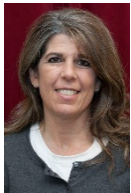


# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*We took some extra time with this year-end edition, the last several weeks of the legislative session were, in a word, active. The Commission is pleased to see several of our Bail and Pretrial Services recommendations drafted in [HB439 \(Dever, Ginter\)](#) – we look forward to working with interested parties to advance reform.*

*This is also a pivotal time for criminal sentencing in our State – knowing from where we’ve come must be considered in where we are going. Thank you to Chair Manning and members of the House Criminal Justice Committee for the request and indulgence of the [historical perspective and evolution of criminal sentencing in Ohio](#).*

*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 Recently Introduced



### Legislation Impacting Sentencing Recently Introduced

#### **HB426 SCHOOL SEXUAL CONDUCT (HAGAN)**

The bill expands the offense of sexual battery to prohibit a public or nonpublic school employee or an employee of an institution of higher education from engaging in sexual conduct with a student at the school who is at least four years younger than the employee. Current statute applies only to a teacher, administrator, coach, or person in authority and the bill would apply to all other school employees. The bill was introduced on November 21, 2017 and had a first hearing in the House Criminal Justice Committee on December 5, 2017.

#### **SB235 SEX OFFENDER REGISTRY CHANGES (EKLUND)**

The bill creates a procedure for certain tier II sex offenders convicted of unlawful sexual conduct with a minor to petition a court for reclassification or removal from the sex offender registry and to permits record sealing in those cases. To be eligible for review of registration requirements, the offender must have been between 18 and 21 at the time of the offense and not an authority figure over the other party; the other party cannot have been younger than 14; and the offender must have complied with all conditions of community control. The bill was introduced on November 27, 2017.

#### **SB244 PROMOTING PROSTITUTION PENALTIES (DOLAN, MANNING)**

The bill increases the offense of promoting prostitution to a third degree felony if the person has a prior conviction or a prior conviction of a substantially similar offense in another state or the United States or if the person also is convicted of drug trafficking; increases the offense to a second degree felony if the person has two or more prior convictions or two or more convictions of a substantially similar offense in another state or the United States and requires a mandatory prison term in any case in which the person is convicted of or pleads guilty to a firearm specification. The bill was introduced on December 18, 2017.

#### **HB405 COUNTERFEITING OFFENSE (PERALES)**

The bill creates the criminal offense of counterfeiting and based upon the value of the counterfeit involved, specifies penalties ranging from a fourth to first degree felony. The bill further provides that a person may be prosecuted for counterfeiting and related offenses, but if they involve the same conduct and the same victim, the two or more offenses must merge for conviction and sentencing as allied offenses of similar import and includes counterfeiting within the definition of "corrupt activity" under the Corrupt Activities Law. The bill was introduced on November 7, 2017 and had a second hearing in the House Criminal Justice Committee on December 12, 2017.

#### **HB411 WRONGFUL IMPRISONMENT LAW (SEITZ, SYKES)**

The bill modifies the law governing recovery for wrongful imprisonment. The bill allows an Ohio resident to file the civil action either in the court where the criminal action was initiated or in the common pleas court of the county where the person resides. Criterion describing the wrongful conviction is expanded to misdemeanor convictions, felonies or aggravated felonies covered under existing law. The bill also requires: 1.) the Court of Claims to deduct any known debts owed; 2.) a person to reimburse the state for the amount of any award in a related civil rights action that is received after the Court of Claims enters judgment in the person's favor and; 3.) a person to reimburse the state for the entire award for wrongful imprisonment if the person is later convicted of an offense that is based on any act associated with the conviction that was vacated, reversed, or dismissed on appeal and that was the basis of the person being determined wrongfully imprisoned. The bill was introduced on November 7, 2017 and had a first hearing in the House Government Accountability and Oversight Committee on December 5, 2017.

