



OHIO  
CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431

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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 & SIGNED BY THE GOVERNOR

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

**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** – 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 R.C. 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.

### HB8 REVISE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS (WEST, PLUMMER)

The bill requires the electronic recording of all statements made by certain suspects during a custodial interrogation in a place of detention. The bill outlines seven limited exceptions for which electronic recording is not required. The bill also allows a court to consider any failure to electronically record a statement in adjudicating motions to exclude or suppress, and to admit evidence despite a violation of the requirement, but only if the court provides a cautionary instruction to the jury. On April 15, 2021, a substitute bill that included modifying the prohibition against the restraint of a pregnant woman or child who is charged or convicted of an offense was passed by the House, 90-0. The bill was amended in the Senate Judiciary Committee on May 11, 2021 to remove provisions regarding qualified immunity and references to confinement. On May 12, 2021, the Senate passed the bill 31-0, with an emergency clause and the House concurred with the Senate amendments 94-0, the emergency clause 93-1. The Governor signed the bill on May 17, 2021 and it became effective immediately.



### SB2 CRIMINAL CASE COMPETENCY AND ENTERS OHIO INTO PSYPACT (GAVARONE)

The bill makes changes to the requirements for competency evaluations and mental health treatment in criminal cases.

The bill also enters Ohio in the multi-jurisdictional psychology compact known as PSYPACT, establishes the Psychology Interjurisdictional Compact Commission, and creates the Coordinated Licensure Information System.

On February 10, 2021, the bill was passed by the Senate, 32-0. On March 25, 2021, a substitute version of the bill eliminated a provision of current law authorizing court-ordered hospitalizations on an immediate, emergency basis of a person found to meet the criteria for involuntary substance abuse treatment.

The bill was passed by the House, 95-0, on March 25, 2021. The Senate concurred on April 21, 2021, 33-0. The Governor signed the bill April 27, 2021 and it becomes effective August 3, 2021.

## LEGISLATION IMPACTING SENTENCING (continued)

### **SB126 COLLIN'S LAW (KUNZE, GAVARONE) / HB205 COLLIN'S LAW (GHANBARI, SHEEHY)**

**SB126** was introduced on March 10, 2021, and enacts Collin's Law: The Ohio Anti-Hazing Act, which prohibits any person from knowingly participating in, committing, soliciting another person to commit, being actively involved in the planning of the hazing of another, or any administrator, employee, or faculty member of any school or other education institution from knowingly permitting the hazing of any person. On March 31, 2021, the Senate Workforce and Higher Education Committee had its second hearing on the bill. **HB205** was introduced on March 11, 2021, and prohibits similar behavior conducted recklessly. The bill also applies to teachers, consultants, alumnus, or volunteers, as well as parents and/or guardians of students at the school, when the hazing includes coerced consumption of alcohol or drugs resulting in serious physical harm to the person. On June 25, 2021, the bill passed the House and on June 28, 2021 the Senate concurred, 32-0. The bill awaits the Governor's signature.

### **SB36 CRIME VICTIMS (MANNING, HUFFMAN)**

The bill was introduced on February 2, 2021, and revises the eligibility standards and procedure for awarding reparations to crime victims. The bill also modifies the disqualifying conditions for an award of reparations. The bill was passed by the Senate on March 3, 2021, by a vote of 32-0. On May 26, 2021, the bill had a second hearing in the House Criminal Justice Committee.

### **HB22 EXPAND THE OFFENSE OF OBSTRUCTING JUSTICE (LaRe, WILKIN)**

The bill was introduced on February 3, 2021, and expands the offense of obstructing justice to include failure to follow a lawful order from a law enforcement officer or diverting a law enforcement officer's attention. The House Criminal Justice Committee accepted a substitute, amended bill at the fourth hearing on April 22, 2021. On June 25, 2021, the bill was passed by the House, 61-33.

### **HB44 ASSAULT (ROEMER, MILLER)**

The bill was introduced on February 2, 2021, 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 June 25, 2021, the bill was passed by the House, 83-10.

### **SB149 BIAS-MOTIVATED CRIME: SCOPE, REPORTING, TRAINING (MAHARATH, ANTONIO)**

The bill was introduced on March 30, 2021, and renames the offense of ethnic intimidation to bias-motivated crime. The bill also expands the scope of the offense and requires peace-officer training, data collection, and reporting on bias-motivated crime. On April 21, 2021, the bill was referred to the Senate Judiciary Committee.

