

Legislative & Judicial Brief

A Message from Sara Andrews, Director

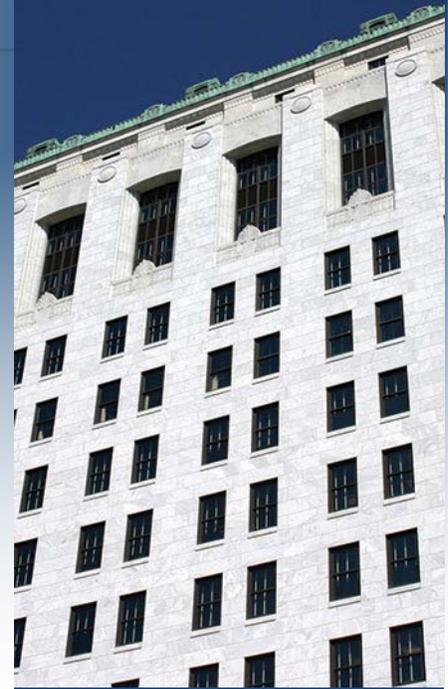


With the lull in legislative activity, we opted not to add to your inbox clutter, we hope you've missed us! Now that there is legislative activity to mention, a few notable court cases and axiomatic updates from the industrious efforts of the Commission, its Advisory and

Ad Hoc Committees, we are back! Please remember to check our [website](#) for details about our work.

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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Member News

Please join us in congratulating several of our long-time Commission Members as they leave us with the proverbial big shoes to fill!

Clermont County Commissioner Bob Proud will be retiring and has resigned his appointment to the Sentencing Commission. Commissioner Proud was appointed to serve on the Commission in 2005.

Clermont County Sheriff Albert 'Tim' Rodenberg is also retiring in the near future and resigning his appointment to the Commission. Sheriff Rodenberg has been a member of the Commission since 2010.

Judge Fredrick 'Fritz' Hany II, Ottawa County Municipal Court has let us know he is resigning from his position on the Commission to focus on his administrative duties at the Court during transition in several key positions. Judge Hany has been a member of the Commission since 1999.

We wish them the very best and will, of course, leave the door open and a standing invitation for a box lunch.

Legislation Impacting Sentencing

HB 300 – License Suspensions

The bill modifies the law governing the termination or modification of a lifetime driver's license suspension or a class two suspension that exceeds fifteen years, to specify that a class one driver's license suspension for a specified aggravated vehicular homicide offense begins upon the offender's release from prison, and to expand the purposes for which limited driving privileges may be granted during a driver's license suspension. Passed the Senate on September 28, 2016.

In other legislative news, during the Senate's ever-so-brief return from summer recess, here are updates to bill statuses that we've previously reported on:

HB 172 – Criminal Records Law

The bill was subject to major revisions in committee and now prohibits online criminal records sites from requiring an individual to pay a fee to remove or correct criminal record information on their site. Each payment or solicitation for payment would result in a first-degree misdemeanor charge against the Internet site. The bill was referred to the Senate Criminal Justice Committee on September 28, 2016.

HB 521 – Juvenile Parole Eligibility

The bill, which was an Ohio Criminal Sentencing Commission proposal, would establish a mechanism for juvenile offenders to seek review of their sentences in certain circumstances. The bill was referred to the Senate Criminal Justice Committee on September 28, 2016.

HB 388 – Ignition Interlock Devices (IIDs)

The bill establishes an alternative to limited driving privileges for a first-time OVI offender: unlimited driving privileges with an ignition interlock device. The bill also makes changes to the requirements related to limited driving privileges granted under the condition that the offender use an ignition interlock device, including requiring an offender using the device to obtain a restricted driver's license and enhancing the penalties for an ignition interlock device violation. The bill makes additional changes to the OVI law by increasing the "lookback" period for OVI and OVI-related offenses from six to ten years, extending the possible term of suspension for a first, second, or third-time OVI offender, and eliminating the restricted license plate requirement for second-time "standard level" OVI offenders. The bill was referred to the Senate Insurance Committee on September 28, 2016.

HB 392 – Protection Orders

The bill authorizes a court to issue a protection order to protect an "intimate partner" (a person who has or had a continuing and significant relationship of a romantic nature with the respondent) from domestic violence by the respondent. The bill was referred to the Senate Criminal Justice Committee on September 28, 2016.

HB 439 – Voyeurism and Similar Crimes

The bill specifies under RC 2907.321 (Pandering Obscenity Involving a Minor), 2907.322 (Pandering Sexually-Oriented Material Involving a Minor), 2907.323 (Illegal Use of a Minor in Sexually-Oriented Material) if the victim is an "impaired person," the penalty increases the same way it would if the victim was a minor. If the victim is an "impaired person," Voyeurism is an F5. "Impaired" means diminished ability to resist or consent because of a mental or physical condition or advanced age. The bill was drafted in response to a case where elderly nursing home residents were being exploited. The bill was referred to the Senate Criminal Justice Committee on September 28, 2016.

