

# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*The Ohio Criminal Sentencing Commission is pleased to unveil our first edition of The Legislative & Judicial Brief, a publication we trust you will find useful, relevant and informational. The Ohio Criminal Sentencing Commission routinely brings together judges, prosecuting and defense attorneys, behavioral health professionals, academics, corrections officials, law enforcement, victims' advocates, community corrections experts, and others with a direct interest in criminal sentencing and is well-positioned to bridge the information gap among criminal justice system partners. We seek bipartisan, meaningful, forward thinking, informed processes and outcomes through creative solutions – beyond simplifying and modernizing the Revised Code – our work is to enhance justice and ensure fair sentencing in the State of 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



## Contents

<a href="#">Legislation Impacting Sentencing</a>	<a href="#">2</a>
<a href="#">Member Profile: Hon. Thomas M. Marcelain</a>	<a href="#">2</a>
<a href="#">Relevant Rule Amendments</a>	<a href="#">3</a>
<a href="#">Court Decisions Regarding Sentencing</a>	<a href="#">3</a>
<a href="#">Recommended Legislation Advanced by the Commission</a>	<a href="#">3</a>
<a href="#">Working Committees of the Commission</a>	<a href="#">4</a>
<a href="#">Commission Roster</a>	<a href="#">4</a>



## Member Profile



Special thanks to the Honorable **Thomas M. Marcelain**, Licking County Court of Common Pleas for his leadership during calendar year 2015, serving as Vice Chair of the Ohio Criminal Sentencing Commission.

Judge Marcelain received his undergraduate degree from Ashland College, then his Juris Doctorate Degree from Temple University School of Law. Marcelain previously was a Municipal Court Judge before becoming a Common Pleas Court Judge.

Through his steady, gracious and reverent direction the Commission identified and achieved a number of priorities, revived its membership and created a solid foundation for future relevant contributions to criminal justice and public safety reform.

We are grateful he will continue to serve the Commission as a Member and give him our best regards for success as he begins his term of President of the Common Pleas Judges' Association.

## Legislation Impacting Sentencing

### HB 410 – Truancy

The bill makes several changes to truancy laws in an effort to keep kids in school. First, the habitual truant calculation will use school hours, rather than days (based on a six hour school day). Once the habitual truant threshold is met, within ten days of the qualifying absence, the student is assigned an “absence intervention team” at the school level. This team must prepare a plan to address attendance, which could include a court diversion program. If the student refuses to participate or fails to complete the program on the school level, a complaint is filed with the court. The complaint is then held in abeyance pending participation in a “diversion program.” Within 30 days of the filing of the complaint, the court develops a diversion program for the child which must include specific goals and timelines. If the child completes the program to the court’s satisfaction, the court dismisses the complaint. If the child fails to make progress toward completion of the program to the court’s satisfaction, the court can modify the program or consider the complaint.

Other changes include: prohibiting suspensions and expulsions for truancy; and including chronic truancy as a trigger for either contributing or failure to send.

### SB 184 – SORN

The bill specifies that the information provided by registrants must be accurate and that any changes need to be registered within seven days of the change. Information that must be updated includes registered addresses, notice of intent to reside, registered vehicle, email, Internet identifiers and telephone information. A failure to register accurate information or to provide an update within seven days of any change would be considered a failure to register under the bill.

### HB 388 – Ignition Interlock Devices (IIDs)

This bill was first advocated by the Coalition of Ignition Interlock Manufacturers and M.A.D.D. and has been previously introduced as 127 HB 279 (Reps. Letson and Seitz), 128 HB 78 (Reps. Hottinger and Weddington), and 130 HB 469 (Rep. Johnson). Under HB 388, for a first-time OVI offender, the court can either (1) give no driving privileges, (2) give limited driving privileges (as under current law), or (3) give unlimited privileges (at petition of offender), with use of an IID.

### SB 204 and HB 307 – Discretionary Driving Suspensions

This bill started as part of the effort to limit collateral sanctions under 2013 SB 337, but mandatory driving suspensions for drug charges were not changed because of a federal mandate. The federal law that mandates the driving suspension also provides an opt-out and in the 130th GA, SCR 27 and HCR 55, were approved by their respective chambers and the Governor issued a certificate officially opting out of the federal mandate that all drug charges must result in driving suspensions. In convictions under R.C. 2925, under SB 204 and HB 307, a judge will have the discretion to decide whether to suspend an offender’s driving license or not. Additionally, if a person has had his license mandatorily suspended prior to the passage of the bill, that person can petition the court to lift the suspension and the judge may choose to either lift or keep the suspension.

### HB 300 – Lifetime and Multiyear Driving Suspensions

This bill was proposed to legislators by a constituent whose mother had been killed by a repeat drunk driver. The bill clarifies that a Class I suspension for vehicular manslaughter begins upon release from prison (not upon conviction). HB 300 provides that, in order for OVI offenders to terminate their license suspensions with the Bureau of Motor Vehicles, they must provide documentation that the entirety of their license suspensions were served outside of prison. If an offender would like to petition to modify or terminate a lifetime suspension or a suspension of more than 15 years, that offender is eligible after 15 years if the underlying offense was a felony and after 5 years if it was a misdemeanor.

### **State v. Blankenship, Slip Opinion No. 2015-Ohio-4624**

The Court found that the sex offender registration and notification mandates for Tier 2 sex offenders do not amount to cruel and unusual punishment. The Supreme Court of Ohio had previously held that the requirements of SORN are punitive, not remedial, in nature. In this case, the Court determined that the mandates of registration would not be considered “shocking to any reasonable person”.

### **State v. Earley, Slip Opinion No. 2015-Ohio-4615**

The Supreme Court of Ohio held that a trial court may impose separate sentences on a defendant convicted of aggravated vehicular assault and operating a vehicle under the influence (OVI) when the OVI is the underlying conduct that led to the vehicular assault.

