



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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Note: This issue will be released in two parts.



## THE UNIFORM SENTENCING ENTRY

The Ohio Criminal Sentencing Commission—in partnership with the University of Cincinnati School of Information Technology—is continuing its work developing a web-based platform for uniform entry templates for sentencing, [the Ohio Sentencing Data Platform \(OSDP\)](#). Started in 2020, the pilot project has expanded much more rapidly than anticipated; currently 97 Judges are engaged with the pilot project in some way.

The OSDP is designed to tell the story of sentencing in Ohio. The story begins when judges implement the uniform entry templates into their existing court processes.

For more information, please contact Sara Andrews, [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov).

## LEGISLATION IMPACTING SENTENCING & SIGNED BY THE GOVERNOR

### **HB427 PROHIBIT MANIPULATION OF CONTROLLED SUBSTANCE ADDICTION (WHITE, MANCHESTER)**

The bill was introduced on September 20, 2021. The bill expands how the element “compelled” is established for the offenses of trafficking in persons and compelling prostitution. Specifically, the bill prohibits an offender from overcoming the will of a victim by furnishing or offering a controlled substance to the victim, or by manipulating the victim’s controlled substance addiction. The bill was signed by the Governor on June 14, 2022 and became effective on September 13, 2022.

### **HB206 PERMIT TOWNSHIP POLICE ENFORCE CERTAIN OFFENSES ON INTERSTATE (GHANBARI, O’BRIEN)**

The bill was introduced on March 11, 2021. The bill allows township police officers, in townships with populations between 5,000 and 50,000 residents, to enforce specified traffic offenses on any interstate highway within the township’s jurisdiction. The bill allows this enforcement power if certain criteria are met, and the board of township trustees adopts a resolution authorizing the action. The bill also specifies that any fines collected from a speeding ticket issued by a township officer on an interstate highway must be paid to the county treasury. The bill was signed by the Governor on June 24, 2022 and became effective on September 23, 2022.

## LEGISLATION IMPACTING SENTENCING & RECENTLY INTRODUCED

### **HB699 REVISE LAW REGARDING CRIMES AND CORRECTIONS (SEITZ, GALONSKI)**

The bill was introduced on June 13, 2022. The bill modifies various aspects of the law regarding crimes and corrections, correctional officers and employees, coroner records, inmate internet access, civil protection orders, delinquent child adjudications, youthful offender parole review, OVI and other traffic offenses, and criminal record sealing and expungement. Modifications in the bill include making certain felony of the third degree OVI offenses eligible for up to sixty months in prison, modifications to certain prison release mechanisms (including the creation of a state of emergency-qualifying offender for judicial release consideration), and expansion of criminal record sealing and expungement eligibility.

### **SB351 ENACT DEFEND OUR CHILDREN ACT (THOMAS, MAHARATH)**

The bill was introduced on June 22, 2022. The bill modifies many sections of the revised code, and enacts new sections, related to firearms. The bill requires firearms to be transferred through an authorized dealer, a law enforcement agency, or pursuant to a specified exception. The bill requires a background check for firearm transfers, raises the minimum age to purchase all firearms to twenty-one, establishes a process for the granting of extreme risk protection orders, and authorizes an income tax credit for the purchase of firearms safety storage units. The bill also increases the penalty for improperly furnishing firearms to an underage person from a felony of the fifth degree to a felony of the third degree and creates a new offense of criminally negligent storage of a firearm. Criminally negligent storage of a firearm is generally a misdemeanor of the third degree; however, criminally negligent storage of a firearm is a felony of the fourth degree if the minor who gains access to the firearm causes serious physical harm and a felony of the third degree if the minor who gains access to the firearm uses the firearm to cause a death.

