



Legislative & Judicial Brief

A Message from Sara Andrews, Director



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

Legislation Impacting Sentencing	2
Legislation Impacting Sentencing	3
Legislation Impacting Sentencing	4
Legislation Impacting Sentencing	5
Marsy's Law	5
Neighborhood Safety, Drug Treatment and Rehabilitation	5
Supreme Court of Ohio Decisions Impacting Sentencing	6
Conference of Chief Justices	6
Human Trafficking Bench Card	6
Working Committees of the Commission	7
Commission Roster	7
Commission Meeting Dates	7



Legislation Impacting Sentencing Updates

SCR13 RECLASSIFY MARIJUANA (YUKO)

The resolution urges the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Administration to reclassify marijuana, or cannabis. The resolution had a first hearing in the Senate Health, Human Services and Medicaid Committee on January 30, 2018.

HR299 RELIGION ASSISTING DRUG ADDICTED PERSONS (YOUNG, GINTER)

The resolution recognizes the efforts and successes of the faith-based community in supporting and assisting individuals who are suffering from opioid and other drug abuse and addiction. The resolution had a first hearing in the House State and Local Government Committee on February 6, 2018.

Legislation Impacting Sentencing Recently Introduced

SB250 CRITICAL INFRASTRUCTURE FACILITY TRESPASS (HOAGLAND)

The bill prohibits criminal mischief, criminal trespass, and aggravated trespass on a critical infrastructure facility and imposes fines for organizations that are complicit in those offenses. The bill also imposes civil liability for damage caused by trespass on a critical infrastructure facility. A "critical infrastructure" is defined by the Department of Homeland Security as assets, systems, and networks that are so vital that their destruction would have a debilitating effect on national security. The bill was introduced on January 24, 2018.

SB248 WRONGFUL IMPRISONMENT LAW (SYKES, EKLUND)

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, to the 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 January 16, 2018 and referred to the Judiciary Committee on January 17, 2018. The bill mirrors the House introduced version, HB411.

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. A substitute bill was accepted and reported out by the Senate Judiciary Committee on January 16, 2018.

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. A substitute bill was accepted by the House Criminal Justice Committee on January 16, 2018.

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. The bill was reported out as amended on January 16, 2018.

HB137 MANDATORY REPORTING – CHILD ABUSE (KENT)

The bill makes municipal and county peace officers mandatory reporters of child abuse or neglect and had a first hearing in the Senate Government Oversight and Reform Committee on January 17, 2018.

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. The bill was passed by the House on January 31, 2018.

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 had a first hearing in the House Federalism and Interstate Relations Committee on January 31, 2018.

HB 336 LICENSE REINSTATEMENT FEE AMNESTY (BARNES, GREENSPAN)

The bill prohibits license reinstatement fees for (1) a juvenile whose license was suspended because of an unruly or delinquent adjudication, unless it was for an offense involving alcohol, drugs, or weapons, (2) a juvenile whose license was suspended because of habitual truancy, if the juvenile provides a diploma or GED, (3) a temporary driving permit, except for a commercial permit, (4) an adult whose license, except for commercial licenses, was suspended for lack of insurance, too many points, or a municipal ordinance violation, unless it for an offense involving alcohol, drugs, or weapons. The bill was referred to the Transportation, Commerce and Workforce Committee on January 17, 2018.

HB349 POLICE ANIMALS (LATOURETTE)

The bill increases the penalty for assaulting a police animal (from F2 to F4; from F3 to F2 if death results) and includes search and rescue animals in the statute. A substitute bill was accepted by the House Criminal Justice Committee at the second hearing on January 23, 2018.

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 had a first hearing in the Senate Judiciary Committee on January 16, 2018.

Legislation Impacting Sentencing – Updates (continued)

HB395 FIREARM DEVICES PROHIBITIONS (PATMON)

The bill prohibits the manufacture, sale, or transfer of any trigger crank, bumpfire device, or other product that accelerates a semi-automatic firearm's rate of fire but does not convert it into an automatic firearm. The bill had a first hearing in the Federalism and Interstate Relations Committee on January 31, 2018.

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 reported out as amended in the House Criminal Justice Committee on January 23, 2018.

