local Government, Public Safety and Veterans Affairs Committee.

HB341 ADDICTION TREATMENT DRUGS (GINTER)

The bill was introduced on September 23, 2019, and amends various sections of the Ohio Revised Code regarding the administration of addiction treatment drugs, federal access to the Ohio Automated Rx Reporting System, the Board of Pharmacy's exemption from open meeting requirements, the occasional sale of certain drugs at wholesale, and naloxone access and education. The House passed this bill on February 12, 2020, by a 96-0 vote. On June 24, 2020, this bill was amended on the floor and then passed the Senate by a 31-0 vote. The House concurred on the consideration of Senate amendments, approving them by a 92-2 vote. The bill was sent to the Governor for signature on September 3, 2020. *The bill was signed by the Governor on September 16, 2020.*

HB350 ANIMAL FIGHTING, BESTIALITY (HOOPS)

The bill was introduced on September 26, 2019, and prohibits bestiality, arranging animal fighting, or attending an animal fighting event. The bill reenacts these provisions from 131 SB 331, which were severed as a violation of the single-subject rule. On February 26, 2020, the bill was amended by the House Criminal Justice Committee; and had a third hearing on May 28, 2020.

HB368 COMPUTER CRIMES (BALDRIDGE)

The bill was introduced on October 16, 2019, and enacts the Ohio Computer Crimes Act, creating several new computer crimes and attendant civil actions. On May 13, 2020, the bill was passed in the House by a 93-1 vote. On June 10, 2020, the bill was referred to the Senate Judiciary Committee; the Senate Judiciary Committee held a first hearing on the bill September 2, 2020.

HB425 CONCEALED WEAPONS (WIGGAM)

The bill was introduced on November 26, 2020, and modifies the duty to notify police if carrying a gun when stopped. Under this bill, a concealed handgun licensee must notify a law enforcement officer that the licensee is authorized to carry a concealed handgun and is carrying a concealed handgun when stopped. On June 11, 2020, this bill was passed in the House by a 58-32 vote. It was referred to the Senate Government Oversight and Reform Committee on June 24, 2020.

LEGISLATION IMPACTING SENTENCING (continued)**HB431 SEXUAL EXPLOITATION DATABASE (ABRAMS, CARFAGNA)**

The bill was introduced on November 26, 2019, and creates the Sexual Exploitation Database, for convictions of “prostitution offenses,” defined as violations of Ohio Revised Code 2907.24 (Solicitation), and makes an appropriation. The bill was amended to include the entirety of SB13 (changing the treatment of juvenile victims of human trafficking). Currently, there are two categories of juvenile victims: (1) those younger than sixteen and (2) those between sixteen and eighteen years old. The bill extends the same treatment to all juvenile victims eighteen and younger. The bill was passed by the House on May 28, 2020, by a 92-1 vote. On June 30, 2020, the bill was referred to the Senate Judiciary Committee; on September 2, 2020, the Senate Judiciary Committee had its first hearing.

HB468 HANDHELD ELECTRONIC DEVICE WHILE DRIVING (LIGHTBODY)

The bill was introduced on January 14, 2020, and prohibits any use of a cell phone while driving, except for making phone calls. The bill also makes using a cell phone to text, use an app, use the internet, or use a game a primary traffic offense (MM) for which a law enforcement officer can stop a vehicle (it is currently a secondary traffic offense). On May 19, 2020, the bill was amended by the House Transportation and Public Safety Committee in their second hearing.

HB552 LIFE SENTENCES – MINORS (GALONSKI, MANNING) / SB256 BAR ON LIFE SENTENCES FOR JUVENILES (MANNING, LEHNER)

The bill was introduced on March 12, 2020, and bars a sentence of life without parole for offenders who are minors, providing special parole dates for offenders who commit a qualifying offense when under the age of eighteen. On May 5, 2020, the bill was referred to the House Criminal Justice Committee. SB256 was introduced on December 23, 2019, and provides similar parole eligibility for offenders under the age of eighteen. SB256 was passed by the Senate on September 23, 2020, by a 29-4 vote.

HB604 CRIMINAL RECORDS SEALING LAW (ROGERS)

The bill was introduced on April 10, 2020, and expands the eligibility for sealing records, shortens the waiting times, and puts time limits around hearings (45–90 days), relating to the Criminal Records Sealing Law. On May 5, 2020, the bill was referred to the House Criminal Justice Committee.

HB610 CRIME VICTIM RIGHTS (CUPP)

The bill was introduced on April 16, 2020, and makes changes to the rights of crime victims, conforming the statute to Marsy’s Law provisions recently adopted in the Ohio Constitution. On May 5, 2020, the bill was referred to the House Criminal Justice Committee; the House Criminal Justice Committee held its second hearing on May 19, 2020.

