



CRIMINAL SENTENCING COMMISSION

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Legislative & Judicial Brief

A Message from Sara Andrews, Director



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

-Sara Andrews

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LEGISLATION IMPACTING SENTENCING

*** PASSED BY THE 133RD GENERAL ASSEMBLY ***

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. The bill broadens the scope of for ILC by requiring an eligibility hearing on an application for intervention in any case in which the offender alleges that drug or alcohol usage was a factor leading to the underlying offense and specifies an offender charged with a felony sex offense is ineligible for ILC. The bill modifies the type of record sealing that may be granted under an ILC order and removes the cap of current law based on total felony convictions, on eligibility for fourth or fifth degree felony and misdemeanor offenses, and increases the caps on restricted felony and misdemeanor offenses. The bill also modifies the time at which an offender may apply to have a conviction record sealed and specifies that \$15 of the \$30 portion of the conviction record sealing application fee that is paid into the State Treasury must be credited to the Attorney General Reimbursement Fund, for use by the Bureau of Criminal Identification and Investigation for expenses related to the sealing or expungement of records.

On December 17, 2020, the bill was amended on the floor of the Senate to include provisions from **SB3 (EKLUND, OBRIEN)** to modify the law regarding use of a prison term as a sanction for a community control violation; modify the drug and alcohol abuse civil commitment mechanism; and expand duties of the State Criminal Sentencing Commission; and from **SB18 (ANTONIO, LEHNER)** that prohibits restraining or confining a woman or child who is a charged, convicted, or adjudicated criminal offender or delinquent child at certain points during pregnancy or postpartum recovery.

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. On December 9, 2020, the bill was amended to address the evaluations of those petitioning to be found ineligible for capital punishment and passed by the Senate, 27-3. On December 17, 2020 the House concurred, 67-12.

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. On December 17, 2020, the bill was amended (corrective amendment) at the sixth hearing in the Senate Transportation, Commerce and Workforce Committee and passed by the Senate, 29-2. On December 22, 2020, the House concurred, 86-0.

SB331 SUNSET REVIEW (ROEGNER)

The bill was introduced June 24, 2020 and abolishes or renews various agencies that are subject to expiration under Sunset Review Law.

Agencies abolished include the criminal sentencing advisory committee and the criminal sentencing commission juvenile committee, R.C. 181.22 and 181.26. The bill further requires a Sunset Review Committee to be convened during each General Assembly, and makes other changes to Sunset Review Law and authorizes the Ohio Judicial Conference to distribute judicial impact statements in an electronic format. The bill was referred to the Senate General Government and Agency Committee on June 30, 2020. On December 1, 2020 a substitute bill was accepted and the bill was reported out of committee and passed by the Senate, 32-0 on December 2, 2020. The bill was reported out at a second hearing in the House State and Local Government Committee on December 16, 2020 and passed by the House 83-1 on December 17, 2020. The Senate concurred on December 18, 2020, 29-0.



LEGISLATION IMPACTING SENTENCING (continued)

*** PASSED BY THE 133RD GENERAL ASSEMBLY *** (continued)

HB431 SORN RECLASSIFICATION; HUMAN TRAFFICKING (ABRAMS, CARFAGNA)

The bill was introduced on November 26, 2019, passed by the House May 28, 2020, 92-1 and voted out of the Senate on December 17, 2020, 84-2. The bill was significantly amended and contains almost no language from the as introduced version of the bill. The as passed version of the bill instead contains the provisions of **SB47 UNLAWFUL SEXUAL CONTACT WITH MINOR PETITIONS (EKLUND)** which allows for SORN reclassification in a narrow set of circumstances and **SB13 HUMAN TRAFFICKING-JUVENILES (FEDOR)**, which alters slightly the procedure for holding charges in abeyance for a juvenile suspected of being a human trafficking victim.

SB256 BAR ON LIFE SENTENCES FOR JUVENILES (MANNING, LEHNER)

The bill was introduced on December 23, 2019, and prohibits a sentence of life without the possibility of parole for an offender who was a juvenile at the time of the offense. Instead, the offender is to receive an indefinite sentence of 18, 25, or 30 years to life, with factors for the sentencing court to consider relative to the hallmarks of youth. The bill also provided parole eligibility timelines for juveniles currently serving extended adult sentences. The bill was amended to allow a reasonable continuance of up to 45 days in abuse, neglect, and dependency cases and reported out of the House Criminal Justice Committee following its fifth hearing on December 16, 2020. The bill was passed by the Senate on September 23, 2020, 29-4 and passed by the House on December 17, 2020, 75-9. The Senate concurred on December 18, 2020, 28-1.