### **SB103 ABOLISH THE DEATH PENALTY; REVISE JUROR CHALLENGE NUMBERS (ANTONIO, HUFFMAN) / HB183 DEATH PENALTY (SCHMIDT, MILLER)**

**SB103** was introduced March 2, 2021, and abolishes the death penalty for the State of Ohio. The bill also modifies the number of jurors that may be challenged in cases where a defendant may be sentenced to life imprisonment. On June 16, 2021, the Senate Judiciary Committee had a second hearing on the bill. **HB183** was introduced on March 4, 2021, and contains similar provisions. On May 26, 2021, the House Criminal Justice Committee had its first hearing on the bill.

### **SB25 ENACT RELAPSE REDUCTION ACT; DRUG TRAFFICKING, DEFRAUDING DRUG TESTS (GAVARONE)**

The bill was introduced on January 26, 2021, and enhances penalties for most drug trafficking offenses when committed on the premises or within the vicinity of a substance addiction services provider's facility, if the offender recklessly disregards whether the offense is being committed within that vicinity. The bill also prohibits defrauding an alcohol, drug, or urine screening test through the use or likelihood of use of synthetic urine, a urine additive, or another person's urine. On May 25, 2021 at the third hearing the bill was amended to change the offense based on whether it occurs on the premises of the facility or within 500 feet, reduced from 1,000 feet. It also changed the offense to whether the offender knew or should have known it was in the vicinity of a substance abuse facility instead of the offender's being reckless, and added an additional element to include an elevated offense if an offender is targeting and selling to someone in treatment or has recently been in treatment within the last 30 days. The substitute bill was accepted and on June 16, 2021, the Senate Judiciary Committee reported out the substitute bill at the fourth hearing. The provisions are to be named the Relapse Reduction Act.

### **HB257 EXTREME RISK PROTECTION ORDER ACT (RUSSO, SMITH)**

The bill was introduced on April 14, 2021, referred to as the Extreme Risk Protection Order Act, allowing family members, household members, and law enforcement officers to obtain a court order to temporarily restrict a person's access to firearms if that person poses a danger to themselves or others. On April 15, 2021, the bill was referred to the House Government Oversight Committee.

## LEGISLATION IMPACTING SENTENCING (continued)

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

The bill was introduced on May 18, 2021. See also companion bill, **HB315** (LELAND, HILLYER). The bill makes 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.

### **HB319 HUMAN TRAFFICKING JUSTICE ACT (GALONSKI, RICHARDSON) / SB183 EXPUNGE CRIMINAL RECORDS-TRAFFICKING VICTIMS (FEDOR, KUNZE)**

**HB319** – See also **SB183** – the bills expand the current record expungement process by requiring only that a person be a victim of human trafficking to be eligible for expungement. Current law requires that the person have a conviction under R.C. 2907.24, 2907.241, or 2907.25 (Soliciting, Loitering to Solicit, Soliciting with HIV) to be eligible. The bills do not provide criteria for what constitutes a human trafficking victim, and presumably refer to both sex and labor trafficking. The act is to be named Expanding Human Trafficking Justice Act. The bills were introduced on May 19, 2021. **HB319** was referred to the House Health Committee on May 25, 2021 and **SB183** had a first hearing in the Senate Judiciary Committee on June 22, 2021.

### **HB343 MARSY'S LAW IMPLEMENTATION – RIGHTS OF CRIME VICTIMS (WHITE)**

The bill was introduced on June 8, 2021. The bill requires that a victim and victims' representatives get all notices, motions, and court orders that are filed, entitles the victim to not testify in court regarding victim's contact or location information and to request that that information be redacted from court records, entitles a victim to be present at the post-arrest release hearing and a community control revocation hearing, requires that a victim gets notice of acquittal or conviction, including the PSI, and of judicial release or other early release and significantly expands the concept of restitution. The bill was referred to the House Criminal Justice Committee on June 10, 2021.

### **SB90 PROHIBIT IMPEDING BREATHING OR CIRCULATION OF FAMILY MEMBERS (KUNZE, ANTONIO)**

The bill was introduced on February 24, 2021, and expands the offense of domestic violence to also prohibit a person from knowingly impeding the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck or by blocking the nose or mouth. On June 22, 2021, the bill was amended to remove a mandatory prison term at the second hearing in the Senate Judiciary Committee.