**LEGISLATION IMPACTING SENTENCING & RECENTLY INTRODUCED** *continued***HB708 REGARDS REDUCTIONS IN CRIMINAL PENALTIES (SEITZ, DAVIS)**

The bill was introduced on July 26, 2022. The bill provides that if a penalty, forfeiture, or punishment for an offense, except an offense of violence, has been imposed on an offender and the penalty, forfeiture, or punishment for that offense is subsequently reduced by a change in law, the penalty, forfeiture, or punishment previously imposed on the offender may also be reduced. Additionally, the bill specifically requires the Ohio Criminal Sentencing Commission to create a sample application form that can be used by an offender to request a reduction. The bill also requires that the Commission review all enrolled acts by the General Assembly to determine whether the act may provide for a reduction. If an enrolled act does provide for a reduction, the Commission is required provide written notice of the change to the state public defender, all county public defenders, and the Ohio Correctional Institution Inspection Committee, along with the sample application form.

**SB357 REGARDS CRIMINAL LAW, MENTAL HEALTH, AND FIREARMS (DOLAN)**

The bill was introduced on August 18, 2022. The bill modifies many sections of the revised code, and enacts new sections, related to firearms. The bill provides for the issuance of safety protection orders authorizing a law enforcement officer to search for and retrieve firearms and dangerous ordnances in possession or control of a respondent, addresses LEADS and NCIC inclusion of protection orders, provides for seller's protection certificates for firearms transfers, and modifies the laws regarding certain provisions related to mental health. The bill requires anyone between the ages of eighteen and twenty-one to have a co-signer aged twenty-five or older to purchase a "restricted-access firearm". The bill also modifies the current offenses of unlawful transactions in weapons, improperly furnishing firearms to a minor, and underage purchase of a handgun.

**HB718 PROHIBIT PRICE GOING OF INFANT FORMULA (DAVIS, CROSSMAN)**

The bill was introduced on August 31, 2022. The bill creates a new criminal offense prohibiting suppliers from recklessly selling or offering to sell any infant formula during a period when there is a shortage of infant formula at a rate or price that is more than five percent above the rate or price charged by the supplier for the same or similar product immediately prior to the covered period. A violation of this new offense is a misdemeanor of the first degree.

**HB725 PROHIBIT CANINE MEDICAL, DENTAL PROCEDURES BY NON-VETERINARIAN (LANESE, HOOPS)**

The bill was introduced on September 27, 2022. The bill creates a new criminal offense prohibiting persons, other than veterinarians who are licensed to practice veterinary medicine and who are using clinically appropriate anesthesia during the procedure, from knowingly performing a surgical procedure on a dog. The bill also prohibits a person from managing a dog's pain after a procedure without guidance and supervision from a veterinarian. A violation of these new offenses is a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on any subsequent offense.

**REMAINING VOTING SESSIONS**

There are 5 remaining voting sessions in the 134th General Assembly: November 16, 2022 (House and Senate), November 30, 2022 (House and Senate), December 1, 2022 (House), December 7, 2022 (Senate), December 14, 2022 (House and Senate), and December 21, 2022 (House and Senate).

**OTHER COURT NEWS****OHIO JUDICIAL CONFERENCE OFFICERS**

The new officers were sworn in during the annual meeting of the Ohio Judicial Conference in September. The Officers are Judge Paula C. Giulitto, Chair; Judge John J. Russo, Chair-Elect; Judge David A. Hejmanowski, 1<sup>st</sup> Vice Chair; Judge Michael D. Hess, 2<sup>nd</sup> Vice Chair; Judge Joyce A. Campbell, Immediate Past Chair.

**POSTCONVICTION INTEGRITY REPORT**

The Task Force on Conviction Integrity and Postconviction Review has completed its work and delivered its report and recommendations to the Supreme Court of Ohio. In all, the Task Force recommends six changes to Ohio's criminal-justice system. The [full report](#) is available for review on the Supreme Court's website. The Task Force was chaired by Judge Gene Zmuda.

**NEW COURT WEBSITE**

The Supreme Court of Ohio recently launched its new website. The redesign changed how the Ohio Criminal Sentencing Commission's site is accessed. The new location for on-site navigation is found under the Administrative Offices page and the Joint Judicial-Legislative Commission tab. The Commission's site can also be accessed [here](#).