NOTABLE BUT SINE DIE

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 reported out as amended by the House Criminal Justice Committee on December 16, 2020, but did not survive the 133rd General Assembly. However, some provisions were amended into HB1 including modification to the law regarding use of a prison term as a sanction for a community control violation; modification to the drug and alcohol abuse civil commitment mechanism; and expansion of the duties of the State Criminal Sentencing Commission.

COVID-19 and the COURTS

[A Survey of Ohio Judges, Court Administrators and Attorneys](#)

In an effort to document the historic and profound circumstances of the pandemic, the Ohio Criminal Sentencing Commission developed [a survey for judges and attorneys to record their responses about changes to operations and practices](#).

The survey collected responses from judges or court administrators working in courts located in 82 of 88 counties in Ohio (93.2 percent of counties). Responding defense attorneys worked in 61 of 88 counties (69.3 percent of counties), and prosecutors in 16 counties. Overall, 85 of 88 counties are represented by respondents in the survey. [The report is here.](#)

The full report incorporated notes and quotes from a number of [follow-up interviews](#) with survey respondents from courts across the state. These interviews covered a range of topics and the insights from respondents went beyond the scope of the main survey report. For this reason, an addendum report to fully explore the experiences shared during the interviews was created and [can be found here](#).

SUPREME COURT OF OHIO COVID-Related Orders

As the impact of COVID-19 continues, on December 16, 2020 Chief Justice O'Connor signed an [order](#) of the Supreme Court tolling for 90 days the case time standards for Ohio's judges.

On January 1, 2021 Superintendence Rule 48 through 48.07 governing guardians ad litem goes into effect. The rules' requirement that guardians ad litem attend mandatory education courses in person will be waived by the [order](#), accommodating remote learning.

[More information can be found here.](#)

LEGISLATION IMPACTING SENTENCING (continued)

NOTABLE BUT SINE DIE (continued)

UNIFORM SENTENCING ENTRY & THE OHIO SENTENCING DATA PLATFORM

The Commission established a Uniform Sentencing Entry Ad Hoc Committee to develop a model, uniform sentencing entry prescribing the minimum information required for a felony sentencing entry.

The Uniform Sentencing Entry, Method of Conviction Entries and Good Civics documents have been drafted and are updated upon relevant Supreme Court of Ohio decisions and changes in law.

Providing a uniform entry with the minimum standards required allows the Courts to include supplemental information to the uniform entry as necessary.

The final report, recommendations and additional information can be found on the [Commission's website](#).

The Uniform Sentencing Entry, Method of Conviction Entries and Good Civics documents provide the opportunity to develop the Ohio Sentencing Data Platform (OSDP) – beginning with a felony sentencing database.

The Commission contracted with the University of Cincinnati School of Information and Technology for the OSDP, starting in one pilot court in Allen County. There are other courts and judges who are using the uniform entries and have interest in participating in the incremental roll out of the sentencing database development.

The Commission is also partnering with the Ohio State University – Moritz College of Law, Drug Enforcement & Policy Center and Program on Data & Governance, Case Western Reserve University – School of Law, Social Justice Institute and have established a Project Team, Governance Board and a Judicial Advisory group for the project.

Further, the Commission recently was awarded a Byrne/JAG grant from the Office of Criminal Justice Services to further the effort.

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.*

The Senate amended SB55 into **HB365 (MANNING, G.)** on the Senate floor on December 17, 2020 and on December 22, 2020, the House did not concur, 43-42. The bill did not survive the 133rd General Assembly.

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.

On November 6, 2020, **SB96 CLEVELAND HOUSING COURT (DOLAN, YUKO)** was amended into SB103 in the Senate Judiciary Committee, but the bill did not survive the 133rd General Assembly.

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 bill was reported out as amended at the fourth hearing on December 16, 2020, but did not survive the 133rd General Assembly.

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 had a second hearing in the Senate Judiciary Committee on November 10, 2020, but did not survive the 133rd General Assembly.