### **HB254 DOMESTIC VIOLENCE FATALITY REVIEW BOARDS (BOGGS)**

The bill was introduced April 13, 2021 and provides for the establishment of domestic violence fatality review boards, amends the versions of sections 121.22 and 4731.22 of the Revised Code that are scheduled to take effect on October 9, 2021 and continues the changes to those sections on and after that date. The bill gives counties and regions the ability to establish domestic violence fatality review boards to review domestic violence deaths in Ohio. The bill allows a board of county commissioners to appoint a health commissioner to establish their county's domestic violence fatality review board. The review boards will consist of 11 members appointed by the county health commissioner. These members will include professionals, such as the county coroner, chief of police and county prosecutor, duties of the boards would include: Promoting continued communication between all groups, professions, agencies or entities engaged in the prevention and education of domestic violence; maintaining databases of the domestic violence fatalities to understand the causes and incidence of those deaths; developing plans for implementing local service and program changes to the groups, professions, agencies or entities that serve local residents that might prevent deaths by domestic violence; and providing the Ohio Department of Health with aggregate data, trends, and patterns concerning domestic violence fatalities. The bill had a second hearing in the House Families, Aging and Human Services Committee on June 24, 2021.

### **SB164 COMPANION ANIMAL CRUELTY; DESTRUCTION BY GAS CHAMBER (HOTTINGER, YUKO)**

The bill was introduced on April 15, 2021, and revises the law and penalties related to companion animal cruelty. The bill makes animal cruelty an offense of violence, as defined under Sec. 2901.01. The bill also prohibits the destruction of a domestic animal by the use of a gas chamber. On May 25, 2021, the bill had a second hearing in the Senate Agriculture and Natural Resources Committee.



## LEGISLATION IMPACTING SENTENCING (continued)

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### **HB266 STATUTES OF LIMITATION: RAPE, CHILD SEXUAL ABUSE (GALONSKI, MIRANDA)**

The bill was introduced April 21, 2021, and eliminates the period of limitation for the criminal prosecution of a person for rape. The bill also eliminates the spousal exception for the offense of rape. On April 22, 2021, the bill was referred to the House Criminal Justice Committee.

### **HB109 INCREASE PENALTIES - RIOT OFFENSES (ABRAMS, CARRUTHERS)**

The bill was introduced on February 16, 2021 and increases penalties for certain assault, vandalism and riot offenses. The bill also allows peace officers to bring civil suits against persons participating in a riot, and to prohibit bias motivated intimidation of first responders. The bill was amended to (1) increase the penalty for enhanced disorderly conduct offenses from a fourth-degree misdemeanor to a first-degree misdemeanor and (2) replace the third-degree felony disorderly conduct offense proposed by the bill with a "similar" disorderly conduct offense in current law now punishable as the first-degree misdemeanor enhanced disorderly conduct offense under (1) at the third hearing in the House Criminal Justice Committee on June 24, 2021.

### **HB283 EXPAND DISTRACTED DRIVING LAWS (ABRAMS, LAMPTON)**

The bill was introduced on May 3, 2021 and expands the texting-while-driving prohibition to a broad prohibition against using a device while driving, with certain exceptions. The bill creates points assessed against a license for violation of the prohibition: 2 points for the 1st offense in 2 years; 3 points for the 2nd; and 4 points for the 3rd and any subsequent. The bill also explicitly allows someone to refuse a search of a mobile device and prohibits an officer from confiscating a device while waiting for a search warrant. The bill further creates data collection requirements based on associated violations of the distracted driving laws. On June 10, 2021 at the second hearing in the House Criminal Justice Committee the bill was amended to: Require ODOT to erect distracted driving warnings "on certain highways and locations entering Ohio; " Require drivers to sign a new one-page form on distracted driving provided from the registrar of motor vehicles to verify they received it; Only allows peace officers to issue written warnings for breaking the law during the six months following the bill's effective date; Require drivers' education to address the dangers of distracted driving and applicants for a driver's license, temporary permit or motorcycle endorsement to be tested on the topic.

### **HB287 CREATE STRANGULATION OFFENSE BY OFFICER (LEPORE-HAGAN, GALONSKI)**

The bill creates the offense of strangulation by a law enforcement officer. It was introduced on May 5, 2021 and referred to the House Criminal Justice Committee on May 11, 2021.

### **HB345 HUMAN IMPACT STATEMENT FOR CRIMINAL JUSTICE BILLS (CROSSMAN, HOWSE)**

The bill was introduced on June 9, 2021 and requires the Legislative Service Commission to prepare a human impact statement for any bill proposed that would impact criminal law. The bill was referred to the House Criminal Justice Committee on June 16, 2021.