HB642 REPEAL CRIMINAL PROHIBITIONS – CANNABIS (BRENT)

The bill was introduced on May 19, 2020, and repeals criminal prohibitions against the trafficking and possession of cannabis. On May 27, 2020, this bill was referred to the House Criminal Justice Committee.

HB646 PILOT PROGRAM – CLEVELAND GUN VIOLENCE (HOWSE)

The bill was introduced on May 19, 2020, and requires the Ohio Director of Health to establish and operate a pilot program to provide individual problem-solving therapy sessions and related family support services to youth and young adults in Cleveland who are at a high risk for gun violence. On May 27, 2020, the bill was referred to the House Health Committee.

HB652 NONCONSENSUAL DISTRIBUTION EXPLICIT IMAGES (ROGERS)

The bill was introduced on May 19, 2020, and requires operators of platforms (i.e. internet web sites, online services, online applications, or mobile applications) to provide a readily accessible process where individuals (or their legal representatives) can request the removal of an explicit image from the operator’s platforms. This image must be removed within one day of the removal request submission. Failing to provide a removal process for explicit imagery is punishable by an M1. On May 27, 2020, the bill was referred to the House Criminal Justice Committee.

HB655 DRUG OFFENSE LAWS (GALONSKI)

The bill was introduced on May 19, 2020, and revises Ohio’s Drug Offense law by amending multiple sections of the Ohio Revised Code. On May 27, 2020, the bill was referred to the House Criminal Justice Committee.

LEGISLATION IMPACTING SENTENCING (continued)

HB660 DEFINE THEFT OFFENSE – MEDICAL MARIJUANA (GALONSKI)

The bill was introduced on May 19, 2020, and amends Ohio Revised Code Sections 2913.01, 2913.02, 2913.51, and 3796.01 to establish theft offenses for medical marijuana. On May 27, 2020, the bill was referred to the House Criminal Justice Committee.

HB690 LSC STATEMENT – CRIMINAL JUSTICE REFORMS (HOWSE, CROSSMAN)

The bill was introduced on June 3, 2020, and requires the Director of the Legislative Service Commission (LSC) to prepare a human impact statement concerning a bill or resolution that proposes to amend criminal justice law. The bill was referred to the House Criminal Justice Committee on June 9, 2020.

HB698 DRUG PENALTY REFORMS (HOLMES, CROSSMAN)

The bill was introduced on June 10, 2020, and proposes to: establish addiction treatment facilities, increase penalties for drug trafficking violations, require convicted drug possession or drug trafficking offenders involving certain drugs to be subject to ten years of post-release control, allow criminal defendants suffering from severe substance use disorders involving certain drugs to be confined by a state detoxification provider while awaiting trial, create restitution work programs, and make an appropriation. The bill was referred to the House Criminal Justice Committee on August 31, 2020.

HB699 REDUCE OPIATE ABUSE (HOLMES, CROSSMAN)

The bill was introduced on June 10, 2020, and provides additions and amendments to various sections of the Ohio Revised Code regarding the abuse of prescription opiates. On August 31, 2020, the bill was referred to the House Health Committee.

HB709 RECORDS DATABASE – LAW ENFORCEMENT (DENSON, UPCHURCH)

The bill was introduced on June 25, 2020, and establishes a database, recording use of force by law enforcement officers. On August 31, 2020, the bill was referred to the House State and Local Government Committee.

HB712 LAW ENFORCEMENT DATABASE (SHEEHY, HICKS-HUDSON)

The bill was introduced on July 1, 2020, and requires the Ohio Attorney General to create a database of information regarding law enforcement officers who have been terminated or resigned under certain circumstances. The bill also requires law enforcement agencies to access the database to determine employment eligibility of those officers. On August 31, 2020, the bill was referred to the House State and Local Government Committee.

HB715 ADMISSIBLE STATEMENTS – CUSTODIAL INTERROGATIONS (CROSSMAN, UPCHURCH)

The bill was introduced on July 1, 2020, and makes any juvenile statements given during a custodial interrogation inadmissible, unless the juvenile was advised of *Miranda* rights, allowed to consult with a guardian or attorney, was present with a guardian or attorney when waiving the right against self-incrimination during the interrogation, and was not misled by law enforcement officers during the interrogation. The bill was referred to the House Criminal Justice Committee on August 31, 2020.

HB716 LAW ENFORCEMENT STRANGULATION OFFENSE (LEPORE-HAGAN, GALONSKI)

The bill was introduced on July 1, 2020, and creates the offense of strangulation by a law enforcement officer; this offense is an F3. On August 31, 2020, the bill was referred to the House Criminal Justice Committee.