LEGISLATION IMPACTING SENTENCING (continued)

NOTABLE BUT SINE DIE (continued)

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 December 2, 2020, the Senate Judiciary Committee accepted a substitute bill at a second hearing, but the bill did not survive the 133rd General Assembly.

HB33 ANIMAL ABUSE REPORTING (LANESE, CARRUTHERS)

The bill was introduced on February 12, 2019, and establishes animal abuse reporting requirements. On December 17, 2020, the bill was passed by the Senate, 31-0, but the bill did not survive the 133rd General Assembly.

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 November 19, 2020, the bill had a fourth hearing in the House Criminal Justice Committee, but the bill did not survive the 133rd General Assembly.

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 November 18, 2020, the bill was passed by the House and referred to the Senate Judiciary Committee on December 2, 2020. The bill did not survive the 133rd General Assembly.

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 December 16, 2020, at the fourth hearing, the bill was amended to no longer specify that the court "is not required" to admit evidence from that interrogation and provide an exception to the electronic recording requirement for custodial interrogations in circumstances where statements are made spontaneously and not in response to interrogation. The bill was reported out of the Senate Local Government, Public Safety and Veterans Affairs Committee as amended, but did not survive the 133rd General Assembly.

THE POWER OF DATA

One of the Commission's ongoing priorities is sensible criminal justice reform in Ohio.

We believe constructive conversation about reform, treatment and program resources, capacity, and outcomes is critical to getting it right, but constructive conversation is not possible without movement towards a data-informed environment.

Empowering the Commission to collect aggregate criminal justice data, as enacted with the passage of HB1 will provide an unprecedented level of information for system practitioners and policy makers.

Robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system.

JUSTICE DONNELLY, JUDGE BERGERON PROMOTE DATA AS REFORM TOOL

Ohio Supreme Court Justice Michael P. Donnelly and First District Court of Appeals Judge Pierre Bergeron co-authored an article, in *The Atlantic*: "[How a Spreadsheet Could Change the Criminal Justice System.](#)"

The jurists then spoke with National Public Radio (NPR) host Mary Louise Kelly about the importance, and power of, sentencing data.

[2 Judges On How Better Sentencing Data Could Make Meaningful Criminal Justice Reform](#)

LEGISLATION IMPACTING SENTENCING (continued)

NOTABLE BUT SINE DIE (continued)

LEADERSHIP OF THE 134TH GENERAL ASSEMBLY

OHIO SENATE

Senator Matt Huffman (R-Lima) will serve as the chamber's president;

Senator Hottinger (R-Newark) will serve as president pro tempore;

Senator Schuring (R-Canton) will serve as majority floor leader; and

Senator McColley (R-Napoleon) will serve as majority whip.

OHIO HOUSE OF REPRESENTATIVES

Representative Cupp (R-Lima) will serve as speaker;

Representative Ginter (R-Salem) will serve as speaker pro tempore;

Representative Seitz (R-Cincinnati) will serve as majority floor leader;

Representative Carfagna (R-Genoa Twp.) will serve as assistant majority floor leader;

Representative Jones (R-Freeport) will serve as majority whip; and

Representative Abrams (R-Harrison) will serve as assistant majority whip.

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 November 10, 2020, the bill was amended to specify that a victim of cybercrime under the bill is entitled to the civil cause of action authorized under the bill regardless of whether there has been a conviction in the criminal case. On December 2, 2020 the bill was reported out by the Senate Judiciary Committee at the fourth hearing and did not survive the 133rd General Assembly.

SB377 COURT CONSENT – PRISONER TRANSFERS (TRANSITIONAL CONTROL) (MANNING, SYKES)

The bill, companion to **HB403 (HILLYER, GOLANSKI)**, was introduced November 9, 2020 and abolishes a judge's veto over a transitional control transfer. The bill had two hearings in the Senate Judiciary Committee, but did not survive the 133rd General Assembly.

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. The bill was amended and reported out of the Senate Government Oversight and Reform Committee on December 16, 2020, but did not survive the 133rd General Assembly.

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 December 3, 2020, a substitute bill was accepted at the first hearing by the House Criminal Justice Committee. The substitute bill restored the existing law process for sealing of multiple convictions (R.C. 2953.32 and 2953.61).

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 and had a third hearing in the House Criminal Justice Committee on November 19, 2020, but did not survive the 133rd General Assembly.

