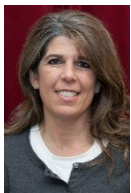


Legislative & Judicial Brief

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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HB96 SEXUAL IMPOSITION – REPEAT OFFENDERS (HUGHES)

The bill increases the penalty for sexual imposition when the offender previously was convicted or pled guilty three or more times to certain specified sex offenses and repeals the corroboration requirement for a sexual imposition conviction. The bill was passed by the House on February 28, 2018, 97-0. The bill had three hearings in the Senate Judiciary Committee and was passed by the Senate on December 13, 2018, 31-0. The Governor signed the bill on December 21, 2018.

HB38 CRIMINAL OFFENSES – VIOLENCE (GREENSPAN)

The bill expands the offense of aggravated murder to include purposely causing the death of a first responder or military member whom the offender knows is a first responder and it is the offender's specific purpose to kill a person in the capacity. It also includes purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is such an officer to also apply when the victim is a federal law enforcement officer or a person who previously served in either capacity. For either of these categories, the bill requires a mandatory prison term of three (3) to 11 years for an attempt to commit aggravated murder. The bill passed the House of Representatives on May 17, 2017, 96-0 and referred to the Senate Judiciary Committee on May 24, 2017. At the sixth hearing on December 3, 2018 the bill was reported out as amended and passed by the Senate 31-0. On December 6, 2018, the House concurred 80-0. The bill was signed by the Governor on December 19, 2018, effective in 90 days.

Legislation Impacting Sentencing *****SIGNED BY THE GOVERNOR*****

SB20 PERMANENTLY DISABLING CRIME SPECIFICATION (HACKETT)

The bill requires an additional prison term of 6 years for an offender who is convicted of felonious assault if the offender is also convicted of a specification that the victim suffered permanent disabling harm and that the victim was under 10 years of age at the time of the offense. The bill was voted out of the House on November 28, 2018, 89-1. On December 5, 2018, the Senate concurred, 31-0 and the bill was signed by the Governor on December 19, 2018, effective in 90 days.

SB201 REAGAN TOKES LAW-INCARCERATION (BACON, O'BRIEN)

The bill creates indeterminate sentences for F1s and F2s, with a presumptive minimum term. The bill allows DRC to recommend both early release, less than the minimum term, and delay release according to the maximum sentence. Post Release Control remains unchanged and operates as it does currently for those that serve the full, indeterminate sentence. As amended, the bill also contains **HB607 (WIGGAM)** (removing requirement that a municipal judge sit in both Orrville and Wooster) and parts of **HB68 (ANIELSKI)**, which defines "impaired" and includes "impaired" persons – not just minors – as potential victims of pandering obscenity, pandering sexually oriented matter, and illegal use of a person in a nudity-oriented material or performance. The bill also included **SB323 (KUNZE)** and **HB719 (PELANDA)** that requires the Attorney General to create and maintain a statewide tracking system for the processing of sexual assault examination kits. The bill was introduced on September 27, 2017 and the act's provisions are to be named the Reagan Tokes Law. There was a part 2 Senate Bill (SB202) and House companion bill **HB365 (HUGHES, BOGGS)**. The bill was amended on April 11, 2018, passed by the Senate, 33-0. On May 15, 2018, the bill was referred to the House Criminal Justice Committee and had a first hearing on November 13, 2018. The bill was passed by the House; Amended on the Floor on December 13, 2018, 86-0 and signed by the Governor on December 21, 2018.

SB231 SIERAH'S LAW-VIOLENT OFFENDERS (GARDNER)

The bill requires the Ohio Attorney General Bureau of Criminal Investigation to establish a Violent Offender Database (VOD), requires persons convicted of certain violent offenses to enroll in the database and names the provisions of the act "Sierah's Law". The bill also increases the current membership of the Ex-Offender Reentry Coalition from 17 to 21, adding four members of the General Assembly, specifying two of the four will be the chairpersons of the standing committees that primarily address criminal justice matters, modifies the duties of the Coalition and eliminates its repeal. The bill requires halfway houses to use the single validated risk assessment tool selected by the Department of Rehabilitation and Correction for adult offenders and it provides that that the notice of release from prison of specified offenders given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminates the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders. The bill was considered by the Senate on April 11, 2018, 31-2. On May 15, 2018, the bill was referred to the House Criminal Justice Committee and had a first hearing on November 13, 2018. On December 5, 2018, the bill was passed by the House 92-0 and on December 6, 2018 the Senate concurred 24-3. The bill was signed by the Governor on December 19, 2018, effective in 90 days.

