



Legislative & Judicial Brief

A Message from Sara Andrews, Director



With this edition we'll be back to our more routine format, including both legislative and court cases impacting sentencing. Remember to regularly check our [website](#) for updated resources and to keep up to date with our work. Notably, the [Ad Hoc Committee on Bail and Pre-Trial Services Reform](#) has completed its report and recommendations. The report will be posted on the website March 16, 2017 and we invite public comment through May 15, 2017.

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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Legislation Impacting Sentencing



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 introduced on February 22, 2017. A companion bill in the Senate (SB 40) had its first hearing in the Senate Judiciary Committee on February 21, 2017.

HB 1 DATING VIOLENCE PROTECTION ORDERS (SYKES, MANNING)

The bill, a reintroduction of HB 392 of the 131st General Assembly, authorizes the issuance of dating violence protection orders with respect to conduct directed at a petitioner alleging dating violence, provides access to domestic violence shelters for victims of dating violence, and requires the Attorney General's victim's bill of rights pamphlet to include a notice that a petitioner alleging dating violence has the right to petition for a civil protection order. The bill was passed by the House on February 28, 2017.

HB 4 COCAINE AMOUNTS DETERMINATION (CUPP, ROGERS)

The bill provides that in determining the amount of cocaine for trafficking and possession offenses, it also includes a compound, mixture, preparation, or substance containing cocaine. The bill passed the House and was referred to the Senate Judiciary Committee on February 22, 2017. There is also a companion Senate Bill (SB 42 – Eklund) which had its first hearing on February 21, 2017.

HB 6 RECORDS PUBLICATION FEES (BARNES, JR.)

The bill, a reintroduction of HB 172 from the 131st General Assembly, prohibits a person who publishes or disseminates criminal record information from soliciting or accepting a fee to remove, correct, modify, or refrain from publishing or otherwise disseminating the information provides criminal and civil remedies for a violation of the prohibition. The bill had its second hearing on February 21, 2017.

HB 19 ARSON OFFENSE DEFINITION (BLESSING III, LANDIS)

The bill includes recklessly causing, by means of fire or explosion, physical harm to the offender's or another person's motor vehicle, house, building, or other structure, or to any other property of another person, while manufacturing or attempting to manufacture a controlled substance, as a violation of the offense of arson. The bill had its first hearing on February 14, 2017.

HB 30 PERMANENTLY DISABLING CRIME SPECIFICATION (KOEHLER)

The bill, which is a companion to SB 20 (also in this edition) requires an additional prison term of 3 to 8 years for an offender who is convicted of or pleads guilty to a felony offense of violence if the offender is convicted of or pleads guilty to a specification that the victim suffered permanent disabling harm and that the victim was under 6 years of age at the time of the offense. The bill had its second hearing on February 21, 2017.

HB 38 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 had its first hearing on February 21, 2017.

HB 56 EXPUNGEMENT-HUMAN TRAFFICKING (DEVER, GAVARONE)

The bill permits a person who is found not guilty or is the defendant in a dismissed case to apply for an expungement of the person's records in the case if the complaint, indictment, or finding of not guilty resulted from the applicant having been a victim of human trafficking, permits a person convicted of certain prostitution-related offenses to apply for the if the person's participation in the offense was a result of having been a victim of human trafficking, and authorizes intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill was referred to the House Criminal Justice Committee on February 21, 2017.

HB 63 DISFIGUREMENT SPECIFICATION (HUGHES)

Nicknamed Judy's Law, the bill requires an additional prison term for felonious assault of 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20 years if the offender also is convicted of a specification that charges that the harm caused by the violation resulted in a permanent, serious disfigurement or substantial incapacity or that the offender used an accelerant in committing the violation. The bill had his first hearing on February 28, 2017.

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.

HB 95 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 reenacts provisions that specified that certain electronic wireless communications device violations were allied offenses of similar import that were found unconstitutional in *Linndale v. Ohio*, 2014-Ohio-4024, by the Tenth District Court of Appeals. The bill was introduced on February 27, 2017.

HB 96 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 introduced on February 27, 2017.

SB 1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking violations, drug possession violations, and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound. The bill had its third hearing on February 28, 2017.

SB 3 (BALDERSON, BEAGLE)

Workforce Development, introduced 1.31.17. The bill contains several provisions aimed at improving the CQE process. Among other things, the bill permits an out-of-state resident with an Ohio conviction record to apply for a CQE through the court of common pleas in any county where a conviction was entered; the bill permits DRC to alter the criteria for a CQE so an individual can apply earlier than is currently possible; and the bill removes the requirement that an applicant for a CQE list the specific collateral sanctions from which the individual is seeking relief, and instead requires the applicant to provide a general statement as to why the individual has applied.