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. The bill was referred to the House Criminal Justice Committee on November 17, 2020, but did not survive the 133rd General Assembly.

SUPREME COURT OF OHIO COURT DECISIONS

Decided based on rulings in [State v. Harper SLIP OPINION NO. 2019-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.]

and

[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 resentedenced 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.]

[State v. Loyed SLIP OPINION NO. 2020-OHIO-5174](#) – Decided November 10, 2020. Reversed judgment of court of appeals.

[State v. Kemp SLIP OPINION NO. 2020-OHIO-5173](#) – Decided November 10, 2020. Reversed judgment of court of appeals.

[State v. Reed SLIP OPINION NO. 2020-OHIO-5172](#) – Decided November 10, 2020. Reversed judgment of court of appeals.

[State v. Pettus, SLIP OPINION NO. 2020-OHIO-4836](#), decided October 13, 2020.

Defendant was convicted of theft after having multiple instances of fraudulent passing of checks at 4 different banks aggregated into single counts of theft for each bank victim. The court held that under RC 2913.61(C)(1) that multiple instances of theft involving a common victim may be aggregated for charging and conviction purposes regardless of whether the victim falls under one of the statutorily defined special victim categories. The conflict question was dismissed, as the fact specific circumstances in this case were distinguishable from those in [State v. Phillips, 2010-Ohio-2711, 12th District Court of Appeals](#), as that case involved the aggregation of multiple thefts against multiple victims into a single count.

[State v. Price, SLIP OPINION NO. 2020-OHIO-4926](#), decided October 20, 2020.

Defendant was convicted for corrupting another with drugs after providing the victim drugs which led to their overdose death. At trial, the defendant requested that the court instruct the jury on causation pursuant to [Burraque v. United States, 571 U.S. 204, 134 Sct. 881, 817 L.Ed.2d 714 \(2014\)](#) that the defendant found to either be the but-for cause or an independently sufficient cause of the harm suffered by the victim. The trial court did not give the specifically requested instruction. The 8th District Court of Appeals upheld the instruction, but certified a conflict between their decision and that in [State v. Kosto, 2018-OHIO-1925, 5th District Court of Appeals](#). The Court held there was no conflict as the circumstances in *Kosto* were distinguishable from those in Price’s case. The Court also rejected defendant’s argument that trial courts causation instruction was insufficient, as the defendant failed to object to the instruction at trial.

SB201 “TOKES LAW” APPELLATE CASE TRACKING

Consistent with the statutory duty of the Commission to review and evaluate changes to Ohio’s sentencing structure and a continuation of our effort to inform and educate practitioners on the implementation of 132nd GA Senate Bill 201 “The Reagan Tokes Law” (SB201), we are tracking appellate cases related to the provisions of SB201:

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

The posted document is broken down into three sections. The first, labeled Appellate Decisions, are those cases in which an appellate court has rendered a decision addressing SB201 directly, either through challenges to the constitutionality of the law, or to address any alleged errors in sentencing process.

The second section are the pending appellate challenges we have been able to find which have not yet been decided. Due to the lack of a centralized, statewide case management system able to be searched for these types of cases, we are reliant on self-reporting from the twelve appellate districts as to these pending cases.

Finally, an endnotes section details appellate decisions that make mention of SB201 but do not address its provisions, broken down by district.

SUPREME COURT OF OHIO COURT DECISIONS (continued)

[State ex rel Thomas v. McGinty, SLIP OPINION NO. 2020-OHIO-5452,](#)

decided December 1, 2020. The trial court ordered that the defendant in a criminal case be allowed to inspect the crime scene, in this case the victim's home, along with counsel and their investigator. The victim's filed for a writ of prohibition in the appellate court, asserting their constitutional rights under "Marsy's Law" to refuse a discovery request made by the accused. The Court held that a writ of prohibition was not the proper means to address the issues in this case, and that the discovery order of the trial court was a final appealable order subject to immediate appeal by the victims under RC 2505.02(B)(4).

[In Re R.B., SLIP OPINION NO. 2020-OHIO-5476,](#)

decided December 2, 2020. Defendant was convicted of a sex offense as a juvenile, classified as a sex offender, and placed on probation until the age of 21. A second classification hearing was held at the completion of the defendant's time on probation, as required by law. The defendant challenged the timing of the second classification hearing. The Court held that this hearing needs to occur in a timely fashion but need not occur the same day as the completion of the juvenile disposition. The Court also held that that the juvenile court had jurisdiction to conduct that statutorily required second classification hearing even after the defendant's 21st birthday.