SB214 FEMALE GENITAL MUTILATION (LEHNER, TERHAR)

The bill prohibits female genital mutilation, including transporting a minor to a location for this purpose. The bill was introduced October 5, 2017, reported out of the Senate Judiciary Committee, as amended, on November 29, 2018, and passed by the Senate on December 5, 2018, 31-0. The bill was reported out of the House Criminal Justice Committee, as amended, on December 12, 2018, Amended on the Floor and passed by the House on December 13, 2018, 86-0 – emergency clause failed 2-84. The Senate concurred on December 19, 2018, 32-0 and the Governor signed the bill January 4, 2019, effective 90 days.

Legislation Impacting Sentencing

SIGNED BY THE GOVERNOR continued

HB 92 PUBLIC INDECENCY CLASSIFICATION (SCHAFFER)

The bill requires an offender who knowingly commits the offense of public indecency involving exposure of private parts likely to be viewed by minors and for the purpose of sexual arousal or gratification to register as a Tier I sex offender/child-victim offender. The bill was introduced on February 27, 2017 and was reported out of committee at the fifth hearing on May 22, 2018. The House passed the bill on June 27, 2018, 92-0. The bill was referred to the Senate Judiciary Committee on November 14, 2018 and reported out of Committee on December 4, 2018. The Senate passed the bill on December 13, 2018, 31-0 and the Governor signed the bill on December 19, 2018, effective in 90 days.

HB411 WRONGFUL IMPRISONMENT LAW (SEITZ, SYKES)

The bill modifies the law governing recovery for wrongful imprisonment. The bill aims to correct the interpretation of this statute in the *Mansaray* case (138 Ohio St.3d 277), and requires a *Brady* (373 U.S. 83 (1963)) violation to prove wrongful imprisonment on the basis of a procedural error. The bill was amended to re-define a “violation sanction center” as a prison rather than an “alternative residential facility”; a violation sanction center is intended for offenders to serve Post Release Control sanctions as well as offenders arrested by the Adult Parole Authority awaiting an administrative hearing. On June 7, 2018, the bill was passed by the House, 77-11. It had five hearings in the Senate Judiciary Committee and on December 12, 2018, was passed by the Senate 31-0 and then signed by the Governor on December 21, 2018.

HB497 SEXUAL IMAGE DISSEMINATION – REVENGE PORN (ROGERS, MANNING)

The bill prohibits the nonconsensual dissemination of private sexual images and requires that certain property involved in the offense be criminally forfeited. On June 27, 2018, the bill passed in the House, 93-0. The bill had four hearings in the Senate Judiciary Committee, was amended on the Floor and passed by the Senate on December 13, 2018, 31-0. The bill was signed by the Governor on December 21, 2018. A similar bill **SB251 (SCHIAVONI)** was introduced on January 25, 2018 and had three hearings in the Senate Judiciary Committee before being reported out as amended on December 5, 2018. On December 12, 2018, the bill was passed by the Senate, 31-0, but did not survive the 132nd General Assembly.

Legislation Impacting Sentencing

UPDATES

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, 32-0. Since then, the bill had two hearings in the House Criminal Justice Committee, but did not survive the 132nd General Assembly.

SB171 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)

The bill increases the penalty that applies to the offense of violating a protection order if the offender had previously been convicted of a protection order violation aggravated menacing or menacing. The bill also requires probation agencies (instead of law enforcement) to oversee electronic monitoring of those convicted of violating juvenile protection orders or menacing by stalking protection orders. On May 16, 2018, the bill was passed by the Senate, 32-0. The bill was amended at its second and fourth hearings in the House Criminal Justice Committee, did not survive the 132nd General Assembly.

ICYMI.....

HOUSE SPEAKER

On Monday January 7, 2019, the Ohio House elected Representative Larry Householder as the next speaker. Householder had a total of 52 votes: 26 votes from Republicans and 26 votes from Democrats.

On Tuesday January 8, 2019, Speaker Householder appointed Jonathon McGee as chief of staff and majority legal counsel for the Ohio House of Representatives.