HB719 SENTENCE REDUCTIONS (WEST, CRAWLEY)

The bill was introduced on July 1, 2020, and allows sentences imposed for qualifying offenses to be legislatively reduced retroactively. The bill was referred to the House Criminal Justice Committee on August 31, 2020.

HB753 PARKER'S LAW (BECKER)

The bill was introduced on August 31, 2020, and creates a new Negligent Assault offense added to RC 2903.14. It prohibits an adult from negligently causing physical harm to someone younger than age thirteen. This crime is classified as an M4.

SUPREME COURT OF OHIO COURT DECISIONS

State v. Jones, SLIP OPINION NO. 2020-OHIO-3051

Decided May 27, 2020.

During voir dire, the State of Ohio waived its final preemptory challenge to a juror, but the trial court later erroneously allowed the State to exercise that challenge after a defense challenge brought a new juror to the panel.

The Court held that this error did not rise to the level of a “constitutional defect” in the trial and was therefore subject to harmless error review and that the error in allowing the additional preemptory challenge did not affect the outcome of the trial.

State v. Howard, SLIP OPINION NO. 2020-OHIO-3195

Decided June 09, 2020.

Where the defendant was initially properly notified that sentences would be run consecutive if imposed for a violation of a community control sanction, the Court held that the notification need not be repeated at subsequent hearings for violations of community control.

And, that the consecutive sentence findings are required to be made at the time the prison terms are imposed – in this case when community control was revoked and the defendant was sentenced to multiple prison terms.

State v. Dangler, SLIP OPINION NO. 2020-OHIO-2765

Decided May 5, 2020. Defendant argued that the trial court’s explanation of sex offender registration obligations during a plea did not adequately satisfy Criminal Rule 11’s requirement that the court explain the “maximum penalty” involved. The Court found that unless the trial court completely fails to comply with a required non-constitutional advisement during the plea, the defendant must show prejudice for the plea to be invalidate – namely that they would not have otherwise entered the plea. Also of note is Justice Donnelly’s separate opinion which calls upon the Supreme Court to issue model plea forms to help avoid these types of appeals, a call which was answered by the work of the Sentencing Commission’s [Ad Hoc Committee on the Uniform Sentencing Entry](#).

Cases Decided Based on Ruling in *Dangler*:

State v. Gilbert, SLIP OPINION NO. 2020-OHIO-3021

Decided May 26, 2020. Reversed and remanded.

State v. Dornoff, SLIP OPINION NO. 2020-OHIO-3022

Decided May 26, 2020. Reversed and remanded.

State v. Johnson, SLIP OPINION NO. 2020-OHIO-3023

Decided May 26, 2020. Affirmed judgment of court of appeals.

State v. Hagan, SLIP OPINION NO. 2020-OHIO-3024

Decided May 26, 2020. Affirmed judgment of court of appeals.

State v. Anderson, SLIP OPINION NO. 2020-OHIO-3025

Decided May 26, 2020. Reversed and remanded.

State v. Harper, SLIP OPINION NO. 2020-OHIO-2913

Decided May 14, 2020. The case centered on the failure to properly include a notice of post-release control obligations in a sentencing entry. The Court “realigned” its holdings on whether this failure rendered the sentence void (and subject to attack at any time) or “voidable” (meaning it must be addressed on direct appeal), holding that such errors in imposing post-release control obligations merely voidable. The case was remanded to the trial court to correct the error in the sentencing entry.

Cases Decided Based on Ruling in *Harper*:

State v. Bell, SLIP OPINION NO. 2020-OHIO-3104

Decided May 29, 2020. Reversed judgment of court of appeals.

State v. Buttery, SLIP OPINION NO. 2020-OHIO-2998

Decided May 21, 2020. Defendant was convicted for failing to register as a sex offender, the duties for which stemmed from a juvenile adjudication for gross sexual imposition. They argued that it was unconstitutional to use a juvenile adjudication to enhance the penalty for a crime committed when the individual is an adult pursuant to *State v. Hand*, 2016-OHIO-5504. The Court held that the conviction was proper as the juvenile adjudication is not an element of the offense and their right to a jury trial or due process on the matter was not violated.

Cases Decided Based on Ruling in *Buttery*:

State v. Young, SLIP OPINION NO. 2020-OHIO-3781

Decided July 23, 2020. Affirmed judgment of court of appeals.

State v. Shazier, SLIP OPINION NO. 2020-OHIO-3782

Decided July 23, 2020. Affirmed judgment of court of appeals.

