

Legislative & Judicial Brief

A Message from Sara Andrews, Director



As you know, a top priority for the work of the Commission is connectivity among all of our partners in criminal justice and public safety reform. Talking about a priority is one thing, but making it happen is preeminence. This month you'll see our 2015 Report, documenting our work and recognizing our accomplishments. I'm proud to say that we are just getting started! This year we are embarking on several projects that will further criminal justice and public safety reform in the State of Ohio by maximizing partnership and collaboration with academic institutions, the National Institute of Corrections and other State Sentencing Commissions.

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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Member Profile



Chrystal Pounds-Alexander received her undergraduate degree from The Ohio State University and a master's in criminal justice from Tiffin University. She is the former program director of the Ohio Family Violence Prevention Center and currently serves as administrator for the Office of Victim Services in the Ohio Department of Rehabilitation and Correction.

Chrystal is also a registered advocate with Senior standing in the state of Ohio and a Nationally Credentialed Victim Advocate with the designations of Comprehensive Victim Intervention Specialist and Program Management Specialist.

Legislation Impacting Sentencing

HB 164 – Record Sealing

The bill ensures the record sealing law applies uniformly by applying it retroactively so that, if an offense is eligible for sealing, it can be sealed regardless of whether it was committed before or after it became an eligible offense. The bill had its 2nd hearing in the Senate Criminal Justice committee on 2/24/16.

HB 171 – Heroin

This bill seeks to increase the penalties when an individual is found with heroin by lowering the threshold needed for the possession of the drug to be considered a first degree felony, as well as for the offender to be considered a major drug offender. The bill had its 3rd hearing in the Senate Criminal Justice committee on 2/24/16.

HB 388 – Ignition Interlock Devices

Under the bill, for a first-time OVI offender, the court can either (1) give no driving privileges, (2) give limited driving privileges (as under current law), or (3) give unlimited privileges (at petition of offender), with use of an IID. The bill had its 3rd hearing in the House Armed Services, Veterans Affairs and Public Safety committee on 2/23/16.

HB 410 – Truancy

The bill makes several changes to the truancy law to help keep kids in school. (See Brief, Jan. 2016). Recent revisions to the bill would delay its implementation date to the 2017-2018 school year, require the use of diversion if such programming is available to a juvenile court, and clarify that a truant student need not be diverted after a complaint is filed if the student has already enrolled in a diversion program. The bill had its 3rd hearing in the House Education committee on 2/23/2016.

HB 439 – Voyeurism and Similar Crimes

The bill treats an “impaired person” like a minor victim for purposes of RC 2907.321 (Pandering Obscenity involving a Minor), 2907.322 (Pandering Sexually-Oriented Material Involving a Minor), 2907.323 (Illegal Use of a Minor in Sexually-Oriented Material). If the victim is an “impaired person,” voyeurism is an F5. “Impaired” means diminished ability to resist or consent because of a mental or physical condition or advanced age. The bill was drafted in response to a case where elderly nursing home residents were being exploited. The bill had its 2nd hearing in the House Judiciary committee on 2/23/16.

SB 97 – Repeat Violent Offenders

The content of the bill is based on the findings of a multidisciplinary advisory group directed by the Ohio Attorney General Mike DeWine beginning in 2011. The bill creates the Armed Violent Career Criminal designation for offenders who possess a firearm or dangerous ordnance after having two previous violent felony convictions and the bill allows a judge to sentence for a mandatory range of two to eleven years in prison for a person convicted of a violent felony offense and a violent career criminal/firearm possession specification. Finally, the bill increases the current prison terms for firearm specifications by fifty percent. The bill had its 6th hearing in the House Judiciary Committee on 1/26/16.

State v. Polus, Slip Opinion No. 2016-Ohio-655

In *State v. Polus*, Slip Opinion No. 2016-Ohio-655, the Ohio Supreme Court ruled that a criminal sentence for a felony and a misdemeanor must be served at the same time, except for in a certain situations specified in state law. In a 6-1 decision, the Supreme Court ruled a Lucas County man's sentence for pleading guilty to one fifth-degree felony and one first-degree misdemeanor must run concurrently. The decision settles a conflict among Ohio appellate courts where some have found that R.C. 2929.41(B)(1) provides judges the discretion to run felony and misdemeanor sentences consecutively.

State v. J.M., Case No. 2015-1221

Argued on February 23, 2016, *State of Ohio v. (J.M.)*, Case No. 2015-1221, asked whether a violation of R.C. 4503.11 for failure to register a motor vehicle, a fourth degree misdemeanor, be counted when determining whether a person is an offender eligible under R.C. 2953.31 to have the record of an earlier conviction sealed. In the case, the appellee had pled guilty to a felony in 1989 and, subsequently, a third degree misdemeanor in 1998. Fifteen years later, in 2013, the appellee pled guilty for failure to renew the vehicle registration. In 2014, J.M. applied for sealing of the 1989 conviction which application was approved by the trial court, a decision affirmed by the 10th District Court of Appeals. However, that decision conflicted with a 4th District Court of Appeals decision and the Supreme Court certified the conflict. The Court will determine whether the failure to register a motor vehicle should be counted under the statute as a conviction that would make J.M. ineligible to seal his conviction. The Court's decision is expected later this year.