#### **HB423 MASKED INTIMIDATION MISDEMEANOR (LANG, SEITZ)**

The bill prohibits wearing a mask or disguise to purposely obstruct the law, intimidate a person performing a legal duty or prevent a person from exercising their constitutional or legal rights. The bill classifies the crime as a first degree misdemeanor. The bill was introduced on November 21, 2017 and had a first hearing in the House Criminal Justice Committee on December 12, 2017.

## Legislation Impacting Sentencing – Recently Introduced (continued)

### **HB439 RISK ASSESSMENT – BAIL SETTING (DEVER, GINTER)**

The bill requires courts to use the results of a validated risk assessment tool in bail determinations; allows nonmonetary bail to be set; requires courts to collect certain data on bail, pretrial release, and sentencing; and requires the state Criminal Sentencing Commission to create a list of validated risk assessment tools and monitor the policies and procedures of courts in setting bail and utilizing pretrial supervision services. The bill incorporates several of the recommendations advanced by the Ohio Criminal Sentencing Commission in its June 2017 report on Bail and Pretrial Services <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/bailPretrialSvcs.pdf>. The bill was introduced on December 7, 2017.

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## Legislation Impacting Sentencing – Sent to the Governor

### **SB33 LEADS DISCLOSURE (EKLUND)**

The bill allows disclosure of information from the law enforcement automated data system (LEADS) to a defendant in a traffic or criminal case and allows certain state highway patrol troopers to administer oaths and acknowledge criminal and juvenile court complaints, summonses, affidavits, and returns of court orders in matters related to their official duties. The bill also authorizes a court to continue a person on intervention in lieu of conviction if the person violates the terms and/or conditions, which mirrors a recommendation from the Ohio Criminal Sentencing Commission. The bill was sent to the Governor for signature on December 14, 2017.

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## Legislation Impacting Sentencing – Updates

### **HB1 PROTECTING DOMESTIC VIOLENCE VICTIMS (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 had its fourth hearing in the Senate Judiciary Committee on December 12, 2017.

### **HB56 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 and permits a person convicted of certain prostitution-related offense to apply for the expungement, with certain exceptions, 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. HB56 was a companion bill to SB4 and was amended to include an expanded use of the Safe Harbor Provision for trafficked juveniles. The bill had a third hearing in the House Criminal Justice Committee on December 12, 2017.

### **HB64 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 sixth hearing in the House Community and Family Advancement Committee on December 13, 2017.

### **HB68 VOYEURISM VICTIM DEFINITION (ANIELSKI)**

The bill identifies an impaired person as a potential victim of voyeurism, includes 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. A conforming amendment was accepted on November 14, 2017.

## Legislation Impacting Sentencing – Updates (continued)

### **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. A substitute bill was accepted on December 12, 2017.

### **HB137 MANDATORY REPORTING – CHILD ABUSE (KENT)**

The bill makes municipal and county peace officers mandatory reporters of child abuse or neglect and was referred to the Senate Government Oversight and Reform Committee on November 29, 2017.

### **HB141 INVOLUNTARY MANSLAUGHTER-CONTROLLED SUBSTANCE (DEVER, WIGGAM)**

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 a fourth hearing in the House Criminal Justice Committee on November 14, 2017.

### **HB228 USE OF FORCE IN SELF-DEFENSE (JOHNSON)**

The bill shifts the burden to the state to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another or defense of that person's residence. The bill expands the circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence. The bill further modifies the Concealed Handgun Licensing Law regarding a licensee's duty to keep the licensee's hands in plain sight, the penalties for illegally carrying a concealed firearm or improperly handling firearms in a motor vehicle, and the posting of warning signs regarding the possession of weapons on specified premises. A substitute bill was accepted December 13, 2017.

### **HB234 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 had a first hearing in the House Criminal Justice on November 1, 2017.

