



Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Commission, in collaboration with the Ohio Judicial Conference, recently published a report to provide an overview and national perspective on low level felony sentencing. In case you missed it, you can find it [here](#). You'll see a companion piece that is specific to low level drug offenses in the near future. We've also updated several of the [Judicial and Practitioner Quick Reference Guides](#). The felony sentencing guide is posted – check back for the traffic, drug and juvenile sentencing guides – they are coming soon!

The Legislative & Judicial Brief is designed to share information, spark conversation, enlighten minds and 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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Recently Introduced:

**SB 159 SEALING RECORDS
AFTER PARDON (WILLIAMS)**

The bill permits a person to apply for the sealing of the records pertaining to a case in which the person was convicted of an offense for which the person was subsequently granted a pardon. The bill was introduced on June 1, 2017.

**HB 234 HEALTH FACILITY
ACCESS INTIMIDATION
(HOWSE, LEPORE-HAGAN)**

The bill makes impeding access to reproductive health care a first degree misdemeanor and creates a civil cause of action for harassment or intimidation of one or more employees of a health care facility. The bill was introduced on May 23, 2017.

**HB 207 TRAFFIC PHOTO RESTRICTION-EMERGENCY SERVICES
(PATTON)**

The bill prohibits a municipal corporation or township that does not operate either a fire department or an emergency medical services organization from utilizing traffic law photo-monitoring devices. The bill was introduced on May 9, 2017 and had its second hearing in the House State and Local Government Committee on May 31, 2017.

**HB 208 TRAFFIC PHOTO RESTRICTION-LOW POPULATION
(PATTON)**

The bill prohibits a local authority with a population of 200 or fewer from utilizing traffic law photomonitoring devices. The bill was introduced on May 9, 2017 and had its second hearing in the House State and Local Government Committee on May 31, 2017.

**HB 209 TRAFFIC PHOTO RESTRICTION-TICKET LIMIT
(PATTON)**

The bill prohibits a local authority, in any year, from issuing a total number of traffic tickets based on the use of traffic law photo-monitoring devices that exceeds two times the population of the local authority. The bill was introduced on May 9, 2017 and had its second hearing in the House State and Local Government Committee on May 31, 2017.

**HB 210 TRAFFIC PHOTO RESTRICTION-REVENUE LIMIT
(PATTON)**

The bill prohibits a local authority from deriving more than 30 per cent of the total annual revenue of the local authority from the issuance of tickets for traffic law violations based on evidence recorded by traffic law photo-monitoring devices. The bill was introduced on May 9, 2017 and had its second hearing in the House State and Local Government Committee on May 31, 2017.

**HB 233 HANDGUN DECRIMINALIZATION-LEAVING UPON
REQUEST (BECKER)**

The bill enacts the "Decriminalization Effort For Ending Notorious Deaths (DEFEND)" to provide an opportunity for a concealed handgun licensee or qualified military member to avoid guilt for carrying a concealed handgun into a prohibited place if the person leaves upon request, and penalizes as disorderly conduct failing to leave upon request or returning with a firearm. The bill was introduced on May 18, 2017 and referred to the House Federalism and Interstate Relations Committee on May 23, 2017.

SB 150 DOMESTIC VIOLENCE-FIREARM ACCESS (BROWN)

The bill prohibits a person convicted of domestic violence or assault of a family member, or a person subject to certain protection orders, from having a firearm and establishes a procedure for surrendering all firearms in the person's possession. The bill was introduced on May 16, 2017 and referred to the Senate Judiciary Committee on May 17, 2017.

Legislation Impacting Sentencing – continued**Legislative Updates (from previous issues):****HB38 CRIMINAL OFFENSES-VIOLENCE (GREENSPAN)**

The bill provides that purposely causing the death of a first responder or military member is aggravated murder and requires an offender to serve the prison term imposed for felonious assault on a peace officer, investigator, first responder, or military member consecutively to the prison term imposed for any related offense. The bill passed the House of Representatives on May 17, 2017 and was referred to the Senate Judiciary Committee on May 24, 2017.

HB 63 SENTENCING –DISFIGUREMENT SPECIFICATION (HUGHES)

The original bill created an additional term of 5 -20 years if the defendant was convicted of a specification that charges the harm caused by the violation resulted in permanent, serious disfigurement or substantial incapacity or that the offender used an accelerant. The substitute bill changes the additional mandatory term to 6 years and requires that an accelerant have been used for the specification to apply. The substitute bill passed the House on May 24, 2017.

HB 64 EXPUNGEMENT – MISTAKEN IDENTITY (SCHURING, REECE)

The bill allows for the expungement of records related to apprehension, arrest, charging, or trial of a person based on mistaken identity. The bill had its third hearing in the House Community and Family Advancement Committee on May 24, 2017.

