



# 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 & SIGNED BY THE GOVERNOR

### Am.Sub.HB110 BIENNIAL BUDGET (OELSLAGER) – Criminal Changes

The following changes are **effective September 30, 2021**. Courts currently accepting guilty pleas which may be sentenced after September 30, 2021 should note the changes to Post-Release Control in their plea colloquy.

**[Felony Sentencing Hearing Requirements R.C. 2929.19](#)** – When placing a defendant on community control, the sentencing court is no longer required to reserve a specific prison term. Instead, the court must inform the defendant of the range of prison terms available for the offense under R.C. 2929.14.

**[Community Control Violators / Technical Violations R.C. 2929.15](#)** – The return to community control supervision after a 90/180-day prison sanction for a technical violation is optional rather than mandatory, the term “suspended” prison term is replaced with “reserved” and the provision are reordered for clarity.

**[Targeted Community Alternatives to Prison \(TCAP\) R.C. 2929.34](#)** – TCAP participation remains voluntary and beginning September 1, 2022 will also apply to F4 offenses.

**[Post-Release Control R.C. 2967.28](#)** (link not included as the new version not yet posted)

Post-Release Control (PRC) supervision terms as well as when and how PRC can be terminated were modified. The new terms of PRC are:

- **ANY felony sex offense** – A mandatory 5-year term.
- **F1 offenses** – A mandatory minimum 2 years, up to a maximum of 5 years at the discretion of the Adult Parole Authority (APA).
- **F2 offenses** – A mandatory minimum 18 months PRC, up to a maximum of 3 years at the discretion of the APA.
- **F3 offense of violence** – A mandatory minimum 1-year PRC, up to a maximum of 3 years at the discretion of the APA.
- **All other F3, F4, and F5 offenses** – Up to 2 years of PRC at the discretion of the APA.

**[Certificates of Qualification for Employment \(CQE\) R.C. 2953.25 and R.C. 2953.31](#)** – The bill prohibits review of sealed records when an individual is being evaluated for a CQE.

**[Sealing of Records of Convictions in Unconditional Pardons R.C. 2967.04](#)** – The Governor may include a condition that records relating to a conviction be sealed as part of the grant of an unconditional pardon.

**[Electronic Instant Bingo Rules R.C. 2915](#)** – The bill revises provisions throughout R.C. Chapter 2915 to provide rules for “electronic instant bingo”.

**[Illegal Conveyance Into a Detention Facility R.C. 2921.36](#)** – An exception is created allowing for small amounts of sacramental wine to be brought into detention facilities for religious purposes.

**[Probation Study Workload Committee Uncodified Section 725.10](#)** – Establishes a Probation Workload Study Committee housed within the Supreme Court of Ohio that is tasked with reporting to the General Assembly by December 31, 2021.



### SB126 ANTI-HAZING ACT (KUNZE, GAVARONE)

SB126 was introduced on March 10, 2021. The bill, called Collin’s Law, increases the penalty for hazing (to an M2) and expands who can be penalized for participating in or permitting hazing. If the hazing involves forced alcohol or drug use that results in serious physical harm, the penalty increases to a felony. On June 25, 2021, the bill passed the House and on June 28, 2021 the Senate concurred, 32-0. The bill was signed by the Governor July 6, 2021 and will go into effect in 90 days.

## LEGISLATION IMPACTING SENTENCING INTRODUCED & UPDATES

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### Note:

The House Criminal Justice Committee last met June 24, 2021.

Senate Judiciary Committee last met June 22, 2021.

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### INTRODUCED

#### **HB383 MODIFY PENALTIES FOR HAVING WEAPON UNDER DISABILITY (KOEHLER)**

The bill was introduced August 2, 2021 and modifies the penalties for the offense of having weapons while under disability.

#### **SB207 HAMILTON COUNTY DRUG COURT (THOMAS, WILSON)**

The Hamilton County Drug Court, created in 1995, is Ohio's first drug court and the only one created by statute. The bill removes language creating the court, which inadvertently also limited court activities to a 1995 model of a drug court. Under the bill, the court will operate under Supreme Court certification like other specialized docket courts.

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### UPDATES

#### **SB182 BAIL REFORM (HUFFMAN, S., MCCOLLEY) / HB315 (LELAND, HILLYER)**

Introduced on May 18, 2021 these bills make changes to the bail process, including requiring courts to make a preliminary pretrial release decision within 24 hours of a person's arrest, requiring courts to impose only the least restrictive conditions of release, and prohibiting the imposition of a secured bond that the person cannot afford to pay. **SB182** had a second hearing on June 16, 2021 in the Senate Judiciary Committee and **HB315** had a second hearing on June 10, 2021 in the House Criminal Justice Committee.

The Ohio Judicial Conference has a [quick overview/flow chart](#) describing the as-introduced bills available on their [website](#).