### **HB260 LIMITED DRIVING ON SUSPENDED LICENSE (BUTLER, SYKES)**

The bill requires a court to grant limited driving privileges to a person in relation to a driver's license suspension if; 1) no element of the offense for which the suspension was imposed relates to the operation or physical control of a motor vehicle or failure to comply with a requirement for the use, possession or registration of a motor vehicle; and 2) the suspension was not required to be imposed due to the involvement of a motor vehicle in the offense or the failure to obtain a valid license. - To require a court to grant limited driving privileges to a person in relation to a driver's license suspension under certain circumstances. The bill had a third hearing in the House Transportation and Public Safety Committee on December 6, 2017.

## Legislation Impacting Sentencing – Updates (continued)

### **HB276 THREATENING UTILITY WORKERS (REZABEK, GREENSPAN)**

The bill enhances the penalty for aggravated menacing if the offender knows or has reasonable cause to know the victim is a utility worker and the offender threatens the worker with a deadly weapon with intent to obstruct the operation of a utility. A substitute bill was accepted on December 12, 2017.

### **HB296 DRUG CRIME NEAR ADDICTION SERVICES (GAVARONE)**

The bill enhances the penalties for certain drug offenses when committed on the premises or within 1,000 feet of a community addiction services provider, regardless of whether the offender knows the offense is being committed within that vicinity. The bill specifies the new penalty enhancements are at the same level as existing penalty enhancements for drug offenses committed in the vicinity of a school or juvenile. The bill had a second hearing in the House Criminal Justice Committee on December 5, 2017.

### **HB354 TIFFIN-FOSTORIA ADDICTION PROGRAM (REINEKE)**

The bill allows the Tiffin-Fostoria Municipal Court to have jurisdiction concurrent with the Seneca County Common Pleas Court to operate a drug addiction recovery program. The bill was reported out of the House Criminal Justice Committee on November 28, 2017 and unanimously passed by the House on December 5, 2017. The bill was referred to the Senate Judiciary Committee on December 13, 2017.

## Legislation Impacting Sentencing – continued

### Legislation Impacting Sentencing – Updates (continued)

#### **HB394 MANDATORY JUVENILE BIDOVERS (REZABEK)**

The bill proposes to eliminate mandatory and reverse bindovers, and modify 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 provides for special Parole Board procedures in those cases. The bill had a first hearing in the House Criminal Justice Committee on November 14, 2017.

#### **SB64 JUVENILE MANDATORY BIDOVERS (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 had a second hearing in the Senate Judiciary Committee on December 12, 2017.

#### **HB365 REAGAN TOKES LAW (HUGHES, BOGGS)**

The bill provides for indefinite prison terms for first or second degree felonies and specified third degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term; generally allows the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration; allows the Department to rebut the release presumption and keep an offender in prison up to the maximum term pursuant to specified findings. The bill also requires the Department to establish a reentry program for all offenders released from prison that the Department determines placement in a halfway house or similar facility is necessary, but the offender has not been accepted by any such facility; requires the Adult Parole Authority to establish maximum work-load and case-load standards for its parole and field officers and have enough trained officers to comply with the standards. It requires that GPS monitoring used for offenders released from prison under such monitoring specify restrictions, including inclusionary zones and necessary exclusionary zones; requires the Department to establish system requirements for GPS monitoring of such offenders by the Department or third-party contract administrators; requires the Department to operate a statewide database for law enforcement use containing specified information about such offenders; and requires that third-party administrators for GPS monitoring under a new contract with the Department provide and use a law enforcement-accessible crime scene correlation program. The provisions are to be named the Reagan Tokes Act. There is companion Senate legislation, part 1 Senate Bill 201 and part 2 Senate Bill 202 (Bacon, O'Brien). The bill had its first hearing in the House Criminal Justice Committee on October 17, 2017 and a fourth hearing December 12, 2017.

#### **HB374 CHILD ENTICEMENT PROHIBITIONS (DUFFEY, CUPP)**

The bill creates additional criminal prohibitions within the offense of criminal child enticement and classifies criminal child enticement as a tier I sex offense when committed by a registered sex offender. The bill had a first hearing in the House Criminal Justice Committee on November 14, 2017.