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### **SB198 PERIOD OF LIMITATION – RAPE (ANTONIO)**

The bill was introduced on June 16, 2021 and referred to the Senate Judiciary Committee on June 23, 2021. The bill eliminates the period of limitation for the criminal prosecution of a person for rape and for a civil action brought by a victim of conduct that would constitute rape.

### **SB203 OPERATING A VEHICLE UNDER THE INFLUENCE – MARIHUANA (MANNING)**

The bill was introduced on June 23, 2021 and seeks to change the laws pertaining to operating a vehicle or watercraft while under the influence of marihuana and the admissibility of evidence regarding the testing of a person's whole blood, blood serum or plasma, urine, breath, or other bodily substance for purposes of OVI statutes. On June 24, 2021 the bill was referred to the Senate Veterans and Public Safety Committee.

### **HB356 REDUCE ABUSE OF PRESCRIPTION OPIOIDS (LOYCHIK, BIRD)**

The bill was introduced on June 21, 2021 and proposes to reduce the abuse of prescription opioids, to establish addiction treatment facilities, to increase penalties for drug trafficking violations, to modify penalties for drug possession, to require an offender convicted of a drug possession or drug trafficking offense involving certain drugs to be subject to ten years of post-release control, to allow a criminal defendant who has a severe substance use disorder involving certain drugs to be confined by a state detoxification provider while awaiting trial, to create restitution work programs, and to make an appropriation. The bill was referred to the House Criminal Justice Committee on June 24, 2021.

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## ICYMI

The Supreme Court of Ohio has extended the deadline for courts to exclusively switch to a [new Model Uniform Traffic Ticket](#) to December 31, 2021.

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.](#)

### [New Rules of Practice and Procedure Take Effect July 1, 2021](#)

Amendments include: Ohio Rules of Civil Procedure (16, 26, 34, and 37); Ohio Rules of Criminal Procedure (11, 19, 33, and 41); Ohio Rules of Appellate Procedure (4 and 21); and the Ohio Rules of Evidence (601).

### [How Clean Are 'Clean Slates'?](#)

Eligible people have the opportunity under state law to have certain case records sealed or expunged. But challenges arise – sometimes repeatedly – when commercial companies release sealed or expunged criminal histories in background checks, often to potential employers and landlords.

[By Kathleen Maloney | May 2021](#)

## 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.

## COMMISSION RESOURCES

The [Felony Sentencing Quick Reference Guide](#) is significantly revised – no longer called a “quick” reference guide and designed to follow a case through the system – from initial considerations like pretrial diversion to release from prison.

[The Adult Rights Restoration and Record Sealing guide](#) is produced in collaboration with the Ohio Judicial Conference. It details record sealing, expungement or other types of relief processes and includes recent legislative enactments regarding State issued employment licenses and Certificates of Qualification for Employment (CQE).

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 and 3. An Informational Section Summarizing the Remainder of the Court's Jurisprudence for Reference.

The Commission continues to monitor the implementation and challenges to the [“Reagan Tokes Act” \(SB201, 133rd General Assembly\) and maintains a SB201 Appellate Decision tracking document](#). There are recent decisions from the 8<sup>th</sup> 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.

## HB1 (133<sup>rd</sup> General Assembly) IMPLEMENTATION

Among the modest reforms in [133<sup>rd</sup> – HB1, section 181.27](#) defines the Commission as a criminal justice agency, essentially codifying current practice of our partnership with other agencies to collect, exchange and analyze data. The bill also obligated the Commission to study the impact of certain provisions, effective April 12, 2021. We are working diligently on the study the impact of HB1. The Commission has established [a workgroup](#) to help guide this effort and will complete its first report in December 2021. Please contact [Sara Andrews](#) if you'd like more information.

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## SUPREME COURT OF OHIO COURT DECISIONS

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[\*State ex rel. Bechtel v. Cornachio\*, Slip Opinion No. 2021-OHIO-1121](#), decided April 6, 2021. After animal control officers seized nearly 100 animals from a “rescue center” Bechtel sought a writ of mandamus compelling the municipal court judge to issue a final judgement ruling on the magistrate’s probable cause decision for the seizure. The judge issued the order after the writ was filed, and the Court held that the issue was therefore moot and denied the request.

