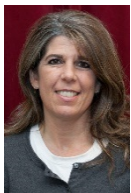


# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*The Legislative & Judicial Brief is designed to share information and spark conversation. The Commission strives to 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	2-4
ICYMI	4
Reagan Tokes Law	4
Working Committees of the Commission	5
Commission Roster	5
Commission Meeting Dates	5

## LEGISLATION IMPACTING SENTENCING RECENTLY INTRODUCED



### FY2020-2021 BUDGET

#### **HB166 OPERATING BUDGET (OELSLAGER)**

The bill was introduced on March 25, 2019 and makes operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and provides authorization and conditions for the operation of state programs. [The bill and related documents can be accessed here.](#) The bill was amended on the floor and passed by the House on May 9, 2019.

The bill contains several provisions of note, including:

- Makes Targeted Community Alternatives to Prison (TCAP) in every county voluntary
- Increases funding for specialized dockets payroll subsidies, which may also be used for treatment and recovery supports

The House version of the bill

- Increases funding for indigent defense from 50% (in the as-introduced version) up to 100%
- Deletes the provisions that provided local funding for probation departments in counties with services from the Adult Parole Authority (APA)
- Creates the Medication Assisted Treatment (MAT) Drug Reimbursement Program to reimburse counties for the costs of MAT in county jails
- Changes the name of the Ohio Legal Assistance Foundation to the Ohio Access to Justice Foundation and creates a task force to study Ohio's indigent defense system, made up of 16 members including the Chief Justice (or designee) and a judge chosen by the Ohio Judicial Conference
- Clarifies that a county auditor must issue a warrant for money payable upon a court order, without needing evidentiary material

#### **SB133 MANAGEMENT OF RELEASED OFFENDERS (O'BRIEN, MANNING)**

The bill was introduced on April 22, 2019 and pertains to post-prison supervision: it requires the Criminal Sentencing Commission to establish an ad hoc committee to study offender supervision; it establishes parameters and requirements for the use of GPS monitoring device, including 24-hour real-time supervision and law-enforcement access through LEADS; it requires the Department of Rehabilitation and Correction to establish re-entry programs for certain offenders; it requires the establishment, by the Adult Parole Authority, of standards for supervision caseload and workload. The bill had a first hearing on May 15, 2019. A companion bill, **HB215 (BOGGS, CARFAGNA)** was introduced on April 24, 2019 and had a first hearing in the House Criminal Justice Committee on May 16, 2019.

#### **SB143 AGGRAVATED BULLYING (WILLIAMS)**

The bill was introduced on May 7, 2019. The bill creates the M3 offense of Aggravated Bullying, defined as knowingly causing emotional harm or knowingly making someone believe that emotional or physical harm to person or property will be caused. Under the definition, both offender and victim must be primary or secondary public school students.

#### **SB144 AGGRAVATED BULLYING-DISCIPLINARY PROCEDURE (WILLIAMS)**

The bill was introduced on May 7, 2019 and creates an M3 offense of Aggravated Bullying and requires a tiered disciplinary program for aggravated bullying in schools.

#### **SB146 DOMESTIC VIOLENCE (KUNZE, ANTONIO)**

The bill was introduced on May 9, 2019 and expands the offense of domestic violence by adding the act of knowingly impeding breathing or blood circulation, a Felony 3. SB146 consists of one component of a similar bill, **SB43 (KUNZE, ANTONIO)**. SB 43 consists of only the strangulation provisions in SB146.

#### **HB205 GOOD SAMARITAN EXPANSION (GALONSKI)**

The bill was introduced on April 16, 2019. Current law allows a limited immunity (for minor misdemeanor drug possession, RC 2925.01 (EE)) for anyone seeking medical help (for self or someone else) during an overdose. The bill expands current law so that the immunity applies also to violations of RC 2925.12 (possession of drug abuse instruments), RC 2925.14(C)(1) (possession of drug paraphernalia), or RC 2925.141 (possession of marijuana paraphernalia).