SUPREME COURT OF OHIO COURT DECISIONS (continued)

Brook Park v. Rodojev, SLIP OPINION NO. 2020-OHIO-3253

Decided June 10, 2020. The Court held that radar or laser speed-measuring device results may be used in court without the need for an expert to testify as to the scientific reliability of their use and operation, but that the finder of fact is still required to determine whether the device's accuracy and the qualifications of the person using the device merit a conviction for the offense in question.

State v. Pendergrass, SLIP OPINION NO. 2020-OHIO-3335

Decided June 17, 2020. Defendant was convicted of unlawful sexual conduct with a minor in 2016, the later indicted for another incident which took place before the 2016 conviction. The second indictment sought a higher-level felony due to the 2016 conviction. The Court held that the statutory language dictated that the sentence enhancement required that the defendant had a prior conviction at the time the offense was committed, rather than at the time of the indictment.

State v. McFarland, SLIP OPINION NO. 2020-OHIO-3343

Decided June 18, 2020. Defendant challenged their convictions based on a sufficiency of the evidence argument where they were sentenced to life without parole for a conspiracy to commit aggravated murder and sentenced to life without parole. The Court affirmed the Eighth District holding that there was sufficient evidence to support the convictions.

State v. Taylor, SLIP OPINION NO. 2020-OHIO-3514

Decided July 2, 2020. Here the Court held that there is no legislative requirement that the trial court consider the defendants ability to pay in imposing the costs of the prosecution and jury fees specifically under R.C. 2947.231. This decision is limited to those specific costs, as other types of financial sanctions imposed do statutorily require ability to pay considerations. The trial court is permitted to waive, suspend, or modify the 2947.231 costs and other financial sanctions pursuant to R.C. 2947.23(C).

Cases Decided Based on Ruling in *Taylor*:

State v. Dunson, SLIP OPINION NO. 2020-OHIO-3871

Decided August 4, 2020. Reversed and remanded.

State v. Holder, SLIP OPINION NO. 2020-OHIO-3875

Decided August 4, 2020. Affirmed judgment of court of appeals.

State v. Sibrian, SLIP OPINION NO. 2020-OHIO-3876

Decided August 4, 2020. Reversed and remanded.

State v. Nelson, SLIP OPINION NO. 2020-OHIO-3690

Decided July 15, 2020. The Court addressed the meaning of "technical violation" of community control under the R.C. 2929.15(B) probation violator caps. Defendant argued that any violation that is not a new felony is a "technical violation." The Court disagreed, holding that the lack of a definition of the term gives courts discretion to determine what conduct constitutes a "technical violation" of community control, and that defendant's violation of a no-contact order and subsequent misdemeanor conviction did not constitute a "technical violation."

State v. Bozso, SLIP OPINION NO. 2020-OHIO-3779

Decided July 23, 2020. Defendant wished to withdraw a guilty plea claiming ineffective assistance of counsel as they were not advised of the potential consequences the plea may have had on their immigration status. The Court held that the defendant must establish both that there was deficient performance on the part of defense counsel, and that the deficient performance resulted in prejudice to the defendant – namely that they would not have entered into the plea but for the error by defense counsel, and that defendant failed to prove this second element.

State v. Hudson, SLIP OPINION NO. 2020-OHIO-3849

Decided July 30, 2020. Defendant was sentenced to prison, and the initial sentencing entry failed to properly impose post-release control obligations. After having served their sentence, they appealed their sentence and placement on post-release control. Following the holding in *State v. Harper* above, the Court held that the sentence was not void and therefore was barred by res judicata as it was not addressed on direct appeal.

SUPREME COURT OF OHIO COURT DECISIONS (continued)

State v. Reed, SLIP OPINION NO. 2020-OHIO-4255

Decided September 1, 2020. The Court held that a defendant is only entitled to jail-time credit for those days they are confined in a public or private facility which does not include time the defendant as subject to house arrest or electronic home monitoring in residence following their conviction.