**NEWS FROM AROUND THE STATE****ADDICTION SERVICES**

The Ohio Department of Mental Health and Addiction Services recently announced the receipt of \$97M in federal State Opioid and Stimulant Response grant funding. The grant will be used to support funding for prevention, harm reduction, early intervention, treatment, and recovery supports.

## SUPREME COURT OF OHIO DECISIONS

**[Rance v. Watson, Slip Opinion No. 2022-](#)**

**[Ohio-1822](#)**, decided June 2, 2022. Defendant plead guilty to felony sex offenses. The trial court as part of the presentence investigation ordered a psychological report. The defendant upon being sentenced to prison filed a complaint for a writ of habeas corpus against the prison warden. The Third District Court of Appeals dismissed defendant's complaint. The Supreme Court affirmed the court of appeals decision finding that ordering the psychological report did not call into question the defendant's competency to stand trial.

**[State v. Burroughs, Slip Opinion No. 2022-](#)**

**[Ohio-2146](#)**, decided June 29, 2022. Police discovered a closed bookbag while executing an arrest warrant. Without obtaining a search warrant, they opened the bookbag and discovered illegal drugs. The Supreme Court reviewed the "single-purpose-container exception" to the warrant requirement of the Fourth Amendment. The court held that the exception only applies when the illegal nature of the contents of a package are readily apparent because of the distinctive characteristics of the package. The court noted that a bookbag could hold a variety of illegal and legal items.

**[State v. Wilson, Slip Opinion No. 2022-](#)**

**[Ohio-3202](#)**, decided September 14, 2022. The defendant had previously been convicted of operating a motor vehicle under the influence of alcohol or drugs ("OVI") and given a license suspension as a result of that conviction. Sometime after her conviction for OVI, and while still under the related suspension, the defendant was found sleeping in the driver's seat of a running motor vehicle. A police officer charged her with operating a motor vehicle under an OVI suspension and the defendant was ultimately found guilty of that offense. The Supreme Court held that operation in the context of a license suspension requires that a defendant must cause or have caused movement of a vehicle, pursuant to RC 4511.01(HHH).

**[State v. Bryant, Slip Opinion No. 2022-Ohio-1878](#)**, decided June 7, 2022. Defendant was sentenced to 22 years for multiple felony convictions. Upon hearing the sentence, the defendant had an expletive laden outburst directed at the sentencing judge. As a result the trial court decided that the defendant was not showing remorse and increased his sentence to 28 years. The defendant appealed the addition of the six years arguing that the appropriate remedy should have been contempt of court and not adding six years to his sentence. The Supreme Court found that the Eleventh District erred in upholding the increased sentence. The Supreme Court found that when a defendant's outburst or other courtroom misbehavior causes a significant disruption that obstructs the administration of justice, that behavior may be punishable as contempt of court and not with an increased prison sentence.

**Revised Code Section(s): 2705.01, 2929.11, 2929.12**

**[State v. Montgomery, Slip Opinion No. 2022-Ohio-2211](#)**, decided June 30, 2022.

Defendant was charged with Rape and Kidnapping. At trial the prosecutor moved to allow the victim to sit at the prosecutor table as the State's representative. The Defense objected and the trial court allowed the victim to sit. After conviction at trial, the defense appealed. The Fifth District allowed the victim to sit at the table citing Marsy's law and Rule 615(B) of the Ohio Rules of Evidence. The Supreme Court found the Fifth District was correct regarding the victim being present in the courtroom, but the right to be present did not entitle the victim to sit at the prosecutor's table. The Supreme Court held that sitting the victim at the prosecutor's table was structural error violating the Sixth Amendment to the U.S. Constitution as applied to the states through the Fourteenth Amendment.