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### THE OHIO SENTENCING DATA PLATFORM

The Commission recently developed [the Ohio Sentencing Data Platform \(OSDP\) website](#). The OSDP website is designed to provide detailed information about the project and the implementation of the Uniform Sentencing Entry and Method of Conviction entries into existing court processes. The Uniform Sentencing Entry and companion documents were developed to give judges a reliable, up-to-date source with the current case law and statutory provisions needed to impose lawful sentences and to empower courts with accessible information.

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### OHIO PAROLE BOARD

[The ACLU of Ohio and the Ohio Justice & Policy Center filed a lawsuit](#) in the Franklin County Court of Common Pleas alleging the Parole Board and Ohio Department of Rehabilitation and Correction have an unwritten policy of denying parole to inmates who have had sentences of death or of life without the possibility of parole that had subsequently been commuted to sentences of life with the possibility of parole.

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### COVID-19 – RESOURCES

[The Supreme Court of Ohio has compiled a number of national and local COVID-19 resources for employers and agencies open to the public to help prevent further spread of the disease.](#)

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## SUPREME COURT OF OHIO COURT DECISIONS

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### COMMISSION RESOURCES COURT DECISIONS & TRACKING

Recently we published [the Supreme Court of Ohio Criminal Justice Opinion Summary](#) which is a review of Supreme Court of Ohio criminal justice jurisprudence – 2017 through 2020. We collated the cases in date order under three categories:

1. Case Law Addressed by the Uniform Sentencing Entry Package;
2. Cases the Commission May Want to Refer for Legislative Action or to Explore for Further Work by the Commission;
3. Informational Section Summarizing the Remainder of the Court's Jurisprudence for Reference.

### "REAGAN TOKES LAW" (SB201, 132<sup>ND</sup> GENERAL ASSEMBLY)

The Commission continues to monitor the implementation and challenges to the "Reagan Tokes Law" (SB201, 132<sup>nd</sup> General Assembly) and maintains [a SB201 Appellate Decision tracking document](#).

There are recent decisions from the 8th district Court of Appeals on the constitutionality of SB201 – the first Appellate District to have issued decisions finding the bill to be unconstitutional. Further, other legal challenges include ripeness, right to a trial by jury, due process and separation of powers.

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[State v. Worley, Slip Opinion No. 2021-OHIO-2207](#), decided July 1, 2021. On direct appeal of a capital murder trial, the Court upheld the jury verdict and the death sentence for the abduction and murder of a 20-year old college student. The Court found that the evidence was sufficient to support the convictions, rejecting the defense arguments as to evidentiary and procedural issues, and upheld the capital verdict after independent review as supported by the evidence and not disproportionate to other sentences. The facts of this case led to the passage of HB231 "Sierah's Law" in 2018 and the creation of the [Violent Offender Database](#).

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[State v. Brinkman, Slip Opinion No. 2021-OHIO-2473](#), decided July 21, 2021. The defendant entered a guilty plea to capital charges for the murder of three women in 2017. A three-judge panel in Cuyahoga County then imposed death sentences following the mitigation phase of the trial. The Court found that the trial court did not strictly comply with Crim.R. 11(C)(2)(c) in explaining the defendant's constitutional rights and ensuring the plea was knowingly, intelligently, and voluntarily made. At the initial plea hearing, the trial court failed to explain both the defendant's right to confront witnesses brought against them and the right to have their guilty proven beyond a reasonable doubt. A second hearing was held four days later where the trial court conducted a second plea colloquy and explained those rights, but the Court held that the fact that the plea was accepted at the first hearing before that explanation, and the requirement for strict compliance, rendered the plea invalid. The Court vacated the convictions and remanded the case.

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### OTHER COURT NEWS

With the growing importance of accessibility and transparency to track cases within the state's judicial system, [the Supreme Court of Ohio has simplified finding accepted cases online](#).

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[The July 2021 IN DEPTH for Court News Ohio by Kathleen Maloney](#) highlighted that grants from the Supreme Court of Ohio have funded technology projects across the state judicial branch. Further, in the midst of COVID-19 restrictions, 143 courts received requested funds. The story reflects how courts are taking steps to advance operations and make it easier for the public to interact with the justice system.

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[The Task Force on Improving Court Operations Using Remote Technology \(iCourt\) Task Force](#) was created to study how Ohio courts have used technology during COVID and how innovation will continue in the future. The Task Force recently released its comprehensive [report and recommendations](#).

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**Next Meeting of the Full Commission**  
(location TBA)  
**Thursday September 16, 2021 10:00 a.m.**

**2021 Full Commission Meeting Dates (location TBA)**  
**Thursday December 16, 2021**

\*Working committees meet between Full Commission meeting dates.



**Special Thanks to contributor:**

**Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference**

**Questions, Comments, Suggestions? Contact:**

[sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov)

**Contact Us:**

Ohio Criminal Sentencing Commission

65 South Front Street

Columbus, Ohio 43215-3431

[www.supremecourt.ohio.gov/Boards/Sentencing](http://www.supremecourt.ohio.gov/Boards/Sentencing)

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