[\*State ex rel. Sands v. Culotta\*, Slip Opinion No. 2021-OHIO-1137](#), decided April 7, 2021. Sands sought a writ of mandamus in the 11<sup>th</sup> District Court of Appeals asking that his trial judge be ordered to issue a judgement entry with additional jail-time credit that Sands believed he was entitled to. The Court upheld the 11<sup>th</sup> District’s dismissal of the request for failure to state a claim for which relief can be granted, as Sands had a remedy to correct any jail-time credit issues through direct appeal.

[\*State ex rel. Person v. McCarty\*, Slip Opinion No. 2021-OHIO-1207](#), decided April 13, 2021. The Court affirmed the dismissal of a request for a writ of mandamus ordering the trial court to vacate Person’s sentence and to re-sentence them. Person alleged both errors in their jury verdict and ineffective assistance of appellate counsel for failing to raise the issues. The Court held that as an adequate remedy existed to appeal those issues, there was no claim for which mandamus relief could be granted.

[\*State ex rel. Whittaker v. Lucas County Prosecutor’s Office\*, Slip Opinion No. 2021-OHIO-1241](#), decided April 14, 2021. After their infant was injured while being cared for outside the home, Whitaker sought a writ of mandamus compelling the Lucas County prosecutor to file felonious assault charges against the caregivers. Both of those individuals had already been indicted and pled to child endangering charges for the incident. The Court affirmed dismissal of the request, citing the prosecuting attorney’s charging discretion and finding that the necessary procedures under RC 2935.09 had been followed, and as such Whitaker had no right to the relief they requested.

[\*State ex rel. Griffin v. Sehlmeier\*, Slip Opinion No. 2021-OHIO-1419](#), decided April 27, 2021. Griffin, an inmate at correctional institution, made two public records requests of the institution with regard to records of COVID-19 cases among inmates and staff. The second request dealt specifically with the institution where Griffin was housed. The Court reviewed the records and found that the record keeper failed to properly identify the records that were responsive to the requests Griffin made, granted the writ, and ordered the institution to pay \$1000 in damages for their failure to comply with the public records statute.

[\*State ex rel. Peoples v. O’Shaughnessy\*, Slip Opinion No. 2021-OHIO-1572](#), decided May 6, 2021. Defendant’s case was remanded for resentencing on appeal as their sentence incorrectly imposed 6 years for a specification instead of the 5 years required by law. Defendant sought a writ of mandamus asking that they be transferred back to the county jail for resentencing. The Court held that an amended journal entry issued by the trial court was sufficient to correct the error and that transferring the defendant back would be a “vain act” as no new sentencing hearing would be conducted. The Court affirmed dismissal of the request.

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[\*Orr v. Schweitzer\*, Slip Opinion No. 2021-OHIO-1786](#), decided May 27, 2021. Orr sought relief in habeas and filed several motions in the 12<sup>th</sup> District Court of Appeals, alleging that constitutional violations led to their imprisonment for life-without-parole for a homicide offense. The Court affirmed the dismissal of the writ request and all attendant motions, holding that Orr was not entitled to the types of relief requested.

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[\*State ex rel. Bey v. Loomis\*, Slip Opinion No. 2021-OHIO-2066](#), decided June 23, 2021. The Court upheld the dismissal of a request for a writ of mandamus compelling production of public records for failure to comply with RC 2969.25(A) requirement that the applicant include an affidavit of all prior civil actions

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[\*State v. Tidwell\*, Slip Opinion No. 2021-OHIO-2072](#), decided June 24, 2021. A State Highway Patrol Officer initiated a traffic stop of defendant’s vehicle after an unidentified person shouted to the officer that defendant was drunk behind the wheel of a vehicle. The Court held that, on review of the record and under the totality of the circumstances, the brief investigatory stop was reasonable and not prohibited by the Fourth Amendment’s protections against unreasonable searches and seizures.

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[\*State ex rel. Steele v. Foley\*, Slip Opinion No. 2021-OHIO-2073](#), decided June 24, 2021. The Court upheld the dismissal of a habeas complaint for failure to comply with RC 2969.25(A)’s requirement that the applicant include an affidavit of all prior civil actions.

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[\*State ex rel. A.N. v. Cuyahoga County Prosecutor’s Office\*, Slip Opinion No. 2021-OHIO-2071](#), decided June 24, 2021. The Court affirmed the Eighth District’s dismissal of a request for a writ of mandamus ordering the County and City Prosecuting Attorneys to prosecute past offenses. The Court found no abuse of prosecutorial discretion in refusing to file charges, and as such A.N. was not entitled to mandamus relief.