HB 436 – OVI-grant limited driving privileges-terminate immobilization order

Introduced 01-26-16, the bill authorizes a judge that grants limited driving privileges to a second-time OVI offender to order the termination of the mandatory immobilization order. The bill was referred to the Senate Transportation, Commerce and Labor Committee on September 28, 2016.

HB 347 – Forfeiture Law

The bill modifies the Forfeiture Law by revising the civil forfeiture process, changing seizure procedures, shifting the burden of proof and revising evidence requirements for criminal forfeiture, making changes to the disposal of forfeited property and the disposition of funds, and restricting the transfer of forfeited property to a federal agency. It establishes the offense of receiving proceeds of a drug abuse, theft, or trafficking in persons offense, and authorizes the state to file a civil action against a person who is alleged to have committed that offense if the proceeds involved exceed \$25,000. The bill modifies the procedure in execution regarding goods claimed by a third party. The bill was referred to the Senate Government and Oversight Reform Committee on September 28, 2016.

SB 353 – Private Images

The bill prohibits the nonconsensual dissemination of private sexual images, requires that certain property involved in the offense be criminally forfeited and creates legal rights and employment protections for the victim. The bill was introduced on September 8, 2016 and referred to Senate Criminal Justice committee on September 28, 2016.

Court Decisions Regarding Sentencing

State v. Hand, Slip Opinion No. 2016-Ohio-5504

The Supreme Court of Ohio found that using a prior juvenile adjudication to enhance the sentence of an adult offender violates the state and federal constitutions. The Court’s majority found that because a juvenile adjudication does not provide the right to a jury trial it cannot be used to enhance an adult sentence. Noting the difference in purpose between the adult and juvenile criminal justice systems, one being protection of the public and punishment and the other being rehabilitation, the majority determined absence of a jury trial in juvenile court maintains the civil nature of adjudications and using those adjudications from the less formal juvenile process to enhance an adult punishment would be unfair.

In a dissenting opinion, Justice Terrence O’Donnell wrote the majority of federal and state court decisions have found a juvenile adjudication can be used to enhance a sentence even though there is no right to a jury trial in juvenile proceedings.

State v. Thomas, Slip Opinion No. 2016-Ohio-5567

The Supreme Court of Ohio determined that an offender should be sentenced under the law in effect at the time he was convicted not when the crime occurred. The majority decision noted that R.C. 1.58(B) allows an offender to be sentenced under a more lenient statute if one is passed before the sentence is imposed and R.C. 1.52(A) states that when two statutes conflict and cannot be reconciled, the later-passed law prevails.

The Court then analyzed two sections of uncodified law, one in S.B. 2 (1996) and one in H.B. 86 (2011). The S.B. 2 language limited the impact of the sentencing changes in that bill to offenders sentenced after its effective date. The language in H.B. 86 allows its provisions to impact sentences if those sentences would be lessened under the bill (à la R.C. 1.58). Because H.B. 86 was passed later than S.B. 2, the Court found that the sentence under H.B. 86 should be imposed on the defendant.

Trial Court Decision

Although we don’t generally report on trial court cases, this one may be of particular interest to many of you. And, besides – we have tremendous respect and admiration for Judge Routson, a distinguished and astute jurist.

State v. Woelke, Case No. 2015-CR-231, Hancock County

In a case arising from the filing of a motion for intervention in lieu of conviction, Judge Reginald Routson of the Hancock County Court of Common Pleas found R.C.2951.041(B)(1) unconstitutional as a violation of the separation of powers doctrine.

Judge Routson’s decision, over the objections of the State and the Attorney General, found that the unilateral ability to “veto” the consideration of the defendant’s motion with no judicial review as to the propriety of that decision allows the prosecutor to usurp judicial authority.

Ohio Criminal Sentencing Commission Members

CHAIR

Maureen O'Connor, *Chief Justice*

VICE-CHAIR

Nick Selvaggio, *Common Pleas Court Judge*

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Municipal Court Judge

Sylvia Sieve Hendon, *Appellate Court Judge*

Kenneth Spanagel, *Municipal Court Judge*

Steve McIntosh, *Common Pleas Court Judge*

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Tim Young, *State Public Defender*

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

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Paula Brown,
Ohio State Bar Association

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

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.

2016 Full Commission Meeting Dates

Thursday, **December 15, 2016**

2017 Full Commission Meeting Dates

Thursday, **March 16, 2017**

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 21, 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:

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Special Thanks to contributors:

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



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