HB68 VOYEURISM VICTIM DEFINITION (ANIELSKI)

The bill identifies an impaired person as a potential victim of voyeurism, to include conduct involving an impaired person within the offenses of pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity oriented material or performance, and to prohibit an owner, operator, administrator, or employee of a care facility from creating, sharing, reproducing, or publishing any image of a care facility resident without a proper purpose and without prior written consent from the resident. The bill was reported out of the House Criminal Justice Committee on May 23, 2017.

HB95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is the apparent cause of the violation and to reenact provisions of law that specified that certain electronic wireless communications device violations were allied offenses of similar import. The bill was reported out of the House Transportation and Public Safety Committee on May 17, 2017.

HB109 CRIMES AGAINST DISABLED OR ELDERLY (PATMON)

The bill creates specifications that impose an additional prison term on a felony offender who commits the offense against a disabled person or elderly person and a period of Department of Youth Services commitment on a delinquent child for felony act committed against a disabled or elderly person, for felony offenses that do not delineate enhanced penalties when a disabled or elderly person is the victim of the violation. The bill had a second hearing in the House Criminal Justice Committee on May 23, 2017.

HB141 INVOLUNTARY MANSLAUGHTER-CONTROLLED SUBSTANCE (DEVER J, WIGGAM S)

The bill provides that causing or contributing to the death of another person as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and to make this offense a strict liability offense. The bill had its first hearing in the House Criminal Justice Committee on May 9, 2017.

HB 49 OPERATING BUDGET (SMITH)

Makes appropriations for FY 2018-2019. Specifically, the Department of Rehabilitation and Correction and the executive recommendation for the FY18/19 budget for community programs. The executive budget increased funding for community diversion programs by 51.8% to \$61.3 million in FY 18 and 32.2% to \$81.1 million in FY 19.

DRC reports in 2016, approximately 8,300 of the nearly 20,000 people committed to prison were sent there to serve one year or less and approximately 4,100 of those were Felony 5 offenses.

The executive budget built on an existing pilot program to divert nonviolent, fifth degree felons from prison and DRC estimates the target population to be approximately 3,400 offenders per year. The House version creates a local confinement exemption under which counties may send a limited number of offenders sentenced to less than 12 months for a F5 to prison.

The House version also allows F5 offenders to be sent to prison if they are also convicted of another sentence that must be served in prison or if an offender is sentenced for multiple offenses having a total prison term greater than 12 months. The bill passed the House on May 2, 2017.

Various Senate committees continue to hear testimony on the bill.

SB 3 WORKFORCE DEVELOPMENT (BEAGLE, BALDERSON)

The bill contains several changes to the certificates of qualification for employment including permitting an out of state resident with an Ohio conviction to apply for the CQE, allows DRC to develop criteria for early applications, and removes the requirement that the applicant list the specific collateral sanctions from which they are seeking relief. The bill also provides that the CQE creates a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for employment. Finally DRC is required to maintain a database that identifies granted and revoked CQEs. The bill passed the Senate on April 26, 2017 and has its second hearing in the House Higher Education and Workforce Development Committee on June 7, 2017.

SB 4 RECORDS EXPUNGEMENT (KUNZE, OELSLAGER)

The bill allows a person who is found not guilty of an offense or who is the defendant named in a dismissed criminal charge to apply for a court order to expunge the person's official records in the case if the charge or not guilty finding was the result of the applicant having been a human trafficking victim, unless the records pertain to an aggravated murder, murder, or rape conviction. If the application for expungement is for a first or second degree felony the court must consider certain factors and requires the court find that the interest in having the record expunged are not outweighed by legitimate government needs to maintain the records. The bill also allows a person convicted of certain prostitution-related offenses to apply for the expungement if the person's participation was a result of having been a human trafficking victim. Finally, the bill allow interventions in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill passed the Senate on May 17, 2017 and has its first hearing in the House Criminal Justice Committee on June 6, 2017.

SB7 PROTECTION ORDER VIOLATIONS (BACON, MANNING)

The bill specifies that service of a protection order or consent agreement upon a person is not necessary for the person to be convicted of the offense of violating a protection order if the person was shown the order or a copy of it or a judge, magistrate, or law enforcement officer informed the person of the order, and it is proved that the person recklessly violated the order's terms. The bill passed the House Criminal Justice Committee on May 16, 2017.

SB 32 CRIMINAL TRIAL PROCESS (EKLUND)

The bill provides a prosecutor an additional fourteen days to commence a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required amount of time and to authorize the court to release the person from detention in connection with those charges pending trial. The bill was passed by the Senate on May 3, 2017 and has its first hearing in the House Criminal Justice Committee on June 6, 2017.