[State v. Castner, SLIP OPINION NO. 2020-OHIO-4950,](#) decided October 21, 2020. Defendant appealed a twelve-month sentence after being removed from two court ordered drug treatment programs as a condition of community control, arguing that the violations were technical in nature and therefore limited his prison sentence to ninety days under RC 2929.15(B). The Court applied the analysis it set forth in **[State v. Nelson, SLIP OPINION NO. 2020-OHIO-3690](#)** and held that the court ordered treatment was a "substantive rehabilitative requirement specifically tailored to address" the defendant's drug problems, and that the nature of the defendant's violations (being kicked out of treatment for contacting underage girls using the treatment facility's phone and computer), considered in light of his prior criminal history (sex offenses involving underage girls) rose above the level of a technical violation of community control.

[State v. Bowers, SLIP OPINION NO. 2020-OHIO-5167,](#) decided November 10, 2020. Defendant was convicted of rape of a child under the age of 13 with an additional specification that the victim was under the age of 10. At sentencing, the court sentenced the defendant to 25 years to life under RC 2971.03(B)(1)(c), a provision which requires a finding that the crime was committed by force or threat of force. The Court held that since this additional factor which increased the penalty for the offense was not submitted to the jury, the sentence was improper.

[In Re M.H., SLIP OPINION NO. 2020-OHIO-5485,](#) decided December 3, 2020. A juvenile suspected of committing child abuse was interviewed by an investigator from the local children's services agency without their parent present. The juvenile was not informed of their *Miranda* rights and admitted to the abuse during the interview. The Court held that absent any evidence that the investigator was a law enforcement officer or acting under the direction of law enforcement that they need not give *Miranda* warnings prior to the interview. The Court further held that admitting testimony about the interview and admission did not violate the defendant's due process rights.

[State v. Townsend, SLIP OPINION NO. 2020-OHIO-5586,](#) decided December 10, 2020. Defendant was convicted on numerous counts of rape with sexually violent predator specifications. Several of those convictions were for conduct that took place prior to the enactment of 125 GA HB 473 which changed the definition of sexually violent predator. The Court held that those changes subjected the defendant to a higher potential sentence and therefore constituted an Ex Post Facto violation. The case was remanded for resentencing on the counts taking place before the statutory change.

[State v. Clips, SLIP OPINION NO. 2020-OHIO-6748,](#) and **[State v. Frierson, SLIP OPINION NO. 2020-OHIO-6749](#)** both affirmed on the basis of the decision in **[Townsend.](#)**

[State v. Gideon, SLIP OPINION NO. 2020-OHIO-5635,](#) decided December 15, 2020. The defendant was a licensed physician accused of inappropriately touching patients. In an interview with an investigator from the state medical board they made admissions to criminal conduct which the investigator shared with the local police. The defendant argued that as they were required by law to answer the investigators questions truthfully or face potential license revocation, that the admissions should be suppressed as be made under coercion. The Court held that while the threat of losing one's medical license could be sufficient coercion to warrant suppression, that the trial court considered all relevant facts and circumstances in finding that there was no coercive behavior in this case.

SUPREME COURT OF OHIO COURT DECISIONS (continued)

[State v. Groce, SLIP OPINION NO. 2020-OHIO-6671](#), **[State v. Dent, SLIP OPINION NO. 2020-OHIO-6670](#), decided December 16, 2020. Three co-defendants were convicted of engaging in a pattern of corrupt activity for possession, manufacture, and trafficking in illegal drugs out of a house. They challenged the sufficiency of the evidence for their convictions. At trial, the state introduced video footage recovered from the scene showing the defendants engaged in drug activities over a four-hour period on a single day. The Court held that sufficient evidence existed to show the existence of a criminal enterprise as well as the familiarity of the defendants with each other and the business being conducted.**

RELATED CASE: **[State v. Walker CASE NO. 2019-0654](#)** decided in same entry as [Dent](#).

