

# 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



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## LEGISLATION IMPACTING SENTENCING – RECENTLY INTRODUCED

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### **SB182 RAISE MINIMUM AGE FOR FIREARM PURCHASES (THOMAS, LEHNER)**

The bill was introduced on August 13, 2019 and is scheduled for a first hearing in the Senate Government Oversight and Reform Committee on September 17, 2019.

The bill proposes to raise the minimum age to purchase a firearm to age 21 and increases the penalty for improperly furnishing firearms to an underage person.

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### **HB315 FIREARM SALES & SUICIDE PREVENTION (LISTON)**

The bill was introduced August 7, 2019 and requires federally licensed firearms dealers to provide suicide prevention information to the purchaser of a firearm. The brochure is to be created by the Office of Criminal Justice Services, Department of Public Safety.

### **SB184 (LEHNER, WILLIAMS)**

The bill was introduced August 19, 2019 and allows family members, household members, and law enforcement officers to obtain a court order that temporarily restricts a person's access to firearms if that person poses a danger to self or others. The bill sets up a timeline for hearings on petitions for extreme risk protection orders, and requires voluntary surrender of firearms within 72 hours, at which point firearms not surrendered will be seized, with receipt of seized firearms filed with the court. The bill also creates two new criminal offenses: unlawful petition for an extreme risk protection order is an M3; having a firearm while under extreme risk protection order disability is an M3, and repeat offenses are F5s. The disability lasts for 5 years after an extreme risk protection order expires. Additionally, the bill requires the BCI superintendent, within 6 months, to prepare forms for red flag protection orders and provides extremely detailed instructions for doing so. The superintendent is also responsible for distributing the forms to all county, municipal, and common pleas courts. The bill is scheduled for a first hearing in the Senate Government Oversight and Reform Committee on September 17, 2019.

**HB316 (RUSSO, SWEENEY)** was introduced August 2, 2019 and includes the same provisions.

### **HB317 FIREARM TRANSFERS (ROBINSON, MILLER)**

The bill was introduced August 7, 2019 and requires a firearm transfer to be made through a federally licensed dealer or a law enforcement agency. Some exceptions are made for temporary transfers, such as at a shooting range, for hunting activities, and for historic guns. The bill requires a background check when a firearm is transferred; this includes a competency check involving the attorney general's database of people who have been involuntarily committed or found to be mentally ill subject to court order. That database is currently accessible to sheriffs issuing licenses to carry guns – under the bill, other law enforcement as well as federally licensed gun dealers will be required to access the database. A similar bill **SB183 (LEHNER, THOMAS)** was introduced on August 13, 2019 and is scheduled for a first hearing in the Senate Government Oversight and Reform Committee on September 17, 2019.

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## LEGISLATION IMPACTING SENTENCING – UPDATES

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### **SB19 EXTREME RISK PROTECTION ORDER (WILLIAMS)**

The bill was introduced on February 12, 2019. The bill allows family members, household members, and law enforcement officers to obtain a court order that temporarily restricts a person's access to firearms if that person poses a danger to themselves or others. The bill had a first hearing in the Senate Government and Oversight Reform Committee on September 10, 2019.

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

The bill creates an M3 offense of Aggravated Bullying and requires a tiered disciplinary program for aggravated bullying in schools. It was referred to the Senate Judiciary Committee on June 11, 2019 and is scheduled for a first hearing on September 18, 2019.

### **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. The bill is scheduled for a second hearing on September 18, 2019. A companion bill, **HB208 (ROEMER, MILLER)**, has had two hearings in the House Criminal Justice Committee, most recently on June 27, 2019.

### **SB58 NONVIOLENT CRIMINALS WITH MENTAL ILLNESS (GAVARONE)**

The bill expresses the intent of the General Assembly to reform the process of restoring the competency of individuals with serious mental illness charged with nonviolent crimes and to provide alternatives for treatment. It was introduced on February 21, 2019 and referred to the Senate Judiciary Committee on February 26, 2019. A substitute bill was accepted in the Senate Judiciary Committee on September 10, 2019 at the first hearing. A second hearing for the bill is scheduled for September 18, 2019.