SENATE PRESIDENT

On Monday January 7, 2019, the Ohio Senate elected Senator Larry Obhof for a second term as Senate President.

GOVERNOR-ELECT

Governor-elect DeWine has a website that includes up to date information on cabinet appointments, media releases and information about the incoming Administration. The site can be found here:

<https://govelect.ohio.gov/wps/portal/gov/govelect/governor-elect>

Legislation Impacting Sentencing

UPDATES (continued)

SB207 FELONIOUS ASSAULT-OFFENSE EXPANSION (KUNZE)

The bill expands the offense of felonious assault to include knowingly causing or attempting to cause physical harm to another person by means of strangulation or suffocation. The bill was introduced on October 3, 2017 and referred to the Senate Judiciary Committee. The bill was reported out of Committee as amended at the fifth hearing on November 27, 2018. The bill was passed by the Senate on November 28, 2018, 30-0, but did not survive the 132nd General Assembly. A similar bill, **HB561 (BOGGS, LANESE)** was introduced March 19, 2018, and had three hearings in the House Criminal Justice Committee before being reported out on December 4, 2018, but also did not survive the 132nd General Assembly.

SB339 STATUTE OF LIMITATIONS – RAPE (SCHIAVONI)

The bill eliminates the period of limitations for the criminal prosecution of a person for rape, conspiracy to commit rape, complicity in committing rape, or attempted rape and provides that there is no period of limitations for a civil action brought by a victim of conduct that would constitute rape, conspiracy to commit rape, complicity in committing rape, or attempted rape. The bill was introduced on November 28, 2018 and referred to the Senate Judiciary Committee on December 5, 2018, but did not survive the 132nd General Assembly. A similar bill **HB627 (SMITH, GALONSKI)** was introduced May 1, 2018, and had one hearing in the House Criminal Justice Committee on December 11, 2018, but also did not survive the 132nd General Assembly.

SB345 COUNTY COSTS IN CAPITAL CASES (PETERSON)

The bill was introduced on December 10, 2018 and allows the Controlling Board to transfer money to the Attorney General and State Public Defender to defray county costs associated with certain capital cases. See also **HB781 (WILKIN)**. The bills did not survive the 132nd General Assembly.

SB268 THEFT IN OFFICE PENALTIES (WILSON)

The bill establishes first and second degree felony offense levels (current law limits the offense to a third degree felony) for theft in office based on the amount of property or services stolen. The bill also allows for certain audit costs of the entity that suffered the loss involved in the offense to be included an order for restitution. The bill also requires certain convention and visitors' bureaus to make all meeting minutes, vendor payment information and financial information available for inspection by the public; permits intrastate equity crowdfunding under certain circumstances; provides for a hardship exemption from the requirement that financial statements filed under the Securities Law be audited; replaces expungement with sealing of ex parte protection orders and records under certain circumstances; and clarifies the appellate process for the court's refusal to grant certain protection orders. The bill was introduced on March 1, 2018, had four hearings in the Senate Government Oversight and Reform Committee and was passed by the Senate on May 16, 2018, 32-0. The bill had four hearings in the House Government Accountability and Oversight Committee and was reported out as amended on December 13, 2018, and passed by the House as Amended on the Floor, 86-0. The bill was informally passed on December 19, 2018, December 27, 2018 and December 31, 2018, but did not survive the 132nd General Assembly.

HB 81 DEATH SENTENCE – MENTAL ILLNESS (SEITZ, ANTONIO)

The bill, which is a reintroduction of legislation from the last General Assembly, provides that a person convicted of aggravated murder who shows that they had a serious mental illness at the time of committing the offense cannot be sentenced to death for the offense and provides a mechanism for resentencing to a life sentence a person previously sentenced to death who proves that they had a serious mental illness at the time of committing the offense. This bill was reported out of the House Criminal Justice Committee on December 4, 2018, after six hearings. It was informally passed December 12, 2018, and December 13, 2018, and re-referred to Committee on December 17, 2018. The bill did not survive the 132nd General Assembly.