[State v. Graham, SLIP OPINION NO. 2020-OHIO-6700](#), decided December 17, 2020. Defendant was convicted of capital murder for his role in a home invasion robbery where he shot and killed an individual in the home. The Court found that improper victim impact evidence was admitted during the guilt phase of the trial where the homicide victim's father testified about both the victim and the impact the loss had on his life, but held that there was no prejudice to the defendant as the testimony was not "overly emotional" and also because of the overwhelming evidence of the defendant's guilt. However, the Court conducted its independent evaluation of the capital sentence and found that the mitigating factors including the defendant's youth, troubled upbringing, and history of mental health issues weighed against the imposition of a death sentence in the case and remanded the case for resentencing.

[State v. Jones, SLIP OPINION NO. 2020-OHIO-6729](#), decided December 18, 2020. Defendants appealed a ten-year sentence imposed for their involuntary manslaughter conviction following the death of a child in their care. The Eighth District found, pursuant to RC 2953.08(G)(2), that the length of the sentence was "contrary to law" in light of the purposes and principles of felony sentencing set forth in RC 2929.11. The Court held that RC 2953.08 does not allow this type of independent review or modification of felony sentences for compliance with RC 2929.11 or RC 2929.12. The Court also held that the language in **[State v. Marcum, 2016-OHIO-1002](#)** relied upon by the Eighth District in their decision was dicta.

RELATED CASE: Initially held for decision in **[State v. Susan Gwynne, Case No. 2017-1506](#)**.

[State v. Chapman, SLIP OPINION NO. 2020-OHIO-6730](#), decided December 18, 2020. As part of the community control conditions placed on the defendant for a conviction for failing to pay child support, the trial court ordered that the defendant "make all reasonable efforts to avoid impregnating a woman." The Court held reiterated that the conditions of probation which restrict a defendant's liberty must be both reasonably related to the end goal of placing the defendant on community control, and that this condition was improper.

[State v. Fazenbaker, SLIP OPINION NO. 2020-OHIO-6731](#), decided December 18, 2020. The defendant was convicted of breaking and entering for theft from a pull-behind being stored for the winter. The Court was called on to determine if this "recreational travel trailer" constituted an "unoccupied structure" sufficient to prove the elements of breaking and entering. The Court held that as the structure was designed to be a temporary dwelling and was still capable of being "occupied" even after being winterized it was in fact an "unoccupied structure" as contemplated by the statute.

[State v. Hackett, SLIP OPINION NO. 2020-OHIO-6699](#), decided December 17, 2020. Defendant chose to waive their right to counsel and represent themselves at trial for murder, rape, and kidnapping. The trial court appointed standby counsel to assist the defendant. Prior to trial the defendant made a number of requests for standby counsel to be able to act on the record, which were denied by the trial court as requests for improper hybrid representation. The Court held that the limits placed on standby counsel did not violate the Sixth Amendment, finding that there is not right to have standby counsel appointed and citing a number of potential issues raised by hybrid representation.

[State v. Rue, SLIP OPINION NO. 2020-OHIO-6706](#), decided December 17, 2020. The defendant was placed on a five-year term of community control. They absconded twice and had warrants issued for their arrest, the second of which occurred after the 5-year term was set to expire. The defendant was arrested, revoked, and sentenced to prison after the date their probation had been set to expire. The Court held that the absconding did not toll the period of community control absent a declaration of the defendant as an absconder by the court. As the trial court did not make that determination at a violation hearing prior to the termination of the five-year period, the court lacked jurisdiction to impose a prison term on the defendant.

[State v. Simpson, SLIP OPINION NO. 2020-OHIO-6719](#), decided December 18, 2020. Defendant alleged that his appellate counsel was ineffective and requested to reopen their case under App.R. 26(B) on that basis. The Twelfth District denied the request, applying the analysis set forth in **[Strickland v. Washington, 466 U.S. 668 \(1984\)](#)** requiring the defendant to establish that appellate counsel's efforts were objectively deficient, and that those errors were reasonably likely to have affected the result of the appeal. The Supreme Court upheld the Twelfth Districts holding, and declined to mandate that courts consider the numerous factors laid out by **[Mapes v. Coyle, 171 F.3d 408\(6th Cir. 1999\)](#)**, holding that those factors are merely instructive to court's conducting a *Strickland* analysis.

