



Legislative & Judicial Brief

A Message from Sara Andrews, Director

As an acknowledgement of the dearth of data about the criminal justice world outside of state prisons, much of the upcoming work of the Commission – despite the multifarious challenges – is a collaborative, careful, calculated and exceptional effort to collect, analyze and tell the story of case disposition data with explicit focus on what happens before prison, otherwise known as the system’s “front end” where many decisions are made that impact both future judicial and corrections practices. The outcomes of knowing more about what happens to people who don’t go to prison will serve as a solid foundation for all of our other 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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Legislation Impacting Sentencing Recently Introduced

HB305 PROTECTION ORDERS (ANTONIO, BOYD)

The bill requires a court that issues a protection order to determine if the respondent is prohibited from carrying or possessing a firearm; or whether an offender who has been convicted of specified offenses is prohibited from carrying or possessing a firearm; and requires a respondent or offender who the court determines is prohibited from carrying or possessing a firearm to transfer all firearms in the person's possession to a law enforcement agency or a federally licensed firearms dealer. The bill was introduced on July 18, 2017.

2018 Meeting Dates of the Full Commission

March 15, 2018

10:00a

Vern Riffe Center

June 21, 2018

10:00a

Ohio Judicial Center

September 20, 2018

10:00a

Ohio Judicial Center

December 13, 2018

10:00a

Vern Riffe Center

SB 171 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.

Legislation Impacting Sentencing – continued
Legislative Updates (from previous issues)

HB49 BIENNIAL OPERATING BUDGET (SMITH)

Appropriations – FY2018-2019. Specifically, the Department of Rehabilitation and Correction (DRC) and community programs. The executive budget built on an existing pilot program to divert nonviolent, fifth degree felons from prison. The House version created a local confinement waiver under which counties may send a limited number of offenders sentenced to less than 12 months for a F5 to prison. The Senate version removed the local confinement waiver and limited the pilot program to the 10 largest counties in Ohio, specifying other counties may voluntarily participate. The Senate removed language specifying that offenders sentenced for multiple offenses with a total term greater than 12 months are not eligible for the local confinement. The Senate also limited prison sanctions for community control violations that are part of F5 sentences to 90 days if they are technical violations or new misdemeanor offense. The conference committee kept the Senate provisions regarding low-level felons and, eliminated drug trafficking offenders from diversion eligibility in the final bill. The conference committee also expanded the targeted population to F4 offenders, with a 180-day cap on prison time for community control violations. The language in the bill also reduced funding in DRC Community Misdemeanor Programs. Additionally, a new Institution Addiction Treatment Services Fund was created in the DRC's budget. The bill was reported by the conference committee on June 27, 2017. The House and Senate approved the conference committee report on June 28, 2017 and the Governor signed the bill June 30, 2017. The Governor vetoed 47 items in the budget none of which affected the criminal justice provisions. The House voted to override 11 of those vetoes on July 6, 2017. As of August 7, 2017 the Senate has not acted on the House overrides; it has until the end of the General Assembly to do so.

HB63 SENTENCING–DISFIGUREMENT SPECIFICATION (HUGHES)

The original bill created an additional term of 5 -20 years if the defendant was convicted of a specification that charges the harm caused by the violation resulted in permanent, serious disfigurement or substantial incapacity or that the offender used an accelerant. The substitute bill changes the additional mandatory term to 6 years and requires that an accelerant have been used for the specification to apply. The act's provisions are named "Judy's Law". The bill was signed by the Governor on July 17, 2017 and becomes effective in 90 days.

HB 233 HANDGUN DECriminalIZATION-LEAVING UPON REQUEST (BECKER)

The bill enacts "Decriminalization Effort For Ending Notorious Deaths (DEFEND)".

DEFEND is intended to provide an opportunity for a concealed handgun licensee or qualified military member to avoid criminal liability for carrying a concealed handgun into a prohibited place if the person leaves upon request. If the person fails to leave upon request or returns with a firearm, the bill penalizes as trespassing.

The bill was passed by the House of Representatives on July 6, 2017.

Supreme Court of Ohio Decisions Impacting Sentencing

***Gyugo v. Franklin Cty. Bd. of Dev. Disabilities*, Slip Opinion No. 2017-Ohio-6953**

The Supreme Court of Ohio ruled that an adult-services worker for the Franklin County Board of Developmental Disabilities could be terminated for failing to disclose a sealed criminal conviction on the application to renew his state registration.

Questions regarding sealed convictions are not generally permitted, however, they are allowed when the question bears a “direct and substantial relationship” to the position.

The Court found that because the Board is prohibited under other state statutes from hiring individuals convicted of certain crimes and requires the state to deny or revoke the registration of applicants convicted of specified offenses, the worker was required to disclose the sealed conviction when asked to do so on the registration renewal applications.