SB 7 PROTECTION ORDER VIOLATIONS (BACON, MANNING)

The bill, which is a reintroduction of legislation from the last General Assembly provides 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 had actual notice of the order or agreement and the person recklessly violated its terms. The bill was referred to the Senate Ways and Means Committee. The bill had a second hearing on February 28, 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. It also allows a person convicted of certain prostitution-related offenses to apply for the expungement of the conviction record of any offense, other than a specified disqualifying offense, the person's participation in which was a result of having been a human trafficking victim, and allows intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill had its second hearing on February 14, 2017.

SB 66 SENTENCING MODIFICATIONS (EKLUND)

To modify criminal sentencing and corrections law by including rehabilitation as a purpose of felony sentencing, removing the one-year minimum for presumptive fourth or fifth degree felony community control sanctions, modifying sanctions for a violation of a community control condition, modifying the manner of calculating confinement credits, modifying eligibility criteria and procedures for granting intervention in lieu of conviction, making offenders convicted of certain multiple fourth or fifth degree felonies eligible for conviction record sealing, revising procedures for the Adult Parole Authority to grant a final release or terminate post-release control, and modifying the criteria for considering a prison term sanction for a post-release control violation. The bill was referred to the Senate Judiciary Committee on February 22, 2017.

**SB 64 JUVENILE MANDATORY BINDOVERS
(THOMAS)**

The bill, also a product of the Ohio Criminal Sentencing Commission, eliminates mandatory bindovers and reverse bindovers and modifies the procedures regarding discretionary bindover of an alleged juvenile court to a criminal court. The bill was referred to the Senate Judiciary Committee on February 22, 2017.

SB 12 DEATH PENALTY IMPOSITION (TAVARES)

The bill would prohibit execution of a defendant if the defendant's race was the basis of the decision to seek or impose the death penalty and permits a defendant to file a motion alleging that the defendant's race was the basis of the decision to seek or impose the death penalty. The bill had its first hearing on February 8, 2017.

SB 13 RECORDING LAW ENFORCEMENT (TAVARES)

The bill would grant a person the right to lawfully record any incident involving a law enforcement officer and impose civil liability upon the state or a local law enforcement agency if a law enforcement officer employed by the state or local law enforcement agency interferes with the recording of the incident, destroys the recording, seizes the recording without a warrant or subpoena or the person's consent, or retaliates against the person who recorded the incident. The bill was referred to the Senate Local Government, Public Safety and Veterans Affairs Committee on February 1, 2017.

SB 19 PROSECUTING ATTORNEY RESTRICTIONS (THOMAS)

The bill would prohibit prosecuting attorneys of counties with a population of 400,001 or more from engaging in the private practice of law. The bill had its first hearing in the Senate Government Oversight and Reform Committee on February 22, 2017.

SB 20 PERMANENTLY DISABLING CRIME SPECIFICATION (HACKETT)

The bill would create a specification that requires an additional prison term of 3 to 8 years for an offender who is convicted of or pleads guilty to a felony offense of violence if the offender is convicted of or pleads guilty to a specification that the victim suffered permanent disabling harm. The bill had its third hearing on February 21, 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 authorizes the court to release the person from detention in connection with those charges pending trial. The bill had its second hearing in the Senate Judiciary Committee on February 21, 2017.

SB 63 DELINQUENT CHILD CONFINEMENT CREDIT (THOMAS)

The bill, which reflects language approved by the Ohio Criminal Sentencing Commission, will revise the procedures for determining the delinquent child confinement credit. The bill was referred to the Senate Judiciary Committee on February 22, 2017.

SB 42 Drug Offense Penalties (EKLUND) The bill was introduced February 8, 2017 and clarifies that, in determining drug amounts, the entire mixture is included with the weight of the drug itself (in response to *State v. Gonzales*, Slip Opinion No. 2016-Ohio-8319). Any detectable amount of a drug is sufficient to prove the presence of that drug.

SB 67 VIOLENT OFFENDER REGISTRY (GARDNER, HITE)

Nicknamed "Sierah's Law", the bill requires the Attorney General to establish a violent offender registry. The bill had its first hearing on February 28, 2017.

Court Decisions Regarding Sentencing

***State v. Morgan*, Case No. 2015-0924**

This case presents the Supreme Court of Ohio with two questions: 1) Does a trial court's failure to appoint a guardian ad litem (GAL) for a teen accused of several crimes, whose parents died prior to his transfer hearing, constitute an error that would nullify the transfer; and 2) Does the child need to show that the juvenile court's failure to appoint a GAL prejudiced his case in order to win a new proceeding? The case was argued on February 8, 2017.