SUPREME COURT OF OHIO COURT DECISIONS (continued)

[State v. Turner, SLIP OPINION NO. 2020-OHIO-6773](#), decided December 22, 2020. Defendant was pulled over by police after have been witnessed driving on – not over – the white “fog line” on the right side of the roadway. The Court resolved a conflict among several districts holding that merely “touching” the white line without crossing over does not constitute reasonable and articulable suspicion sufficient to prove probable cause and initiate a traffic stop.

[State v. Pendleton, SLIP OPINION NO. 2020-OHIO-6833](#), decided December 23, 2020. Defendant was found to be in possession of over 100 grams of powder that contained a mixture of both heroin and fentanyl. He was charged, convicted, and sentenced consecutively for two offenses – trafficking in heroin and trafficking in fentanyl – related to this same amount of drugs, as the trial court found they did not merge for sentencing purposes. The Court held that this violated double jeopardy, as the defendant was being subjected to more than one punishment for a singular weight-based drug offense.

[State v. Weber, SLIP OPINION NO. 2020-OHIO-6832](#), decided December 23, 2020. Police responding to the defendant’s home found him holding a shotgun while highly intoxicated. The defendant was convicted of misdemeanor possession of a firearm while under the influence, and challenged his conviction alleging a violation of his Second Amendment right to bear arms. The Court, applying the two-step analysis set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008), upheld the constitutionality of the statute.

[State v. Patrick, SLIP OPINION NO. 2020-OHIO-6803](#), decided December 22, 2020. The Court held that the prohibition on appeal of felony sentences for aggravated murder and murder set forth in RC 2953.08(D)(3) does not prohibit a defendant from appealing based on claimed violations of their constitutional rights. Defendant appealed a sentence of 33 years to life for an aggravated murder committed while they were age 17, and alleged the punishment was cruel and unusual in violation of the Eighth Amendment. The Court held that an extended sentence such as this is subject to the same scrutiny as a life without parole sentence, and that trial courts must consider the youth of juvenile offenders when they are sentenced as an adult. The case was remanded for resentencing for the trial court to make such considerations.

RELATED CASES: Initially held for decision in *State v. Townsend* Case No. 2019-0606 and **[State v. Kinney, SLIP OPINION NO. 2020-OHIO-6822](#)** reversed and remanded based on the holding in this case.

[State v. Taylor, SLIP OPINION NO. 2020-OHIO-6786](#), decided December 22, 2020. The Court resolved a conflict among appellate districts as to whether explicit ability to pay findings are needed to impose appointed counsel fees and whether such fees are appropriate as part of a defendant’s sentence. The court held that while it is best practice for the court to state its ability to pay findings on the record, they need not be explicitly made pursuant to statute when imposing appointed counsel fees. The Court further held that appointed counsel fees are not costs and should not be included as part of the defendant’s sentence. Best practice would be to impose appointed counsel fees by separate entry, but the Court also opined that if they are assessed in the sentencing entry it should be noted that they are a civil assessment.

[State ex rel. Romine v. McIntosh, SLIP OPINION NO. 2020-OHIO-6826](#), decided December 23, 2020. Defendant was convicted for a homicide offense involving the same victim in two separate indictments and case numbers. At sentencing, the trial court imposed a life sentence for both offenses, but found they were allied offenses of similar import and merged the sentences in the two different cases. The defendant did not challenge the sentences in their direct appeal, and instead sought writs of mandamus and prohibition, arguing their sentences were void and still subject to collateral attack. The Court cited its decisions in *State v. Harper* and *State v. Henderson* and held that the sentencing error was one made in the trial court’s exercise of its jurisdiction and the error was therefore voidable, and only subject to review on direct appeal.

[Lingle et al. v. State, SLIP OPINION NO. 2020-OHIO-6788](#), decided December 23, 2020. The defendants were convicted of sexually oriented offenses in another state and subject to an automatic designation as sexual predators upon registering here in Ohio. They sought to challenge their classification. The Court held that under the applicable former version of RC 2950.09(F)(2) they needed to prove first the why they were subject to lifetime registration in the out-of-state conviction, and then distinguish that requirement from Ohio’s sexual predator classification, all by a standard of clear and convincing evidence.

**Next Meeting of the Full Commission
Virtually on
Thursday March 18, 2021 10:00 a.m.**

2021 Full Commission Meeting Dates (location TBD)

Thursday March 18, 2021 – virtual

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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