HB409 VETERANS TREATMENT COURTS (BUTLER, PERALES)

The bill permits courts to create a veterans treatment courts and allows courts to divert certain criminal defendants to participate in a veterans treatment court. The bill had a second hearing in the House Criminal Justice Committee on January 23, 2018.

HB427 ADDICTION & OVERDOSE RESPONSE (YOUNG)

The bill as-introduced authorized grants for treatment programs and required county reporting of overdose deaths. On January 24, 2018, at the first hearing in the House Community and Family Advancement Committee, a substitute bill was accepted. The substitute bill allows individuals who provide drugs to another individual who then dies to be charged with involuntary manslaughter and creates a mechanism in which overdosing individuals who have already received an administration of naloxone within the past 72 hours can be admitted without their consent to a hospital or drug treatment facility.

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; require 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 had a second hearing in the House Criminal Justice Committee on January 23, 2018.

HB455 DRUG TRAFFICKING OFFENSES (WIGGAM)

The bill permits a compound, mixture, preparation, or substance containing cocaine in determining the amount of cocaine for trafficking offenses. The bill also increases penalties for certain drug trafficking offenses and names the act the Drug Trafficking Deterrence Act. The bill had a first hearing in the House Criminal Justice Committee on January 23, 2018.

Legislation Impacting Sentencing – Updates (continued)

HB457 OPIATE USE-PAROLE & COMMUNITY CONTROL (ANTANI)

The bill requires that an offender serving a community control sanction or a parolee who fails a drug test for heroin, fentanyl, or carfentanil be held in jail or admitted to a residential treatment program for up to 30 days. The bill has a first hearing in the House Criminal Justice Committee on January 23, 2018.

HB461 DELINQUENCY ABEYANCE-CHILD TRAFFICKING (FEDOR, GALONSKI)

The bill requires a juvenile court to hold a delinquency complaint in abeyance if the court has reason to believe that the act charged might be prostitution related or that the child might be a victim of human trafficking. The bill also provides that the same elements that apply for the offense of trafficking in persons under the age of sixteen also apply to a victim who is age sixteen or seventeen. The bill had a first hearing in the House Criminal Justice Committee on January 30, 2018.

Issue 1 - Marsy's Law:
Rights for Crime Victims
Constitutional Amendment
Effective: February 5, 2018

Legislation Impacting Sentencing – continued

[The Ohio Crime Victim Justice Center](#) (OCVJC) has taken a lead role in bringing interested parties together to develop implementing legislation for Marsy's Law. Among other things, OCVJC has a summary and list of the constitutional amendment provisions available on the OCVJC website.

Many other organizations have various educational, training & other resources available to assist in implementation.

Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment

The Ohio Ballot Board and the Attorney General of Ohio have certified a proposed constitutional amendment, [the Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment](#), as a single ballot issue.

The amendment proposes to reduce the number of people in state prison for low-level drug crimes and expands credit (sentence reduction) for time served in treatment.

The amendment also reduces nonviolent felony drug crimes to misdemeanors and shifts state funding resulting from a reduced prison population to drug treatment programs.

Supporters will need to collect more than 300,000 valid petition signatures by July to put the issue on the 2018 statewide fall ballot – that's equal to 10 percent of the total vote cast for governor in 2014.

SB 1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking, drug possession and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound; revises the manner of determining sentence for certain violations of the offense of permitting drug abuse, and adds lisdexamfetamine to the list of schedule II controlled substances. The bill was reported out as amended by the House Criminal Justice Committee on January 30, 2018.

SB145 DISMEMBERMENT ABORTIONS BAN (HUFFMAN)

The bill generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion. The bill had a second hearing in the House Criminal Justice Committee on January 16, 2018.

SB201 REAGAN TOKES LAW-INCARCERATION (BACON, O'BRIEN)

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. The bill also is designed to generally allow the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration and allow the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specified findings. The act's provisions are to be named the Reagan Tokes Law. There is a companion/part 2 Senate Bill (SB202) and House companion bill HB365 (Hughes, Boggs). The bill had a third hearing in the Senate Government Oversight and Reform Committee on January 10, 2018.