***State v. Orr*, Case No. 2015-1847**

In this case the Supreme Court of Ohio was asked to determine if laws regarding a person alleged to have committed a crime as a juvenile, apprehended after their 21st birthday, and subject to prosecution in a criminal court violate the ex post facto clause of the US Constitution and the retroactivity clause of the Ohio Constitution. In 1993, when the crime was committed by the then 13-year old defendant, state law prevented transfer of a juvenile to adult court. That law was changed in 1997 to state that a juvenile who commits an act that would be a felony if committed by an adult but who is taken into custody for the alleged offense after the age of 21 no longer is considered a "child" in relation to that act. The laws then deny juvenile courts jurisdiction in such cases and mandate that criminal prosecution instead be heard in the appropriate court with jurisdiction to handle the case if the juvenile had been an adult at the time of the alleged offense. Oral arguments were held on Thursday, February 9, 2017. Subsequently, the case was dismissed as improvidently allowed.

***State v. Rahab*, Case No. 2015-1892**

The Supreme Court of Ohio is asked to determine if a sentence is unconstitutional when a sentencing court infers that a sentence is based on a decision to go trial and doesn't make an unequivocal statement that the sentence wasn't based on the refusal to accept a plea bargain. The defendant argues that any increased sentence based on his decision to stand on his right to trial rather than plead guilty is improper and violates the right to due process. The state argues that the defendant must present clear and convincing evidence that the trial court's sentence was unconstitutional and vindictive and that the record in this case reveals the trial court based its decision on the purposes and principles of Ohio's sentencing laws. Oral arguments were held on Thursday, February 9, 2017.

***State v. Grimes*, Case No. 2016-0215**

This case asks the Supreme Court of Ohio to clarify if, in order to impose a valid post-release control, must the language in the sentencing entry advise the convict of the sanctions for violating post-release control, or can the entry simply reference the post-release control statutes in the Ohio Revised Code. Oral arguments were held on Thursday, February 9, 2017.

***State v. Aalim*, Case No. 2015-0677**

On February 22, 2017 the Supreme Court of Ohio issued a stay in Aalim (which did away with mandatory bindovers).

Upcoming Topics for the Commission

Marsy's Law – "Amendment to Ohio's Constitution that ensures equal rights for victims of crime". For more information, check here <https://marsyslaw.us/marsys-law-state-efforts/ohio/>.

Justice Reinvestment in Ohio – where are we now? We will be spending time with the Council of State Government Justice Center staff for a recap of the 2011 justice reinvestment process and the HB 86 policies enacted as well as state and local initiatives occurring since; discussing recent criminal justice system trends regionally, nationally and in Ohio; and forging the next steps in building the Commission's capacity to compile data, identify trends for Ohio to achieve greater impact from public safety policies, including opportunities to receive external support.

HB49, the FY2018-2019 operating budget. Specifically, the Department of Rehabilitation and Correction and the executive recommendation for the FY18/19 budget for community programs. By FY19, Ohio will have increased community resources by \$100.3 million, a 71 percent increase over FY11 levels.

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 proposed budget builds 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.

Ohio Criminal Sentencing Commission Members

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Municipal Court Judge

W. Scott Gwin, *Appellate Court Judge*

Kenneth Spanagel, *Municipal Court Judge*

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Robert Fragale, *Juvenile Court Judge*

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Harvey Reed,

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Tim Young, *State Public Defender*

Gary Mohr, *Director, Department of
Rehabilitation and Correction*

Chrystal Pounds-Alexander,

Victim Representative

Paula Brown,

Ohio State Bar Association

Ronald Burkitt, *Juvenile Police Officer*

Fredrick Benton Jr., *Defense Attorney*

Kathleen Hamm, *Public Defender*

County Prosecutor (Juvenile) – *appointment
pending*

County Commissioner – *appointment pending*

Law Enforcement – *appointment pending*

*the Commission is assisted by its Advisory
Committee, for a complete list contact
sara.andrews@sc.ohio.gov

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, **March 16, 2017**

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 14, 2017**

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.

Contact Us:

Ohio Criminal Sentencing Commission

65 South Front Street, 5th Floor

Columbus, Ohio 43215-3431

www.supremecourt.ohio.gov/Boards/Sentencing

Special Thanks to contributors:

Jo Ellen Cline, Esq., *Criminal Justice Counsel, Sentencing Commission*

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

Questions, Comments, Suggestions? Contact: sara.andrews@sc.ohio.gov



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