**Revised Code Section(s): Constitution, Article I, Section 10a**

**[State v. Brooks, Slip Opinion No. 2022-Ohio-2478](#)**, decided July 21, 2022. This case came before the Court on a discretionary appeal from a judgment of the Fifth District Court of Appeals, as well as for consideration of a certified-conflict question (with a judgment from the Twelfth District Court of Appeals).

The discretionary appeal dealt with the following proposition of law: "2018 H.B. 228 [eff. March 28, 2019], which shifted the burden of proof on self-defense to the prosecution, applies to all trials held after the effective date of the act, regardless of when the alleged offenses occurred." The certified-conflict question was: "[d]oes legislation that shifts the burden of proof on self-defense to the prosecution...apply to all subsequent trials even when the alleged offenses occurred prior to the effective date?" The defendant in *Brooks* was charged with a number of offenses alleged to have occurred on June 5, 2018, including aggravated burglary, assault, and domestic violence. At trial, in October of 2019, the defendant sought to raise the defense of self-defense. The trial court held that, because the defendant was charged prior to the effective date of 2018 H.B. 228, the old self-defense burden of proof standard applied, and it was incumbent upon the defendant to prove self-defense by a preponderance. The Fifth District affirmed. The Supreme Court reversed the judgement of the Fifth District and held that the burden shifting amendment contained in 2018 H.B. 228 applied "prospectively to all trials occurring after its effective date, regardless of when the underlying alleged criminal conduct occurred." The Supreme Court then answered the certified-conflict question in the affirmative.

**Revised Code Section(s): 2901.05**

**[State v. G.K., Slip Opinion No. 2022-Ohio-2858](#)**, decided August 19, 2022. The defendant was indicted on seven counts in a 2009 indictment. Ultimately, he pled guilty to one count of the indictment with the remaining six counts being dismissed in accordance with the terms of a plea agreement and he was placed on a period of community control. In 2014, the defendant applied to have the dismissed counts sealed. At the time the application to seal was filed he was not eligible for the sealing of the conviction. The Supreme Court held that, based on a plain reading of the relevant statutory language, records relating to dismissed counts in an indictment are unable to be sealed until records of the counts of the indictment for which the offender has been convicted are eligible to be sealed.

**Revised Code Section(s): 2953.52**

## SUPREME COURT OF OHIO DECISIONS continued

[State v. Brinkman, Slip Opinion No. 2022-Ohio-2550](#), decided on July 28, 2022. The defendant waived the right to a jury trial and entered guilty pleas to all counts of his indictment. The defendant was convicted of Aggravated Murder (two counts), Aggravated Burglary, Aggravated Robbery (two counts), and Tampering with Evidence. A three-judge panel found the defendant guilty of both counts of aggravated murder and sentenced the defendant to death on each count. The Supreme Court affirmed the convictions and the death sentences. However, the Supreme Court found that the trial court erred by imposing postrelease control on the aggravated robbery convictions, because those counts merged with the aggravated murder convictions for sentencing purposes. The Supreme Court held that when a defendant is sentenced on merged counts the trial court is prohibited from imposing a sentence on those merged counts, including the imposition of postrelease control on the merged counts.

**Revised Code Section(s):**

[State v. McNeal, Slip Opinion No. 2022-Ohio-2703](#), decided August 9, 2022. The defendant was charged with rape for an offense that occurred on September 29, 2014. At trial, the victim testified that on the night of the offense she had consumed a large amount of alcohol and could not have consented to sexual intercourse. The defendant was convicted of rape (by jury) and a repeat-violent-offender specification (by the trial court). On February 12, 2020 the defendant filed in the trial court a motion for leave to move for a new trial. The basis of the request was the defendant's assertion that he had recently received a previously undisclosed laboratory report pursuant to a public records request, and that the report indicated the victim had no detectable amount of alcohol in her bloodstream approximately three and a half hours after the rape occurred. Without hearing the trial court denied the defendant's request for leave to file a motion for a new trial. The Supreme Court held that the defendant established a prima facie case that he was unavoidably prevented from moving for a new trial pursuant to the time specified in Crim. R. 33(B) due the prosecution's suppression of the evidence, and that the trial court abused its discretion when it denied the motion for leave to move for a new trial without a hearing.