SB242 ELIMINATING PROHIBITION-CERTAIN WEAPONS (LAROSE)

The bill eliminates the prohibition against manufacturing, possessing for sale, selling, or furnishing certain weapons other than firearms or dangerous ordnance. The bill was introduced on December 18, 2017 and referred to the Senate Judiciary Committee on January 17, 2018.

SB244 PROMOTING PROSTITUTION PENALTIES (DOLAN, MANNING)

The bill amends penalties for promoting prostitution by specifying that prior conviction of a similar violation or a conviction of trafficking or aggravated trafficking in drugs increases the offense to a third degree felony. The bill also specifies that if one or more convictions of a similar offense is a second degree felony and if the person pleads guilty to or is convicted of a firearm specification, the court shall sentence the person to a mandatory prison term. The bill was introduced on December 18, 2017 and referred to the Senate Judiciary Committee on January 17, 2018.

SB251 NONCONSENSUAL IMAGE DISSEMINATION PROHIBITION (SCHIAVONI)

The bill prohibits the nonconsensual dissemination of private sexual images, requires that certain property involved in the offense be criminally forfeited, and creates certain legal rights and employment protections of a victim of the offense. The bill was introduced on January 25, 2018 and referred to the Senate Judiciary Committee on February 6, 2018.

Supreme Court of Ohio Decisions Impacting Sentencing

STATE V. BEASLEY, SLIP OPINION No. 2018-OHIO-16

On January 4, 2018 the Supreme Court decided that the trial court abused discretion in adopting a blanket policy of refusing no-contest pleas and that the defendant's failure to enter a no-contest plea on record does not constitute a waiver of claim of error when the trial court informed the defendant that it would not accept any plea of no contest.

IN RE D.H. SLIP OPINION No. 2018-OHIO-17

On January 4, 2018 the Supreme Court decided that a juvenile court's orders transferring jurisdiction to adult court are not appealable under R.C. 2505.02(B)(4). There is no statutory right to interlocutory appeal for a juvenile after an amenability hearing that binds the juvenile over to adult court.

STATE V. POUNTNEY, SLIP OPINION No. 2018-OHIO-22

On January 4, 2018, the Supreme Court decided that because the state failed to prove the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual for transdermal fentanyl, it failed to establish the "bulk amount" of that drug for purposes of increasing the felony level. The state may not rely on usual dose range of morphine to establish bulk amount of transdermal fentanyl. The Court made mention of pending legislation that will increase penalties for fentanyl distribution, possession, and use.



Chief Justice O'Connor Addresses the Opioid Epidemic at the Conference of Chief Justices

[From Court News Ohio February 1, 2018](#)

.... "We've seen evil innovation at work in the recent past, with carfentanil hitting the street at thousands of times the strength of fentanyl," said Chief Justice O'Connor, who serves as the CCJ's president. "To combat that kind of innovation, the moving target of the drug scene, we decided to embark on some innovation of our own."

That innovation exists in the creation of the Regional Judicial Opioid Initiative, or RJOI, which is a first-of-its-kind regional task force. Eight states — Illinois, Indiana, Kentucky, Ohio, Michigan, North Carolina, Tennessee, and West Virginia — have started to identify the core problems and split up the work.

"One of our earliest targets, and a point of ongoing success right now, was prescription drug monitoring," said Chief Justice O'Connor. "Allowing each state to remain an island was no way to solve doctor shopping and pharmacy shopping. We knew we had to work across borders, and we are."

Panelists also discussed the latest research on treatment options and evidence-based sentencing.

Bench Card Offers Guidance on Human Trafficking Cases

On January 23, 2018, the Supreme Court of Ohio announced the availability of a [bench card](#) to strengthen the response of courts to recognize the intersection between human trafficking, domestic violence, and sexual violence.

The reference guide, developed by the Supreme Court's Domestic Violence Program, seeks to better educate the judicial branch on state laws that target human trafficking.

The guide provides practical tips for judicial officers, as well as highlights red flags compiled from the literature and practitioners' experience with traffickers and victims.

The reference guide complements other efforts to shed light on the complexities of human trafficking.

[Full Story in Court News Ohio.](#)

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.

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.

Contact Us:

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

www.supremecourt.ohio.gov/Boards/Sentencing

Special Thanks to contributor:

Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference

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



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