***State v. D.B.*, Slip Opinion No. 2017-Ohio-6952**

This case had been remanded to the trial court under the Court’s decision in *State v. Aalim*, 2016-Ohio-8278 (*Aalim I*); however, the Supreme Court granted a motion for reconsideration after it reversed the *Aalim* decision. (*Aalim II*) (*State v. Aalim*, 2017-Ohio-2956).

The question in this case was whether or not a juvenile convicted by the adult court of one charge that is subject to mandatory transfer should be sentenced by the adult court on all charges. The Court answered the question affirmatively noting that the statute states that it is the “case” and not the “convictions” that determines what happens.

***State v. Anderson*, Slip Opinion No. 2017-Ohio-5656**

The Supreme Court of Ohio ruled that mandatory sentences for juvenile offenders are constitutional. In addition, the Court found that a longer penalty imposed for a juvenile convicted at trial than that for a codefendant who pled guilty is not a trial penalty, particularly when the sentence was within the range authorized by law.

Relying on the U.S. Supreme Court’s decision in *Graham v. Florida* (2010), the Supreme Court of Ohio explained that in order to determine whether a penalty constitutes cruel and unusual punishment, the Court is to consider “whether there is a national consensus against the sentencing practice at issue,” and use its own independent judgment to determine whether it is unconstitutional. Applying that standard to this case, the Court concluded that there is not a national consensus against mandatory minimum sentences for juveniles and wrote that “[i]mposing a mandatory minimum sentence of three years on juvenile offenders for aggravated robbery and for kidnapping does not violate the Eighth Amendment’s prohibition against cruel and unusual punishment.”

Also rejecting Anderson’s claim that a mandatory three-year firearm penalty is unconstitutional, the Court noted that the mandatory three-year prison sentence imposed on a juvenile offender tried as an adult for a conviction of a firearm specification does not violate the Eighth Amendment because it serves a legitimate “penological” goal to punish or deter criminal behavior, is proportional to the crimes committed, and is not one of the harshest possible penalties for a juvenile offender.

Supreme Court of Ohio Decisions Impacting Sentencing – continued

***Cleveland v. Oles*, Slip Opinion No. 2017-Ohio-5834**

The Supreme Court declined to craft a “bright-line rule” that would require a police officer to provide *Miranda* warnings to a suspect in a traffic stop that was removed from their car and placed in the front seat of a police cruiser.

The Court noted that the U.S. Supreme Court had found that *Miranda* warnings are not necessary during routine traffic stops and that the warnings required by *Miranda* are necessary when a person has been taken into custody or freedom of action has been restricted in a significant way. In this specific case, the Court found that questioning in the front seat of the police car did not reach the level of a custodial interrogation.

The Court identified three factors that may provide guidance on whether the warning must be given before front-seat questioning occurs: (1) the intrusion is significant, (2) the questioning and detention are not brief and (3) the interaction is threatening or intimidating. The Court also noted that the distinction between feeling “in custody” and “not free to leave” is important because if the standard were “not free to leave” every traffic stop would require *Miranda* warnings.

***Dayton v. State*, Slip Opinion No. 2017-Ohio-6909**

In March 2015, laws adopted by the General Assembly took effect regulating local authorities’ use of automated traffic-enforcement programs. Three of the many provisions were found to be unconstitutional by the Ohio Supreme Court.

The Court found that the laws were not of a “general nature” that apply evenly throughout the state, that they improperly limited the legislative power of a municipality to govern local police, sanitary or similar regulations, and thereby violated the Home Rule Amendment.

The three provisions found unconstitutional include the requirement that a police officer be present at the site of the camera, the provision which prohibits a fine to a driver caught speeding by a traffic camera unless the driver exceeded the speed limit by 6 miles per hour or more in a school or park zone, or by 10 mph in other areas; and the provision which directs a municipality to perform a safety study and conduct a public information campaign prior to using a camera.

***State v. Wogenstahl*, Slip Opinion No. 2017-Ohio-6873**

The Supreme Court of Ohio affirmed that the trial court had jurisdiction over the capital murder trial of the defendant when it could not be determined whether the victim was killed in Ohio or Indiana.

The Court found that under R.C. 2901.11(D) if it cannot be reasonably determined in which jurisdiction the offense took place, the offense is conclusively presumed to have taken place in Ohio.

Ohio Criminal Sentencing Commission Members

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Lara Baker-Morrish, *City of Columbus, Chief*

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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

Ronald Burkitt, *Juvenile Police Officer*

Fredrick Benton Jr., *Defense Attorney*

Kathleen Hamm, *Public Defender*

State Representative – *appointment pending*

County Prosecutor (Juvenile) – *appointment pending*

County Commissioner – *appointment pending*

Law Enforcement – *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.

2017 Full Commission Meeting Dates

Thursday, **September 21, 2017**

Thursday, **December 14, 2017 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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