**Revised Code Section(s):**

[State v. Whitaker, Slip Opinion No. 2022-Ohio-2840](#), decided August 18, 2022. The defendant was convicted after a jury trial of Aggravated Murder, The defendant's conviction for aggravated burglary was vacated by the court. In vacating the conviction, the Supreme Court found that the evidence presented at trial was insufficient to support a guilty finding. Specifically, the structure that was central to the commission of the offense had been unoccupied for several years, was going to be unoccupied indefinitely, was in the process of being renovated, and had not been visited by the owner more than three or four times. Throughout the trial the prosecutor displayed a photo board (referred to as a "cast of characters" display) with photographs of each person that testified in the trial, as well as a photograph of the victim. The Court held that photographs depicting the victim, the victim's mother, the principal of the school where the victim attended, and two friends of the victim were victim-impact evidence and should not have been displayed during the trial. The Court also addressed the defendant's assertion that the trial court erred in not allowing evidence of his offer to plead guilty in exchange for a sentence of life without parole during the mitigation phase of the death penalty portion of the case. The Supreme Court held that it was not error, evidence of this type is not relevant during the mitigation phase, and additionally rejected the premise that an offer to plead guilty in exchange for life without parole shows an acceptance of responsibility. In doing so, the Court reaffirmed previous holdings rejecting similar propositions.

**Revised Code Section(s): 2911.11, 2909.11**

[State v. Sanford, Slip Opinion No. 2022-Ohio-3107](#), decided September 8, 2022. The defendant was arrested on October 6, 2016 on a single felony charge of failure to stop after an accident. The defendant was held in jail on a \$100,000 bail. On December 29, 2016 the grand jury returned an indictment charging: Ct. 1. Aggravated Vehicular Homicide (as a proximate result of violating RC 4511.19(A)), Ct. 2. Aggravated Vehicular Homicide (driving recklessly), Ct. 3. Failure to Stop after an Accident, Ct. 4. Driving While Under Suspension, Ct. 5. Operating Without a Valid License, Ct. 6. OVI (under the influence), and Ct. 7. OVI (per se - marijuana metabolite). Sometime after the arrest the state obtained blood results showing that the defendant was operating with a prohibited concentration of marijuana metabolites in his system. At the time of his arraignment on the indictment the defendant had been held a total of 95 days. The trial court dismissed Cts. 3, 4 and 5 on speedy-trial grounds. The Ninth District Court of Appeals dismissed Cts. 2 and 6 on speedy-trial grounds. The Supreme Court held that at the time of his arrest the state did not have the information necessary to charge Cts. 1 and 7 and, therefore, the statutory speedy-trial time period on those new charges began when they were filed.

[State v. O'Malley, Slip Opinion No. 2022-Ohio-3207](#), decided September 15, 2022. The defendant was convicted of operating a motor vehicle under the influence of drugs or alcohol as a third offense within ten years. As a result of that conviction, and pursuant to 4511.19(G)(1)(c)(v), the trial court ordered the defendant's vehicle forfeited. The Court held that the forfeiture did not violate the Equal Protection Clauses of either the state or federal Constitutions by treating owners and nonowners differently. Additionally, the court held that, as applied to the defendant in this case, the forfeiture was not an excessive fine in violation of the Eighth Amendment because it was not grossly disproportional to the gravity of his offense.

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**Next Meeting of the Full Commission**  
(Location TBA)

**Thursday December 15, 2022 10:00 a.m.**

**Note: The October meeting has been cancelled**

Due to several persistent scheduling complications the full Commission meeting originally scheduled for October 27, 2022 has been cancelled.

\*Working committees meet between full Commission meeting dates.




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**Special Thanks to contributor:**  
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**Questions, Comments, Suggestions? Contact:**

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