



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 & RECENTLY INTRODUCED

HB 735 INCREASE DV SENTENCING (LARE, MILLER)

The bill was introduced on October 26, 2022. The bill increases the penalty range for third-degree felony domestic violence and creates a presumption in favor of a prison term for the offense. Third-degree domestic violence still requires two or more prior convictions, but the sentencing range increases from the normal third-degree felony range (12 to 36 months) to the higher-level third-degree sentencing range (12 to 60 months) with a presumption in favor of the imposition of a prison term. The bill also increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions involving pregnant victims from 6 months to 12 months and increases the mandatory minimum definite prison term for third-degree felony domestic violence convictions resulting in serious physical harm to a woman's unborn or termination of the pregnant woman's pregnancy from 12 months to 18 months.

HB 738 POSTCONVICTION RELIEF (LELAND, HICKS-HUDSON)

The bill was introduced on October 26, 2022. The bill makes modifications to the Revised Code relating to postconviction-relief claims based on actual innocence, including the extension of the possibility of postconviction discovery to noncapital defendants. Additionally, the bill requires appellate courts to collect and maintain data related to felony sentence appeals and to report that data to the Ohio Criminal Sentencing Commission. Types of data the bill requires these courts to collect and maintain include data related to the number of appeals filed, the number of appeals that affirm a conviction, the number of appeals that reverse a conviction, and the number of cases that are dismissed, stayed, or terminated. Finally, the bill creates the Ohio Innocence Commission. The bill gives this new commission investigatory and subpoena powers for the purpose of reviewing claims of actual innocence and creates a manner by which credible claims will be referred for judicial review.

HB 740 PROHIBIT HOONING AND BEING A SPECTATOR AT A HOONING EVENT (MILLER, PLUMMER)

The bill was introduced on November 1, 2022. The bill creates two new offenses: hooning, and hooning complicity. Hooning, a misdemeanor of the first degree, means operating a motor vehicle in a reckless or dangerous manner to provoke a reaction from spectators by speeding; street racing; performing doughnuts, burnouts, drifting, rapid acceleration, squealing tires or engine revving; or allowing passengers to ride partially or fully outside of a motor vehicle. Hooning complicity, an unclassified misdemeanor, means being a spectator at a hooning event.

HB 743 REQUIRE PROVISION OF FEMININE HYGIENE PRODUCTS

The bill was introduced on November 1, 2022. The bill requires that state correctional institutions, municipal correctional facilities, and county correctional facilities provide inmates experiencing a menstrual cycle with an adequate supply of feminine hygiene products at no cost to the inmates. The bill also prohibits these facilities from denying inmates the use of showering or bathing facilities while experiencing menstruation, regardless of whether the inmates are separated from the general population for degree of charge or disciplinary reasons.



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.

SUPREME COURT OF OHIO DECISIONS

[State v. Troisi, Slip Opinion No. 2022-Ohio-3582](#), decided 10/11/2022. The defendants in this case were employees of a wholesale drug distribution company. The defendants were charged with violating RC 2925.03(A)(1) by knowingly selling, or offering to sell, a controlled substance. The crucial point in the allegations against the defendants is that they, in violating section 2925.03, did not act in accordance with Chapter 4729 of the Revised Code. If they had acted in accordance with RC Chapter 4729, then section 2925.03 would not have applied to them based on their employment status. The indictment only accused the defendants of acting “not in accordance with Chapter 4729” while violating RC 2925.03. The bill of particulars also failed to include with specificity the acts that the state believed were not in accordance with RC Chapter 4729. The trial court granted the defendant’s motion to dismiss. On appeal, the 8th District reversed the decision of the trial court. Ultimately, the Supreme Court reversed the court of appeals and held that the defendants were prejudiced by the lack of specificity in the indictment and the bill of particulars. Therefore, the state failed to identify the nature and cause of the allegations against the defendants by not clearly elucidating the specific violation of Chapter 4729 that makes the wholesale distributor susceptible to criminal prosecution under RC 2925.03 and, subsequently, the indictment must be dismissed without prejudice.