#### **HB232 IMPORTUNING (SCHAFFER, SMITH K.)**

The bill was introduced May 2, 2019. For F3 Importuning Offenses (RC 2907.07(A) or (C)), the bill adds a mandatory prison term if either the offender also arranged to meet the importuned person or the offender is 10 or more years older than the importuned person (or the age claimed by a law enforcement officer acting as an importuned person).

#### **HCR10 DRUG CARTELS (WIGGAM, PLUMMER)**

The Resolution was introduced on May 8, 2019 and urges the federal government to designate certain drug cartels operating from Mexico as foreign terrorist organizations. On May 16, 2019 the resolution had a first hearing in the House Criminal Justice Committee.

## LEGISLATION IMPACTING SENTENCING – UPDATES

### **SB3 DRUG SENTENCING REFORM (EKLUND, O'BRIEN)**

A substitute bill was accepted in the Senate Judiciary Committee, at the second hearing, on March 6, 2019. The bill redefines the current controlled substance trafficking offenses and controlled substance possession offenses with new offenses located in five Revised Code sections and reclassifies the offenses as aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, possession of a controlled substance, possession of marijuana, and possession of hashish. The bill also clarifies the meaning of “technical violation” in the provisions that impose a 90-day or 180-day limit, in specified circumstances, on the use of a prison term as a sanction for a felony community control sanction violation. Further, the bill specifies that a municipal court or county court does not have jurisdiction to hear any charge of a drug possession offense the bill reclassifies from a felony to a misdemeanor unless the particular court operates a drug court, and that if a municipal court or county court does not have a drug court, the common pleas court is required to hear all such charges. It modifies the criteria governing applications for, and granting of, a probate court order requiring involuntary treatment for a person suffering from alcohol or other drug abuse. It also modifies the eligibility for applying for sealing of official records to include a specific reference to persons convicted of a drug possession offense the bill reclassifies from a felony to a misdemeanor; specifies that such persons are to be considered as convicted misdemeanants; and authorizes an offender convicted of any of the new possession offenses enacted under the bill to apply upon successful completion of a court-ordered treatment program or intervention plan. The bill modifies the not guilty/dismissed charges for record sealing provisions to ensure that they apply to a person charged with any of the bill’s new possession offenses who had the charge held in abeyance under the bill, successfully completed the treatment program or intervention plan, and had the charges dismissed. Proponent testimony was heard at the third hearing on May 15, 2019.

### **SB5 PROMOTING PROSTITUTION PENALTIES (KUNZE, DOLAN)**

The bill was introduced February 13, 2019. Current law states a violation of RC 2907.22 (Promoting Prostitution) is an F4 and increased to an F3 if a minor is involved. The bill increases the penalty to an F3 in additional circumstances: a previous conviction of violence; 2 or more previous convictions under RC 2925.03 (Drug Trafficking). The bill was passed 32-0 by the Senate on March 6, 2019 and had a fourth hearing in the House Criminal Justice Committee on May 16, 2019.

### **SB10 THEFT IN OFFICE PENALTIES (WILSON)**

The bill was introduced on February 12, 2019 and increases the penalty for theft in office when the value of property or services stolen is \$150,000.00 or more. The bill also requires the person convicted to pay restitution for the costs of auditing any public entity that suffered as a result of the theft. The bill was passed by the Senate 32-0 on March 13, 2019. The bill was reported out of the House Criminal Justice Committee at the third hearing on May 9, 2019.

### **SB55 ENHANCE PENALTIES-DRUG TRAFFICKING (GAVARONE)**

The bill enhances the penalties for most drug trafficking offenses when committed on the premises of a substance addiction services provider’s facility, or within 1,000 feet of the premises of such a provider’s facility, if the offender recklessly disregards whether the offense is being committed within that vicinity. The bill sets the new penalty enhancements at the same level as existing penalty enhancements for the same drug trafficking offenses when committed in the vicinity of a school or juvenile. The bill is also referred to as the “Relapse Reduction Act” and was passed by the Senate on May 15, 2019, 31-2.