Legislation Impacting Sentencing

UPDATES (continued)

HB355 SEXTING UNDER 21 (HILL, REZABEK)

The bill generally prohibits sexting by a person 19 years of age and under but allows diversion from penalty. The bill requires every court in Ohio to create a "sexting educational diversion program" for Ohioans under 21 convicted of sending sexually explicit material featuring minors, as long as it is a first conviction, there is not more than a 5-year difference in ages between offender and person portrayed in the material, and there was no exchange of money or other item of value. The bill also creates several exceptions, including for people with explicit photos of themselves or their spouses (so long as they don't distribute the photos) and those who receive unsolicited photos and immediately delete them. The bill was amended at the first hearing on February 13, 2018 in the House Criminal Justice Committee and was reported out of committee on May 22, 2018. The House passed the bill on June 27, 2018, 94-0. The bill had two hearings in the Senate Judiciary Committee, the second on December 3, 2018, but the bill did not survive the 132nd General Assembly.

HB394 MANDATORY JUVENILE BINDOVERS (REZABEK)

The bill proposes to eliminate mandatory and reverse bindovers except for those charged with aggravated murder and the child was age 16 or 17 at the time of the act charged, and modifies the procedures for discretionary bindovers, of an alleged juvenile offender from a juvenile court to a criminal court; revises the procedures for determining the delinquent child confinement credit; revises certain delinquent child financial sanction dispositions and procedures and establishes a separate restitution disposition; and provides special parole eligibility dates for persons with an indefinite or life sentence imposed for an offense other than aggravated murder or another crime involving the purposeful killing of multiple persons committed when the person was under age 18 and for those offenders that receive or received a definite sentence of more than 18 years for an offense committed when the offender was under age 18 and provides for special Parole Board procedures in those cases. On May 15, 2018, at the third hearing in the House Criminal Justice Committee a substitute bill (-3) was accepted. On May 22, 2018 at the fourth hearing the bill was reported out of committee. The bill did not survive the 132nd General Assembly.

HB461 DELINQUENCY ABEYANCE-CHILD TRAFFICKING (FEDOR, GALONSKI)

The bill requires a juvenile court to hold a delinquency complaint in abeyance if the court has reason to believe that the act charged might be prostitution related or that the child might be a victim of human trafficking. The bill also provides that the same elements that apply for the offense of trafficking in persons under the age of sixteen also apply to a victim who is age sixteen or seventeen. The bill had five hearings in the House Criminal Justice Committee and was reported out on December 11, 2018. On December 13, 2018, the bill was passed by the House, 83-3 but, did not survive the 132nd General Assembly.

Legislation Impacting Sentencing

UPDATES (continued)

HB778 INMATE COMPETENCY EVALUATIONS (GAVARONE)

The bill was introduced on November 28, 2018. The bill had a first hearing in the House Criminal Justice Committee on December 11, 2018. The bill prohibits municipal courts from utilizing state hospitals to restore defendants to competency in non-violent misdemeanor cases. The bill did not survive the 132nd General Assembly.

HB782 OVI SEALING OF CHARGES (ANTANI)

The bill was introduced on December 6, 2018 and allows for the sealing of charges dismissed through intervention in lieu of conviction when those charges are connected to a conviction for operating a vehicle under the influence. The bill did not survive the 132nd General Assembly.

SB341 EXPRESS INTENT – DRUG SENTENCING REFORM (OBHOF, EKLUND)

The bill was introduced December 3, 2018. The bill expresses, in uncodified language, the intent of the General Assembly to develop and enact legislation to reform Ohio's drug sentencing laws. In accompanying comments to the press, the Senate President has said a drug reform bill or bills will be introduced next year, within the first group of 10 bills to be introduced in the 133rd General Assembly.

State v. Cupp, SLIP OPINION No. 2018-OHIO-5211

Decided December 27, 2018. The defendant was detained on a pretrial bond for a rape case at the same time he was serving a jail sentence for probation violation on an unrelated domestic violence conviction. The Court held that as the pretrial case was not the cause of the probation violation the defendant was not entitled to jail time credit for the number of days he was confined for that violation.

State v. Bishop, SLIP OPINION No. 2018-OHIO-5132

Decided December 21, 2018. The Court held that when a defendant currently on postrelease control is entering a guilty plea on a new felony, the trial court must inform that defendant during the Criminal Rule 11 colloquy that it is permitted by statute to terminate their existing postrelease control and to sentence the defendant to a consecutive term of imprisonment for violating postrelease control by committing a new felony.