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## SUPREME COURT OF OHIO COURT DECISIONS (continued)

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### United States Supreme Court Decisions

[Caniglia v. Strom, 141 S. Ct. 1596](#), decided May 17, 2021. Caniglia’s firearms were seized by police following a report from his wife that he was experiencing suicidal ideations.

The Court held that the “public caretaking” exception to the 4<sup>th</sup> Amendment’s warrant requirements did not apply when a person was in their home.

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[Edwards v. Vannoy, 141 S. Ct. 1547](#), decided May 17, 2021. Edwards was convicted for several offenses by 10-2 jury votes in Louisiana under a then-existing law which did not require unanimous jury verdicts. Following the Court’s decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) requiring that jury verdicts be unanimous, Edwards appealed asking that the ruling be applied retroactively. The Court held that the *Ramos* ruling did not apply retroactively.

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[Jones v. Mississippi, 141 S. Ct. 1307](#), decided April 22, 2021. The Court upheld a discretionary life-without-parole sentence for a juvenile who was 15 at the time of the offenses, holding that the 8<sup>th</sup> Amendment and the Court’s jurisprudence did not require that the trial court find the juvenile was permanently incorrigible before sentencing them to life without parole.

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[Lange v. California, 141 S. Ct. 2011](#), decided June 23, 2021. The Court held that the exigent circumstances exception to the Fourth Amendment’s warrant requirement did not allow for California Highway Patrol officers to pursue a fleeing misdemeanor suspect into their home without a warrant. The totality of the circumstances involved must show the necessary emergency, and that does not \*necessarily\* exist when only a misdemeanor is involved.

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[State v. Azeen, Slip Opinion No. 2021-OHIO-1735](#), decided May 25, 2021. Azeen was convicted of felonious assault for a double shooting that took place in 1987 which left one victim paralyzed. Defendant entered a guilty plea and was sentenced to 8 to 25 years in prison. In 2014, a victim of the shooting died, and the coroner held that the death was caused by the injury from 1987 which left them paralyzed. Azeen was then indicted for aggravated murder, and asked the trial court to dismiss the charge, arguing that the State never reserved the right to file charges under the 1987 plea agreement. The trial court dismissed the indictment, and the 8<sup>th</sup> District affirmed the dismissal. Pursuant to their holdings in *State v. Carpenter*, 68 Ohio St.3d 59, 623 N.E.2d 66 (1993) and *State v. Dye*, 127 Ohio St.3d 357, 939 N.E.2d 1217 (2010), the Court looked to the record to see if a negotiated plea agreement barred the state from bringing further charges based on the same set of facts, and on review of the record, the Court found no evidence of a plea agreement sufficient to invoke *Carpenter*. The Court reversed the dismissal of the indictment and remanded the case.

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[State ex rel. Davis v. Turner, Slip Opinion No. 2021-OHIO-1771](#), decided May 26, 2021. Defendant’s sought habeus relief asking that their sentence be declared “partially void” as the trial court incorrectly imposed post release control for an ineligible offense (murder). Davis also asked that the court costs imposed in the case be vacated as well. The Court reiterated that sentencing errors made under the trial court’s jurisdiction render a judgement voidable, not void, and the fact that those errors could have been addressed on direct appeal precluded relief in habeus. The Court the addressed the court costs issue, holding that the proper method for Davis to challenge the garnishment for court cost collection was under the Administrative Code, and not through extraordinary writ.

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[State ex rel. Hogan Lovells L.L.P. v. ODRC, Slip Opinion No. 2021-OHIO-1762](#), decided May 26, 2021. Hogan Lovells filed public record requests asking that the Ohio Department of Rehabilitation and Correction provide records regarding lethal injection drugs. They sought relief in mandamus asking the Court to order ODRC to comply with that request. The Court reviewed the records and denied the request for a mandamus writ, but found that ODRC failed to reply in a timely fashion and ordered \$500 damages to be paid by ODRC, along with the potential for additional attorney’s fees.

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[State ex rel. Summers v. Fox, Slip Opinion No. 2021-OHIO-2061](#), decided June 22, 2021. The Court previously granted a mandamus writ ordering the county prosecutor and sheriff to turn over public records to Summers related to Summer’s criminal case. The Court held that Summers was not entitled to attorney’s fees as the county officials responded reasonably and not in bad faith to the request, nor was Summers entitled to statutory damages. Court costs were awarded to Summers as they are mandatory under the law.

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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:**

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