In re: Aaron K. Von, Case No. 2015-0619

Argued on February 24, 2016, this case revolves around whether the sex offender registration procedure in R.C. 2950.15 applies retroactively to sex offenders who committed their crimes before January 1, 2008, and who were convicted and sentenced before that date. The Court's decision will be rendered later this year.

Ohio Attorney General Opinion

OAG Opinion No. 2016-007

The Ohio Attorney General issued an opinion in response to a request from the Trumbull County Prosecuting Attorney about the responsibility of a clerk of court under R.C. 2937.22(B) to transmit a bail surcharge to the Treasurer of State if a defendant enters an intervention in lieu of conviction program pursuant to R.C. 2951.041 or a pre-trial diversion program pursuant to R.C. 2935.36. The question presented recognized that, in a case that involves an intervention in lieu of conviction program or a pre-trial diversion program, it is possible that a defendant may plead guilty and later the case is dismissed. If a plea of guilty and a dismissal occur within the same case, conflicting results may occur because under R.C. 2937.22(B) a plea of guilty requires transmittal of the bail surcharge to the Treasurer of State, but upon a later dismissal, R.C. 2937.22(B) requires that the bail surcharge be returned to the defendant.

The Attorney General's analysis determined that under R.C. 2937.22(B), a conviction, plea of guilty, forfeiture of bail, finding of not guilty, or dismissal of the charges prompts the clerk of court either to transmit the bail surcharge to the Treasurer of State or return the bail surcharge to the defendant, as those events signify the final judgment in a criminal case. However, in the case of intervention in lieu of conviction (ILC) under R.C. 2951.041, a defendant's guilty plea is not a final judgment in the criminal case. If the defendant fails to complete the requirements of the ILC program, the court enters a finding of guilt and sentences the defendant, which prompts the clerk of court to transmit the bail surcharge as provided in R.C. 2937.22(B) to the Treasurer of State. If the defendant successfully completes the requirements of the ILC program, the court dismisses the charges against the defendant, which prompts the clerk of court to return the bail surcharge to the defendant.

In the case of a pre-trial diversion program under R.C. 2935.36, if a defendant fails to complete the requirements of the pre-trial diversion program, and the defendant's criminal case proceeds to trial and the final judgment of the trial court prompts the clerk of court either to transmit the bail surcharge as provided in R.C. 2937.22(B) to the Treasurer of State if the defendant is convicted, or return the bail surcharge to the defendant if the defendant is found not guilty. However, if the defendant successfully completes the pre-trial diversion program requirements, the court dismisses the charges against the defendant, which prompts the clerk of court to return the bail surcharge to the defendant.

Judicial Votes Count Website Updated for 2016 Primary Election

The March 15 primary election will include Ohio Supreme Court, appeals court, and common pleas court races. In all, Ohio voters will determine 145 judicial seats this year.

Voters in each of Ohio's 88 counties can click on a county to get to know the judicial candidates, including their judicial experience and why they are running for that particular judicial seat.

<http://blogs.uakron.edu/judicialvotescount/>

Courts' Response to Trafficking of Children Workgroup

The Ohio Supreme Court's Advisory Committee on Children and Families has formed a Courts' Response to Trafficking of Children Workgroup.

Chaired by Lucas County Juvenile Court Judge Denise Navarre Cubbon, the workgroup is made up of 20 people who have backgrounds in a variety of fields, including law, social work, law enforcement, academia, and medical.

"The workgroup's focus will be child victims of trafficking and how juvenile courts can best address the needs of these children," Judge Cubbon said. Each year, it's estimated that nearly 1,100 Ohio children become victims of human trafficking, and an additional 3,000 are at risk.

The goals of the workgroup are to:

- Promote effective judicial response to the trafficking of children,
- Identify promising court-centered practices, models, and strategies to identify system-involved trafficked children,
- Support judicial leadership and foment inter-system collaboration at the local level, and
- Recommend rules, policies, and practices.

Ohio Criminal Sentencing Commission Members

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VICE-CHAIR

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Kort Gatterdam, *Defense Attorney*

Kathleen Hamm, *Public Defender*

Jason Pappas, *Fraternal Order of Police*

*the Commission is assisted by its Advisory Committee, for a complete list contact sara.andrews@sc.ohio.gov

Working Committees of the Commission

Sentencing & Criminal Justice Committee priorities include the study criminal penalties and sentencing statutes and patterns in Ohio, recommend statutory change and review 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 improving as well as building 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.

2016 Full Commission Meeting Dates

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.

Thursday, **March 17, 2016**, Room 101

Thursday, **Sept. 15, 2016**, Room 101

Thursday, **June 23, 2016**, Room 101

Thursday, **Dec. 15, 2016**, Room 101

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 contributors:

Jo Ellen Cline, Esq., Criminal Justice Counsel, Sentencing Commission

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

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



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