State ex rel. Fraley v. Ohio Dept. of Rehab. & Corr., SLIP OPINION NO. 2020-OHIO-4410

Decided September 15, 2020. The defendant pled guilty to one count of aggravated robbery with a firearm specification and one count of aggravated robbery without a firearm specification. These sentences were imposed concurrently, despite language in Ohio Revised Code section 2929.14(B)(1)(a)(ii) necessitating that the firearm specification charge “must be served consecutively to and prior to the sentence that is imposed for the underlying felony.” The Ohio Department of Rehabilitation and Correction (DRC) calculated the defendant’s sentence according to the consecutive requirement in the statutory provision, instead of based on the lower court’s erroneous journal entry specifying concurrent sentences. The Court held that if a sentencing entry contains a legal error favoring the defendant, in order for the error to be corrected the state must file an appeal. Since no such appeal was filed in the defendant’s case, the defendant’s writ of mandamus was granted compelling the DRC to correct its records. **see separate story, this issue – page 3.*

State v. Hartman, SLIP OPINION NO. 2020-OHIO-4440

Decided September 22, 2020. The Court ruled that evidence of past sexual abuse of a stepdaughter should have been excluded in the trial of a defendant accused of raping an adult female acquaintance. The defendant’s conviction was reversed since this other-acts evidence did not meet the standards under evidentiary Rules 404(B) and 403(A). Courts are instructed to not only determine if the evidence is being offered for a non-propensity purpose, but also to weigh the probative value against the dangers of prejudice and or confusion of the issues and to craft appropriate limiting instructions when such evidence is deemed admissible.

State v. Smith, SLIP OPINION NO. 2020-OHIO-4441

Decided September 22, 2020. Correspondingly with *Hartman* above, the Court held that the Double Jeopardy Clause of the Ohio Constitution does not impose a *per se* bar to introducing other-acts evidence for crimes where a defendant had been previously acquitted. Evidence of a defendant’s past molestation of his daughter was permissible evidence for the charge of sexually abusing his granddaughter, since it met the admissibility standards under Rules 401, 403, and 404(B).

Mohamed v. Eckelberry, SLIP OPINION NO. 2020-OHIO-4585

Decided September 25, 2020. The defendant was awaiting trial and was detained on pretrial bond. After granting the defendant’s writ of habeas corpus, the Court reduced the pretrial bond amount, per the recommendation of the master commissioner. Upon a challenge of the bond reduction, the Court held that an appellate court may permit a habeas corpus petitioner in an original action to introduce evidence to prove an excessive-bail claim. The appellate court may then exercise its own discretion to determine the proper bail amount imposed.

State v. Henderson, SLIP OPINION NO. 2020-OHIO-4784

Decided October 7, 2020. The Court again addresses void-versus-voidable sentencing error, extending the holding in *Harper* above and stating that erroneous sentences imposed by a court with subject-matter jurisdiction over a case are merely voidable and must be challenged on direct appeal. Here, the defendant was sentenced in 1999 to a definite term of 15 years for murder and an additional, consecutive 3-year firearm specification. The sentencing court did not, on the record or in the entry, impose the statutorily mandated life-tail for the murder charge. Neither the state nor the defendant filed a direct appeal. The trial court held a resentencing hearing in 2017 and resented the defendant imposing the life-tail, a decision upheld by the Eighth District Court of Appeals. The Supreme Court reiterated its holding in *Harper* and held that the original sentence was voidable, not void, and was therefore unable to be challenged by the state or defendant except on direct appeal.

McKinney v. Haviland, SLIP OPINION NO. 2020-OHIO-4785

Decided October 7, 2020. Defendant challenged the imposition of consecutive sentences in his case, arguing that the trial court failed to make all the finding necessary under RC 2929.14(C) at a resentencing hearing. The Court held that there is no statutory requirement that the findings made at the original sentencing be made again at a sentencing after a remand, and further, that sentencing errors such as this can be addressed via direct appeal and are therefore not cognizable in a habeas petition.

NOTABLE & NEW

Uniform Sentencing Entry:

Felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehensible sentences is of the utmost import for the administration of justice and promoting confidence in the system. As such, Chief Justice O'Connor asked the Commission to convene a Uniform Sentencing Entry Ad Hoc Committee (for felony cases). *The Committee released its Report and Recommendations* – more information can be found on the Commission's website:

<http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp>

SB201 Appellate Case Tracking:

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 have begun tracking appellate cases related to the provisions of SB201*. The latest information is available here:

<http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/SB201/appealTracking.pdf>

Ohio Criminal Justice Responses to COVID-19:

We shared a preview of our forthcoming report with the full Commission, including preliminary results of a survey of courts and attorneys. The brief presentation is available here:

<http://www.supremecourt.ohio.gov/Boards/Sentencing/materials/2020/Sept/COVIDResearch.pdf>.

**Next Meeting of the Full Commission:
Virtually on
Thursday December 17, 2020 10:00 a.m.**

2021 Full Commission Meeting Dates (location TBD)

Thursday March 18, 2021

Thursday June 24, 2021 (not the third Thursday)

Thursday September 16, 2021

Thursday December 16, 2021

*Working committees meet between Full Commission meeting dates.

Special Thanks to contributor:

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*the Commission is assisted by its Advisory Committee, a [complete list is here](#).