Revised Code Section(s): 2925.03, Chapter 4729

[State v. Campbell, Slip Opinion No. 2022-Ohio-3626](#), decided 10/13/2022. The defendant was on community control and was being supervised by a probation officer. As a condition of community control, the officer had the defendant sign a consent to search form. The form stated that the defendant consented to “searches of my person, my property, my vehicle, and my residence at any time without a warrant.” On a routine visit to the defendant’s residence, and lacking any “reasonable suspicion”, the probationer officer searched the contents of the defendant’s cell phone. The search revealed possession of child pornography, which resulted in additional criminal charges being filed against the defendant. The court held that, consistent with precedent, this search was not a violation of the defendant’s Fourth Amendment rights, as he was on community control and had consented to searches of his property. However, the court did find that the probation officer exceeded the limits of the statutory authority to search, because the statute expressly states that a probation officer’s authority to search must be based on “reasonable suspicion.” Despite the statutory violation, the appellate court erred in holding that the fruits of the search should have been suppressed.

Revised Code Section(s): 2951.02

[State v. Leegrand, Slip Opinion No. 2022-Ohio-3623](#), decided 10/13/2022. The defendant was found guilty of, among other offenses and specifications, murder. The defendant was sentenced to 18 years to life in prison. The sentencing entry for the murder conviction read “LIFE IN PRISON WITH ELIGIBILITY OF PAROLE AFTER 15 YEARS.” (Capitalization sic.) The relevant sentencing statute states that the penalty for murder of this kind is “an indefinite term of fifteen years to life.” The Eighth District held that the trial court’s sentencing language was dissimilar enough from the statutory language that the case should be remanded for resentencing. The state appealed. The Supreme Court held that the trial court’s failure to use the specific language of the sentencing statute in its sentencing entry was not error. Specifically, this failure was not error because the language contained in the sentencing entry that the trial court used conveys the exact same meaning as the statutory language.

Revised Code Section(s): 2929.02, 2903.02

REMAINING VOTING SESSIONS

There are 5 remaining voting sessions in the 134th General Assembly: November 30, 2022 (House and Senate), December 1, 2022 (House), December 7, 2022 (Senate), December 13, 2022 (House and Senate), December 14, 2022 (House and Senate). An additional if-needed session is scheduled for December 21, 2022 (House and Senate).

NEWS

REQUEST FOR FEEDBACK

The Ohio Criminal Sentencing Commission has convened a Sentencing Roundtable Workgroup under the direction of Reginald Wilkinson, EdD. The Workgroup began meeting in January of this year. The group has met consistently throughout the year and will soon complete its draft version of the Sentencing Recommendations Report. Written feedback from interested groups on the recommendations contained in the draft report will be requested after the December 15, 2022 full Commission meeting. Notice of this request will be circulated.

PUBLIC PORTAL FOCUS GROUPS

Director Sara Andrews and Research Assistant Todd Ives recently presented on the findings from the Ohio Sentencing Data Platform public portal focus groups. The series of focus groups occurred over the course of the year in Cincinnati, Cleveland, Dayton, Columbus, Lancaster, and virtually. The presentation was recorded and can be [viewed online here](#).

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. [HB738](#), introduced on October 26, 2022, incorporates recommendations outlined in the report.

SUPREME COURT OF OHIO DECISIONS continued

[State v. Cobb, Slip Opinion No. 2022-Ohio-3590](#), decided 10/12/2022. The court of appeals' judgment was vacated, and the cause was remanded for a new trial consistent with [State v. Brooks](#).

[State v. Stiltner, Slip Opinion No. 2022-Ohio-3589](#), decided 10/12/2022. The court of appeals' judgment was vacated, and the cause was remanded for a new trial consistent with [State v. Brooks](#).

[State v. Irvin, Slip Opinion No. 2022-Ohio-3587](#), decided 10/12/2022. The court of appeals' judgment was vacated on the authority of [State v. Brooks](#), and the cause was remanded to that court for it to conduct a harmless-error analysis.

[State v. Pitts, Slip Opinion No. 2022-Ohio-3588](#), decided 10/12/2022. The court of appeals' judgment was affirmed on the authority of [State v. Brooks](#).