Court Decisions Regarding Sentencing Supreme Court of Ohio

***State v. Aalim*, Slip Opinion No. 2017-Ohio-2956.**

The Supreme Court of Ohio reversed its earlier opinion finding that the constitutional rights of older juveniles charged with certain serious crimes are not violated when they are automatically sent to trial in adult court. The Court found that Article IV, Section 4(B) of the Ohio Constitution grants the General Assembly exclusive authority to define the jurisdiction of common pleas courts, including juvenile courts. The effect of the prior *Aalim* ruling was to usurp that authority by giving juvenile judges veto power over the legislature's decision to grant common pleas courts' jurisdiction over a limited class of juvenile offenders.

***State v. Grimes*, Slip Opinion No. 2017-Ohio-2927.**

The Supreme Court of Ohio ruled that when a judge imposes post release control on an offender, the judge is required to provide all of the statutorily required notifications at a sentencing hearing. But the court's follow-up written entry of the sentence can be a summary and does not have to quote the judge verbatim. The Court, in its opinion, indicated that when a judge fully explains during sentencing the statutory post release control notification to an offender the subsequent written entry only needs to contain three essential points: notify an offender who is subject to post release control if the supervision is mandatory or discretionary; the duration of the post release control term; and a statement sufficient to notify a reader that post release control will be administered according to R.C. 2967.28, and violators may be subject to the consequences set forth in that section.

***State v. Mutter*, Slip Opinion No. 2017-Ohio-2928.**

Applying a test developed by the United States Supreme Court in *Blockburger v. United States*, 284 U.S. 299 (1932), the Supreme Court of Ohio found that the convictions for misdemeanor aggravated menacing barred further prosecution for felony ethnic intimidation when the charges arose from the same incident. The double jeopardy clause protects against three abuses: 1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. Under the *Blockburger* test, a lesser included offense is considered to be the same as the greater offense if the lesser offense had no additional element that required additional proof for a conviction. The proof required to charge and convict a person with ethnic intimidation is enough to charge and convict someone of aggravated menacing. As a result, in this case, ethnic intimidation and aggravated menacing are the same crime when considering double jeopardy.

***State v. Polk*, Slip Opinion No. 2017-Ohio-2735.**

The Supreme Court of Ohio found that the constitutional rights of a student who had bullets in his book bag were not violated when a high school used this discovery to search another of the student's bags and found a handgun. The opinion noted that schools have a compelling interest in protecting students from harm, making it reasonable for the school to conduct a warrantless search of property, like a book bag, to identify the owner and ensure the contents were not dangerous. In addition, the Court noted, students have a diminished expectation of privacy because of schools' obligation to keep them safe and this requires an easing of the normal limitations on searches, such as the need for probable cause. A student's privacy is further diminished when he or she leaves a personal item unattended at school, making a warrantless search reasonable.

Ohio Criminal Sentencing Commission Members

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Kathleen Hamm, *Public Defender*

State Representative – *appointment pending*

County Prosecutor (Juvenile) – *appointment pending*

County Commissioner – *appointment pending*

Law Enforcement – *appointment pending*

*the Commission is assisted by its Advisory Committee, a [complete list is here](#).

Working Committees of the Commission

Sentencing & Criminal Justice Committee priorities include the study of criminal penalties and sentencing statutes and patterns in Ohio, recommending statutory change and reviewing national developments and trends on matters of sentencing. The committee is also poised to respond and make recommendations regarding more broad areas including probation, risk assessment, release programs, specialized dockets, community corrections and building, as well as improving, relationships and coordinating the work of the Commission with other justice partners – both state and federal.

Juvenile Justice Committee priorities include the review of criminal penalties and sentencing statutes and patterns in Ohio and recommending strategies to combat juvenile delinquency and recidivism.

Data Collection and Sharing Committee primary goals are to develop, coordinate and identify ways to collect and promote methods for sharing appropriate data and information with justice system partners.

Each committee consists of a chair, a vice chair and individual members. The committee chairs are Commission Members or an Advisory Committee member. Committee membership may include individuals outside of the Sentencing Commission and its Advisory Committee that have a vested interest in the Commission's work.

All committees generally meet the third Thursday of each month. For a full list of members, work to date and future meeting information, please visit <http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp> or email Sara Andrews at sara.andrews@sc.ohio.gov.

2017 Full Commission Meeting Dates

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 14, 2017 at the Vern Riffe Center**

All meetings are held beginning at 10:00 a.m. at the Thomas J. Moyer Ohio Judicial Center, 65 South Front Street, Columbus, Ohio 43215.

Working committees meet between Full Commission meeting dates.

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