### **SB13 JUVENILE HUMAN TRAFFICKING VICTIMS (FEDOR)**

The bill was introduced February 13, 2019 and requires a juvenile court to hold a delinquency complaint in abeyance in human trafficking cases and provides that the same elements for the offense of trafficking in persons that apply to a victim younger than 16 also apply to a victim who is age 16 or 17. A substitute bill was accepted at the fourth hearing in the Senate Judiciary Committee on April 24, 2019, which among other things, extends the Safe Harbor abeyance period up to 18 months. The bill had a fifth hearing on May 1, 2019.

### **SB28 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)**

The bill increases the penalty for violating a protection order to an F3 if there are 2 or more previous protection order convictions, 3 or more previous Menacing, Aggravated Menacing, or Aggravated Trespassing Convictions, or 2 or more previous Menacing by Stalking convictions. The bill had a third hearing in the Senate Judiciary Committee on May 8, 2019.

### **SB47 SEX OFFENDER REGISTRY CHANGES (EKLUND)**

The bill creates a procedure for certain tier II sex offenders convicted of unlawful sexual conduct with a minor to petition a court for reclassification or removal from the sex offender registry and to permits record sealing in those cases. The bill was reported out at the third hearing in the Senate Judiciary Committee on April 10, 2019.

### **SB48 SPEEDY TRIAL (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 authorizes the court to release the person from detention in connection with those charges pending trial. The bill was passed by the Senate on April 10, 2019, 31-0. The bill had a third hearing for all testimony on May 16, 2019.

### **HB136 PROHIBIT DEATH PENALTY IF MENTALLY ILL AT TIME OF OFFENSE (HILLYER)**

The bill was introduced on March 14, 2019 and prohibits the death penalty if the offender was mentally ill at time of offense. The bill had a third hearing in the House Criminal Justice Committee on May 16, 2019. A companion bill, **SB54 (EKLUND, WILLIAMS)** was introduced on February 19, 2019 and had a first hearing in the Senate Judiciary Committee on April 24, 2019.

## ICYMI

On April 25, 2019, the Governor's Distracted Driving Task Force released its Report and Recommendations, which include making touching a mobile electronic device while driving a primary offense, increasing fines and penalties for distracted driving, and highlighting the issue in the driver's education curriculum. Under current law, texting while driving is illegal, but it is only a primary offense for drivers younger than 18.

[https://content.govdelivery.com/attachments/OHOOD/2019/04/24/file\\_attachments/1198896/Ohio%20Distracted%20Driving%20Task%20Force%20Report%20FINAL.pdf](https://content.govdelivery.com/attachments/OHOOD/2019/04/24/file_attachments/1198896/Ohio%20Distracted%20Driving%20Task%20Force%20Report%20FINAL.pdf)

*"Second Chances: One Year in Ohio's Drug Courts"* is a documentary film that provides a gripping, up-close look at how three courts in one state – Ohio – approach the American epidemic.

The one-hour film was produced and edited by Anne Fife of Ohio Government Telecommunications under contract to the Ohio Supreme Court's Office of Public Information. It was released via the [Court News Ohio](#) website

[http://www.courtnewsOhio.gov/happening/2019/secondChances\\_050819.asp#.XNmtvjBKhhE](http://www.courtnewsOhio.gov/happening/2019/secondChances_050819.asp#.XNmtvjBKhhE)

The Supreme Court of Ohio recently hosted a Pretrial Justice Summit to talk about why bail reform is needed.

[http://www.courtnewsOhio.gov/happening/2019/pretrialJusticeSummit\\_050719.asp#.XNmuMTBKhhE](http://www.courtnewsOhio.gov/happening/2019/pretrialJusticeSummit_050719.asp#.XNmuMTBKhhE)

## LEGISLATION IMPACTING SENTENCING UPDATES continued

### **HB66 THEFT VICTIM RESTITUTION (MERRIN)**

The bill is referred to as the "Theft Victims' Restitution Act" and provides for restitution to cover the cost of accounting or auditing done to determine the extent of a victim's economic loss. The bill was reported out of the House Criminal Justice Committee on March 28, 2019 at the third hearing and passed by the House on April 11, 2019, 89-3. On May 1, 2019 the bill was referred to the Senate Government and Oversight Reform Committee.