[State v. Drain, Slip Opinion No. 2022-Ohio-3697](#), decided 10/19/2022. The defendant assaulted a fellow inmate in the Residential Treatment Unit at the Warren Correctional Institution. The victim of the assault later died from his injuries. The defendant was indicted on two counts of aggravated murder, two death specifications, two repeat violent offender specifications, and a count of possessing a deadly weapon while under detention for having committed the crime of aggravated murder. The defendant pled no contest to all counts and specifications contained in the indictment and was sentenced to death. The defendant raised 16 propositions of law in the appeal. The Supreme Court rejected each proposition and upheld the convictions and the death sentence.

Revised Code Section(s): 2945.06, 2929.01, 2929.03, 2929.04, 2929.05

STAFF UPDATE

The Commission is pleased to announce the recent addition of Michael Crofford to the staff. Michael has been hired in the role of Research Assistant. Prior to joining the Commission, Michael was employed by the Oriana House where he worked in research as a Continuous Quality Improvement Coordinator.

[State v. Towns, Slip Opinion No. 2022-Ohio-3632](#), decided 10/18/2022. The defendant was employed as a county sheriff when he was charged with, and convicted of, disclosing confidential information in violation of RC 102.03(B). The complaint was initiated by special prosecutors and filed by a special agent of the Ohio Bureau of Criminal Investigation. The Supreme Court addressed the issue of whether a criminal prosecution can be brought alleging a violation of RC 102.03(B) without a prior review of the charges by the Ohio Ethics Commission. The court held that RC 102.03(B) does not prevent an "appropriate prosecuting authority" from independently bringing a complaint under Chapter 102, despite the language contained in RC 102.06 that states the appropriate ethics commission "shall receive and may initiate" a complaint against a person. Thus, the defendant could be prosecuted for violating RC 102.03(B) without the Ohio Ethics Commission first investigating or prosecuting the charge.

Revised Code Section(s): 102.03, 102.06

[State v. Bellamy, Slip Opinion No. 2022-Ohio-3698](#), decided 10/19/2022. The defendant in this case was charged with sexually abusing a child. As part of discovery, the state timely disclosed the name and c.v. of an expert witness. However, the state did not provide the expert's report until six days before trial in violation of Crim.R. 16(K). The rule states that an expert witness's report "shall be subject to disclosure...no later than twenty-one days prior to trial..." The defendant's attorney did not object and the defendant was convicted of all counts as charged. On appeal, the Fifth District overturned the conviction and remanded the case to the trial court for a new trial based on the Crim.R. 16(K) violation. In remanding the case, the Fifth District also held that the new trial must be held without the testimony of the expert. The question the court answered in this case is whether the phrase "at trial" relates specifically to the trial commencing fewer than 21 days after the disclosure of the expert report or also at a retrial following a reversal and remand for failure to comply with the rule. The Supreme Court held that Crim.R. 16(K) only precludes an expert witness from testifying at the trial commencing fewer than 21 days after the disclosure of the expert's written report.

Revised Code Section(s):

[State v. Bortree, Slip Opinion No. 2022-Ohio-3890](#), decided 11/03/2022. The defendant was convicted of attempted aggravated murder and attempted murder. The criminal conduct at issue in these convictions was the July 1993 kidnapping, rape, and assault with a knife of a 19-year-old victim. The defendant was not identified until 2019 when DNA evidence linked him to the crime. The state indicted him that same year and he was convicted after a jury trial. The defendant was then sentenced to 11 years for the offenses, the statutory maximum for a first-degree felony. The defendant filed a motion to dismiss at the trial court alleging that the statute of limitations had elapsed because the crimes he was convicted of were first-degree felonies which carry a 6-year statute of limitations. His motion was denied in the trial court, and the court of appeals upheld that decision. In this appeal to the Supreme Court, the state argued that because the defendant was prosecuted for attempting to violate the aggravated murder and murder sections, which themselves do not have a statute of limitations, the prosecution for the offenses of attempted aggravated murder and attempted murder are also without limitation. Thus, at issue in this case is whether the statute of limitations for the first-degree felonies of attempted aggravated murder and attempted murder is 6 years. The court held that pursuant to the plain and unambiguous language of R.C. 2901.13(A)(1)(a) the statute of limitations for these offenses is 6 years and the defendant's motion to dismiss should have been granted.