### **State v. Beeler 2015-Ohio-668**

The Fourth Appellate District Court of Ohio held that, under R.C. 2951.022, multiple municipal courts can each retain their individual authority to supervise an offender who is a concurrent supervision offender in separate courts and separate counties.

### **State v. Ruff 2015-Ohio-995**

The Supreme Court held that three factors determine whether multiple offenses were “were offenses of similar import” as defined in R.C. 2941.25: conduct, animus, and import. If the defendant’s conduct is composed of offenses involving separate victims or if the resulting harm is separate and identifiable, then two or more offenses of dissimilar import exist. A defendant can be convicted of multiple offenses if the conduct involves offenses of dissimilar import, or the offenses were committed separately, or the offenses were committed with separate animus.

## Relevant Rule Amendments

### **Sup.R. 8 – Court Appointments**

The Supreme Court has published proposed amendments to the Rules of Superintendence for the Courts of Ohio to guide local courts in making court-appointments of lawyers for indigent persons. The rule currently requires courts to make sure there’s an “equitable distribution” when it comes to appointing a lawyer. The proposed amendment clarifies and defines equitable to include a system that would “widely” and “fairly” distribute appointments from a list of pre-qualified lawyers. The court accepted public comments until December 24, 2015 and those comments are now being reviewed by a subcommittee of the Advisory Committee on Case Management. Final action on the amendments can be expected in spring 2016.

### **Sup.R. 5.01 – Use of Restraints in Juvenile Court**

The Supreme Court of Ohio has published proposed amendments to the Rules of Superintendence for the Courts of Ohio that would, if adopted, require local courts to adopt a local rule on the use of restraints on juvenile offenders. The local rule would be required to create a presumption against shackling. However, local courts could restrain juveniles on a case-by-case basis if a judge finds on the record it is necessary because the juvenile’s behavior is a threat or the juvenile is at risk of fleeing. The judge must also find that restraint is necessary because no less restrictive alternatives exist. The public comment period on the proposed amendments ended on January 7, 2015 and those comments are being reviewed by the Advisory Committee on Children & Families. Final action on the proposed amendment is expected in spring 2016.

### **Crim.R. 11 – Pleas; Negotiated Pleas in Felony Cases**

The Supreme Court has published proposed amendments to the Ohio Rules of Criminal Procedure that would require a determination by the court, on the record, that a factual basis supporting the charges exists—prior to accepting a plea agreement. The proposed amendment only applies to felony matters. The Court has reviewed public comments submitted on the proposed amendment and will file the proposed amendments with the General Assembly by January 15, 2016 pursuant to Art. IV, Sect. 5(b) of the Ohio Constitution. The Court will then publish the proposed amendment for another public comment period. Any revisions the Court makes to the proposed amendment must be filed with the General Assembly prior to May 1, 2016 and the amendment would become effective July 1, 2016.

## Legislation Recommended and Advanced by the Commission

On November 19, 2015 the full membership of the Ohio Criminal Sentencing Commission convened and favorably voted to advance two legislative proposals drafted by the Juvenile Justice Committee.

Specifically, the Commission approved amendments to ORC 2152.18 [confinement credit] to clarify the application of the statute and thereby, reduce and/or eliminate confinement credit entries brought by the Office of the Ohio Public Defender to Department of Youth Services facilities.

The second legislative proposal recommends amending 2967.13(B) [Juvenile Life Without Parole – LWOP] which was initiated in response to recent U.S. Supreme Court cases and successful legislative efforts in California and West Virginia on the topic. The Commission is awaiting bill sponsor(s) and is hopeful for introduction in Spring 2016.

*For more information on these proposals contact us at [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov) or visit*

<http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp>.

## 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*

**Dorothy Pelanda**, *State Representative*

**Hearcel Craig**, *State Representative*

**Thomas Marcelain**,  
*Common Pleas Court Judge*

**Robert DeLamatre**, *Juvenile Court Judge*

**Gary Dumm**, *Municipal Court Judge*

**Frederick "Fritz" Hany II**,  
*Municipal Court Judge*

**Sylvia Sieve Hendon**, *Appellate Court Judge*

**Kenneth Spanagel**, *Municipal Court Judge*

**Steve McIntosh**, *Common Pleas Court Judge*

**Terri Jamison**, *Juvenile Court Judge*

**Robert Fragale**, *Juvenile Court Judge*

**Derek DeVine**, *Prosecuting Attorney*

**Paul Dobson**, *County Prosecutor*

**Bob Proud**, *County Commissioner*

**Albert Rodenberg**, *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 Representative*

**Ronald Burkitt**, *Juvenile Police Officer*

**Kort Gatterdam**, *Defense Attorney*

**Kathleen Hamm**, *Public Defender*

**Jason Pappas**, *Fraternal Order of Police*

\*the Commission is assisted by its Advisory Committee, for a complete list contact [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov)

## Working Committees of the Commission

**Sentencing & Criminal Justice Committee** priorities include the study criminal penalties and sentencing statutes and patterns in Ohio, recommend statutory change and review 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 improving as well as building 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).

## 2016 Full Commission Meeting Dates

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.

Thursday, **March 17, 2016**, Room 101

Thursday, **Sept. 15, 2016**, Room 101

Thursday, **June 23, 2016**, Room 101

Thursday, **Dec. 15, 2016**, Room 101

### Contact Us:

Ohio Criminal Sentencing Commission  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

[www.supremecourt.ohio.gov/Boards/Sentencing](http://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](mailto:sara.andrews@sc.ohio.gov)



This publication was produced in collaboration with the Ohio Judicial Conference.