### **HB85 CAPITAL CASE COSTS (WILKIN, ROGERS)**

The bill allows the Controlling Board to transfer money to the Attorney General and State Public Defender to defray county costs associated with certain capital cases. The bill was reported out of the House Criminal Justice Committee at the third hearing on March 28, 2019 and passed by the House on April 3, 2019, 93-2, Emergency Clause 93-2. On April 24, 2019, the bill had a first hearing in the Senate Finance Committee.

### **SB118 INCREASE ASSAULT PENALTIES – SPORTS OFFICIALS (ROEGNER)**

The bill was introduced on March 26, 2019 and increases the penalty for assault if the victim is acting as a sports official or the assault is committed in retaliation for the victim's actions as a sports official. The bill was referred to the Senate Judiciary Committee on March 28, 2019. On April 18, 2019 a companion bill, **HB208 (ROEMER, MILLER)**, was introduced and referred to the House Criminal Justice Committee on April 30, 2019.

### **HB128 SOLICITING PENALTY (KOEHLER, MILLER)**

The bill was introduced on March 12, 2019. The bill increases the penalty for soliciting when the person solicited is age 16 or older and the offender offered payment to engage in sexual activity and increases the penalty for soliciting a person age 18 or older if the offender offered payment to engage in sexual activity and solicited the other person within 1,500 feet of a school or place of worship. The bill also authorizes a court to impose a fine of up to \$1,500 for soliciting in the circumstances aforementioned. The bill also allows the court to designate up to \$750 of the fine be deposited into the Victims of Human Trafficking Fund and permits money in the Victims of Human Trafficking Fund to be used for providing education or treatment programs for persons who have solicited another to engage in sexual activity for hire. The bill had a first hearing in the House Criminal Justice Committee on April 11, 2019.

### **HB161 ABUSE OF CORPSE (SMITH, R.)**

The bill was introduced on March 25, 2019 and increases the penalties for abuse of a corpse in circumstances that involve dismemberment or mutilation of the corpse. The bill had a fourth hearing in the House Criminal Justice Committee on May 9, 2019.

### **[Reagan Tokes Law Information](#)**

The law mandates a system of indefinite sentencing for non-life felonies of the first and second degree and applies to offenses committed on or after March 22, 2019. Contact Commission staff for more information or training opportunities.

[Resources and information can be found 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 Workgroup** 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).

## 2019 Full Commission Meeting Dates

### 2019 Meeting Schedule

\*Working committees meet between Full Commission meeting dates.

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.

#### Special Thanks to contributor:

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

Questions, Comments, Suggestions? Contact: [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov)

#### Contact Us:

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Columbus, Ohio 43215-3431

[www.supremecourt.ohio.gov/Boards/Sentencing](http://www.supremecourt.ohio.gov/Boards/Sentencing)

## MEMBERS

### CHAIR

**Maureen O'Connor, Chief Justice**

### VICE-CHAIR

**Nick Selvaggio, Common Pleas Court Judge**

**John Eklund, State Senator**

**Cecil Thomas, State Senator**

**William Seitz, State Representative**

**Kristin Boggs, State Representative**

**Jennifer Muench-McElfresh, 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, City Solicitor General**

**Larry Sims, Sheriff**

**Aaron Montz, Mayor**

**Colonel Rick Fambro, Ohio State Highway Patrol**

**Ryan Gies,**

*Director, Department of Youth Services*

**Tim Young, State Public Defender**

**Annette Chambers-Smith, Director, Department of Rehabilitation and Correction**

**Chrystal Pounds-Alexander,**  
*Victim Representative*

**Paula Brown, Ohio State Bar Association**

**Gwen Howe-Gebers – County Prosecutor (Juvenile)**

**David Painter – County Commissioner**

**Chief Brandon Standley – Law Enforcement**

**Assistant Chief Charles Chandler – Peace Officer**

**Kathleen Hamm, Defense Attorney**

**Brooke Burns – Public Defender**

\*the Commission is assisted by its Advisory Committee, a [complete list is here](#).