State v. Braden, SLIP OPINION No. 2018-OHIO-5079

Decided December 19, 2018. The Court held that the provisions of R.C. 2947.23(C) allowing a trial court to change orders with regard to court costs only applies to cases sentenced after the statutes effective date of March 22, 2013. Trial courts lack jurisdiction to alter court cost imposition in sentences imposed prior to that effective date.

Girard v. Giordano, SLIP OPINION No. 2018-OHIO-5024

Decided December 18, 2018. Defendant plead no contest to a misdemeanor charge and the trial court found defendant guilty without an explanation of circumstances. That conviction was reversed by the court of appeals who also held that jeopardy had attached prohibiting further prosecution. The Court held that jeopardy did not attach under a circumstance where a trial court fails to fulfill the explanation of circumstances requirement.

State v. Apanovitch, SLIP OPINION No. 2018-OHIO-4744

Decided November 29, 2018. Defendant filed a fourth post-conviction relief petition based on a DNA testing claim. The filing occurred well outside the statutory deadlines for filing such a petition. The Court held that the trial court lacked subject matter jurisdiction to hear the post-conviction petition, as the circumstances of the case did not fall into one of the specific avenues allowing for untimely and/or successive appeals provided by statute.

***National Association of
Sentencing Commissions
(NASC)
Call for Presentations***

The NASC Executive Committee is pleased to announce that the Virginia Criminal Sentencing Commission will host the 2019 NASC Conference.

The Conference is the only national conference with a focus on sentencing and its related issues. It provides an opportunity to network and share ideas, experiences, and expertise.

As the movement to reform the criminal justice system gains momentum at the local, state, and national level, the efforts to reform the anachronistic “tough on crime” strategy are stronger than ever. The First Step Act passed with broad bipartisan support only underscores this new political reality. Yet some would argue that the recent efforts are insufficient to the overall challenges of mass incarceration.

The 2019 conference will focus on the evolution of the sentencing and criminal justice reforms. The programs will showcase research and policies that will help justice practitioners, researchers and policy makers chart a productive path forward.

Please submit a short paragraph describing the session (including session type, i.e. presentation, panel, roundtable, workshop, etc.) and/or any proposed or desired speakers. Please email to Admin@TheNasc.org by February 8, 2019.

Members**CHAIR****Maureen O'Connor**, *Chief Justice***VICE-CHAIR****Nick Selvaggio**, *Common Pleas Court Judge***John Eklund**, *State Senator***Cecil Thomas**, *State Senator***William Seitz**, *State Representative***Kristin Boggs**, *State Representative***Thomas Marcelain**, *Common Pleas Court Judge***Robert DeLamatre**, *Juvenile Court Judge***Gary Dumm**, *Municipal Court Judge***Carl DiFranco**, *Municipal Court Judge***W. Scott Gwin**, *Appellate Court Judge***Kenneth Spanagel**, *Municipal Court Judge***Steve McIntosh**, *Common Pleas Court Judge***Terri Jamison**, *Juvenile Court Judge***Robert Fragale**, *Juvenile Court Judge***Charles "Chip" McConville**, *County Prosecutor***Lara Baker-Morrish**, *City of Columbus, City Solicitor General***Larry Sims**, *Sheriff***Aaron Montz**, *Mayor***Col. Paul Pride**, *Ohio State Highway Patrol***Harvey Reed**,*Director, Department of Youth Services***Tim Young**, *State Public Defender***Stuart Hudson**, *Director, Department of Rehabilitation and Correction***Chrystal Pounds-Alexander**,
*Victim Representative***Paula Brown**, *Ohio State Bar Association***Gwen Howe-Gebers**– *County Prosecutor (Juvenile)***David Painter** – *County Commissioner***Chief Brandon Standley** – *Law Enforcement***Lt. Charles Chandler** – *Peace Officer***Kathleen Hamm**, *Defense Attorney***Brooke Burns** – *Public Defender*

*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 Workgroup 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.

2019 Full Commission Meeting Dates**2019 Meeting Schedule**

*Working committees meet between Full Commission meeting dates.

Unless otherwise noted, 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.

Special Thanks to contributor:**Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference****Questions, Comments, Suggestions? Contact:** sara.andrews@sc.ohio.gov**Contact Us:**

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