

Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Commission unanimously favorably voted to adopt [the recommendations and report of the Ad Hoc Committee on Bail and Pre-Trial Services](#) on June 15, 2017. From here, we stand ready to assist our State and local leaders in a collective effort to evaluate and commit resources to maximize appropriate placement for defendants, protect the presumption of innocence, maximize appearance at court hearings, and maximize public safety.

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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MARSY'S LAW
proposed constitutional amendment

Proponents of a Victims' Bill of Rights, also called [Marsy's Law of Ohio](#), submitted 563,556 signatures to the Ohio Secretary of State's office on June 22, 2017 in order to get the issue on the November 2017 ballot.

In order to qualify for the ballot, the proponents need at least 305,591 valid signatures from at least 44 counties. The Secretary of State will now review the signatures for validity.

HB259 LIQUOR LICENSE-VIOLENCE DATABASE (SEITZ, WEST)

The bill requires the Attorney General to establish a database of persons who have committed an offense of violence at specified liquor permit premises and allow access to the database to holders of liquor permits in the specified categories. The bill was introduced on June 6, 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.

HB278 LAW ENFORCEMENT VEHICULAR ASSAULT (PATTON, KELLY)

The bill includes negligently causing serious physical harm to a law enforcement officer while operating a motor vehicle as a violation of the offense of vehicular assault. The bill was introduced on June 20, 2017.

HB282 CRIMINAL MISCHIEF RENTAL RESTRICTION (HAMBLEY)

The bill expressly prohibits criminal mischief relating to residential rental property and prohibits a metropolitan housing authority from renting or providing housing assistance to a person who has recently been convicted of criminal mischief relating to residential rental property. The bill was introduced on June 20, 2017.

SB159 SEALING RECORDS AFTER PARDON (WILLIAMS)

The bill permits a person to apply for the sealing of the official record(s) pertaining to a case in which the person was convicted of an offense for which the person is granted a pardon. The bill was introduced on June 1, 2017 and referred to the Senate Judiciary Committee on June 15, 2017.

Legislative Updates (from previous issues)

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 victims' 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 third hearing in the Senate Judiciary Committee on June 13, 2017.

HB6 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. The bill also provides criminal and civil remedies for a violation of the prohibition. The bill had its first hearing in the Senate Judiciary Committee on June 13, 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 fourth hearing in the House Community and Family Advancement Committee on June 7, 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. The bill was referred to the Senate Judiciary Committee on June 15, 2017.

HB81 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 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 a serious mental illness at the time of committing the offense. This bill had its third hearing in the House Criminal Justice Committee on June 6, 2017. A companion bill in the Senate (SB 40) had its third hearing in the Senate Judiciary Committee on March 7, 2017.

HB92 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 had its third hearing in the House Criminal Justice Committee on June 20, 2017.

HB95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is a contributing factor of the violation. The bill passed the House of Representatives on June 21, 2017.

**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. And, names the act's provisions "Judy's Law".

The substitute bill was passed by the Senate Judiciary Committee on June 27, 2017 and unanimously passed by the Senate on June 28, 2017.

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

HB49 OPERATING BUDGET (SMITH)

Appropriations-FY 2018-2019. 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 that offenders sentenced for multiple offenses with a total term greater than 12 months are not eligible for the local confinement. The Senate also limits prison sanctions for community control violations that is part of an F5 sentence to 90 days if it is a technical violation or a 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, with money funneled from the Indigent Drivers Alcohol Treatment Fund previously used at the local level to address alcohol and substance abuse of traffic offenders.

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.