Revised Code Section(s): 2901.13, 2923.02, 2903.01

SUPREME COURT OF OHIO DECISIONS continued

[State v. Belville, Slip Opinion No. 2022-Ohio-3879](#), decided 11/02/2022. The defendant was arrested for drug trafficking on July 17, 2019. The defendant was released from jail for a period of 46 days but was rearrested and held an additional 79 days in jail awaiting trial. The state responded to the defendant's initial discovery request the day after he filed his request for discovery. However, included in that response was an assertion that there was a large amount of video evidence that the state still needed to provide. In lieu of coming to the prosecutor's office to watch the large amount of video evidence, the defendant's attorney instead elected to have the state copy the video footage from one hard drive to another. This transfer took 43 days to complete. The day before the defendant's trial on November 19, 2019, he moved to dismiss the case based on an alleged violation of his R.C. 2945.71 speedy-trial right. The defendant argued that at the time of his motion a total of 280 speedy-trial days had elapsed, 10 days beyond the 270 days allowed by R.C. 2945.71(C)(2). The defendant also argued that, because the state initially responded to his discovery request one day after he requested the discovery, time was only tolled for one day. Additionally, the defendant asserted that the video evidence that was provided 43 days after the initial discovery response was "supplemental discovery" and should not be considered for tolling purposes. The Supreme Court disagreed with the defendant on all points. The court held that because the video evidence was disclosed with the initial discovery response it was not supplemental in nature. In so holding, the court found that the defendant's request for discovery operated as a tolling event for the time the state reasonably needed to respond and, under the facts of this case, that included the time that was needed to copy the video evidence. Therefore, the defendant's speedy-trial right was not violated.

Revised Code Section(s): 2945.71, 2945.72

[State v. Hatton, Slip Opinion No. 2022-Ohio-3991](#), decided 11/10/2022. The defendant in this case, along with a single codefendant, was convicted of aggravated burglary, kidnapping, rape, felonious assault, and theft in 1997. The defendant had previously been unsuccessful in challenging his convictions. The issues in this appeal are whether the defendant should have been granted leave to file an untimely motion for a new trial and whether the trial court and court of appeals abused their discretion in holding that res judicata barred him from filing the motion and a successive petition for postconviction relief. The basis of each action was a newly discovered memo from the DNA expert the state relied on at trial. The memo indicates that a third male's DNA was present in the semen collected during the investigation. This memo was never provided to the defendant or any of his previous counsel and was only discovered as the result of a 2018 public records request. Importantly, the DNA expert never testified about the presence of this third male's DNA. Additionally, the state specifically stated at trial that there was "no third person" and that the only people present at the time of the offense were the defendant and his codefendant. The Supreme Court held that, under these circumstances, the defendant established sufficient substantive grounds for a hearing on the motion for a new trial and that the trial and appellate courts abused their discretion in holding that res judicata barred his filing of the motion and a successive petition for postconviction relief.

Revised Code Section(s): 2953.21, 2953.23,

[State v. Blanton, Slip Opinion No. 2022-Ohio-3985](#), decided 11/10/2022. The defendant was convicted by jury of the rape and kidnapping of a 15-year-old girl. He was also convicted by jury of the felonious assault and kidnapping of a fellow inmate. The Supreme Court in this case was asked to review its precedent regarding the doctrine of res judicata and its applicability to ineffective assistance of counsel claims. The court has previously held that res judicata does not bar a postconviction ineffective-assistance-of-counsel claim when either the petitioner had the same attorney at trial and on appeal or, if different attorneys, the petitioner must rely on evidence outside the trial record to establish the claim for relief. Thus, when a petitioner had different attorneys for trial and appeal and the claim could have been litigated based on the trial record but wasn't, res judicata applies and the postconviction claim is barred. The Supreme Court went through a detailed analysis of these issues and concluded that the precedent should stand.

Revised Code Section(s): 2953.21

[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

Next Meeting of the Full Commission:

Thursday December 15, 2022 10:00 a.m.
Ohio Judicial Center – Room 102
Remote Option Available by Zoom

**Working committees meet between full Commission meeting dates.*



Special Thanks to contributor:

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Questions, Comments, Suggestions? Contact:

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