### **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. The resolution was passed by the House on June 26, 2019, 94-1 and referred to the Senate Judiciary Committee on July 17, 2019. The resolution had a first hearing in the Senate Judiciary Committee on September 10, 2019.

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

The bill was amended in the House Criminal Justice committee and voted out of the House on June 5, 2019, 76-18. The bill was referred to the Senate Judiciary Committee on June 11, 2019 and is scheduled for a first hearing on September 18, 2019.

The bill prohibits the death penalty in cases where the offender has a specific mental illness at the time of the crime. The bill was amended to make life without parole mandatory if the mentally ill person is guilty but not death eligible under the bill (both retroactively and prospectively).

A second amendment removed "major depressive disorder" from the list of possible ailments that would make someone not death eligible under the bill (retained in the bill, is: schizophrenia, schizoaffective disorder, bipolar disorder, and delusional disorder).

A companion bill, **SB54 (EKLUND, WILLIAMS)** had a third hearing in the Senate Judiciary Committee on July 17, 2019 and a substitute bill (harmonizing it with HB136) was accepted without objection.

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## COURT DECISIONS

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### *State v. Hitchcock*, SLIP OPINION No. 2019-OHIO-3246

Decided August 15, 2019.

The Court declared that a trial court may not impose a community control sanction or a term in a Community Based Correctional Facility (CBCF) be served consecutively to a prison term on a separate count. The defendant in this case was convicted of three counts and the sentencing court imposed consecutive prison terms on counts 1 and 2, and a consecutive term of a community control sanction, including placement in a CBCF on count 3.

The Court held that statutory authority does not exist for this type of sentence, and absent statutory authority, a community control sanction may not be imposed on one count consecutive to a prison term on another felony count.

### *In Re: Ohio Execution Protocol Litigation US Court of Appeals – 6<sup>th</sup> Circuit No. 16-3064*

Decided September 11, 2019.

Ohio's lethal injection execution process was found constitutional. The 6<sup>th</sup> Circuit Appeals Court declared that under the recent US Supreme Court decision *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), the three-drug protocol was not shown to cause "severe pain and needless suffering" prohibited by the 8<sup>th</sup> amendment.

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## ICYMI

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### 2019 STATE OF THE JUDICIARY ADDRESS

<http://www.ohiochannel.org/collections/supreme-court-of-ohio>

On September 12, 2019, Ohio Supreme Court Chief Justice Maureen O'Connor delivered the annual State of the Judiciary address as part of the annual meeting of the Ohio Judicial Conference. The theme this year for the annual meeting was "Courtrooms, Cameras and Building Public Confidence." [You can view the address on the Ohio Channel, Supreme Court of Ohio archives here.](#)

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### SUPREME COURT OF OHIO SEEKING PUBLIC COMMENT

The Supreme Court of Ohio is seeking public comment, until October 25, 2019, on proposed amendments to Rules of Superintendence, Criminal Rule 5 regarding bond schedules.

The proposed amendment requires municipal or county courts to adopt a uniform bail bond schedule established by the Supreme Court of Ohio if there is more than one municipal or county court in a county and the courts are unable to agree on a uniform bail bond schedule.

Under the proposal, a bail bond schedule shall include a presumption of personal bail. More information can be found by following this link:

[http://www.courtnewsOhio.gov/happening/2019/ruleAmendBondSchedule\\_082619.asp#.XX-eMeRYaUJ](http://www.courtnewsOhio.gov/happening/2019/ruleAmendBondSchedule_082619.asp#.XX-eMeRYaUJ)

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### OHIO ATTORNEY GENERAL

Ohio Attorney General David Yost signed on to a letter of the National Association of Attorneys General, asking Congress to remove federal barriers that currently impede treatment for opioid use disorder.

The letter asks that buprenorphine (in suboxone and naloxone) be easier to prescribe and that Medicaid reimbursement be permitted for adults ages 21 through 65 receiving mental health or substance use disorder treatment in residential facilities with more than 16 beds.

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### 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 us for more information or training opportunities.

[Resources and information can be found here.](#)

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## 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).

## Full Commission Meeting Dates

**Next Meeting of the Full Commission:  
Thursday September 19, 2019 10:00 a.m. – Riffe Center**

*\*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**

**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](#).