HB125 TRAFFIC ORDINANCE JURISDICTION (CRAIG, SEITZ)

The bill specifies the jurisdiction of municipal and county courts over municipal traffic ordinances and establishes requirements governing fines, fees, or other charges for traffic violations and infractions imposed by a municipal corporation that does not have the authority to establish a mayor's court. The bill was voted out of the House of Representatives on June 21, 2017

HB233 HANDGUN DECRIMINALIZATION-LEAVING UPON REQUEST (BECKER)

The bill enacts the "Decriminalization Effort For Ending Notorious Deaths (DEFEND)" to provide an opportunity for a concealed handgun licensee or qualified military member to avoid guilt for carrying a concealed handgun into a prohibited place if the person leaves upon request, and penalizes as disorderly conduct failing to leave upon request or returning with a firearm. The bill had its second hearing in the House Federalism and Interstate Relations Committee on June 20, 2017.

SB3 WORKFORCE DEVELOPMENT (BEAGLE, BALDERSON)

The bill contains several changes to the certificates of qualification for employment including permitting an out of state resident with an Ohio conviction to apply for the CQE, allows DRC to develop criteria for early applications, and removes the requirement that the applicant list the specific collateral sanctions from which they are seeking relief. The bill also provides that the CQE creates a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for employment. Finally DRC is required to maintain a database that identifies granted and revoked CQEs. The bill passed the Senate on April 26, 2017 and had a third hearing in the House Higher Education and Workforce Development Committee on June 21, 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, unless the records pertain to an aggravated murder, murder, or rape conviction. If the application for expungement is for a first or second degree felony the court must consider certain factors and requires the court find that the interest in having the record expunged are not outweighed by legitimate government needs to maintain the records. The bill also allows a person convicted of certain prostitution-related offenses to apply for the expungement if the person's participation was a result of having been a human trafficking victim. Finally, the bill allows intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill passed the Senate on May 17, 2017 and has its first hearing in the House Criminal Justice Committee on June 20, 2017.

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

SB7 PROTECTION ORDER VIOLATIONS (BACON, MANNING)

The bill specifies 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 was shown the order or a copy of it or a judge, magistrate, or law enforcement officer informed the person of the order, and it is proved that the person recklessly violated the order's terms. The bill was passed by the House of Representatives and the Senate concurred in House amendments on June 21, 2017. The bill was signed by the Governor on June 28, 2017.

SB20 PERMANENTLY DISABLING CRIME SPECIFICATION (HACKETT)

The bill 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 victim suffered permanent disabling harm. The bill had its first hearing in the House Criminal Justice Committee on June 20, 2017. A similar House bill (HB30) calls for the same mandatory sentence for permanently disabling harm if the victim was under the age of 6 years old. HB30 had its second hearing in the House Criminal Justice Committee on February 21, 2017.

SB32 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 to authorize the court to release the person from detention in connection with those charges pending trial. The bill was passed by the Senate on May 3, 2017 and had its first hearing in the House Criminal Justice Committee on June 6, 2017.

SB67 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 third hearing in the Senate Judiciary Committee on June 13, 2017.

Court Decision Regarding Sentencing

Fifth District Court of Appeals

State v. Boehm, 2017-Ohio-4285

In a case where the question before the Fifth District Court of Appeals was whether a conviction sealed pursuant to R.C. 2953.32 prevents an offender from eligibility for intervention in lieu of conviction under R.C. 2951.041(B) absent the state's recommendation, the court found that a trial court may consider a defendant's prior sealed conviction but approval by the prosecutor for intervention in lieu of conviction is unnecessary.

The State argued that in a criminal proceeding the defendant's prior sealed record should be considered in determining eligibility.

The Court of Appeals noted, however, that a court proceeding for intervention in lieu of conviction is a special proceeding that is neither criminal nor civil.

Ohio Criminal Justice Recodification Committee

The Recodification Committee presented its plan for revising the Ohio Criminal Code on June 15, 2017. The Committee [has posted a Plain Language Report, a legislative draft and a comprehensive summary of the recommendations on their website.](#)

ocjrc.legislature.ohio.gov

Ohio Criminal Sentencing Commission Members

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Tim Young, *State Public Defender*

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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**

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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