#### **HB389 ABOLISH DEATH PENALTY (ANTONIO)**

The bill would abolish the death penalty and had a first hearing in the House Criminal Justice Committee on December 12, 2017.

#### **SB4 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. SB4 was a companion bill to HB 56 and was amended to allow expungement for all but three F1 offenses and to require an additional balancing test before the determination is made to expunge any F1 or F2. The bill had a third hearing in the House Criminal Justice Committee on December 12, 2017.

#### **SB145 DISMEMBERMENT ABORTIONS BAN (HUFFMAN)**

The bill generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion. The bill passed the Senate on June 28, 2017 and had a first hearing in the House Criminal Justice Committee on November 14, 2017.

## Legislation Impacting Sentencing – Updates (continued)

### **SB160 LICENSE REINSTATEMENT FEE ALTERNATIVE (WILLIAMS)**

The bill authorizes a municipal or county court to allow completion of a community service program in lieu of payment of driver's license reinstatement fees when the court determines that an offender cannot reasonably pay the fees. The bill was introduced on June 1, 2017 and had a third hearing in the Senate Local Government, Public Safety and Veterans Affairs Committee on November 14, 2017.

### **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 or 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 November 14, 2017 the bill was amended to include technical changes and to remove the requirement for electronic monitoring for the violation of a civil protection order.

### **SB180 FIREARM RELATED LAWS-CHANGES S (UECKER, HOTTINGER)**

The bill shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence. The bill also expands circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence; reduces certain concealed handgun offenses to minor misdemeanors in circumstances where the offender does not commit a separate offense while carrying the concealed handgun and eliminates the mandatory posting of signs that warn against the conveyance of a deadly weapon or dangerous ordnance onto specified premises. The bill had a third hearing in the Senate Judiciary Committee on December 12, 2017.

### **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 had a second hearing in the Senate Judiciary Committee on November 28, 2017.

### **SB214 FEMALE GENITAL MUTILATION PROHIBITION (LEHNER, TERHAR)**

The bill makes female genital mutilation an F5; the offense is defined as the act of mutilation or the act of intentionally transporting a minor to the place where the mutilation takes place. The bill had its first hearing in the Senate Judiciary Committee on December 12, 2017.

### **SB219 FIREARM DEVICES-PROHIBITIONS (THOMAS)**

The bill prohibits certain conduct regarding trigger cranks, bumpfire devices, and other items that accelerate a semi-automatic firearm's rate of fire but do not convert it into an automatic firearm. The bill was referred to the Senate Judiciary Committee on December 13, 2017.

## Legislation Impacting Sentencing – Updates (continued)

### **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 had a first hearing in the Senate Judiciary Committee on November 28, 2017.

## Ohio Criminal Sentencing Commission Members

### CHAIR

**Maureen O'Connor**, *Chief Justice*

### VICE-CHAIR

**Nick Selvaggio**, *Common Pleas Court Judge*

**John Eklund**, *State Senator*

**Cecil Thomas**, *State Senator*

**Jeffrey Rezabek**, *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, Chief  
Prosecutor*

**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*

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

**Chrystal Pounds-Alexander**,  
*Victim Representative*

**Paula Brown**,  
*Ohio State Bar Association*

**County Prosecutor (Juvenile) – appointment  
pending**

**County Commissioner – appointment pending**

**Law Enforcement – appointment pending**

**Juvenile Police Officer – appointment pending**

**Defense Attorney – appointment pending**

**Public Defender – 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](mailto:sara.andrews@sc.ohio.gov).

## 2018 Full Commission Meeting Dates

Thursday, **March 15, 2018** at the Vern Riffe Center

Thursday, **June 21, 2018**

Thursday, **September 20, 2018**

Thursday, **December 13, 2018** at the Vern Riffe Center

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. \*Working committees meet between Full Commission meeting dates.

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