



Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Commission is convening in May for a meeting devoted to the discussion of certain agency budget proposals impacting sentencing and criminal justice. We also look forward to a final product from the Recodification Committee later this month. In case you've missed it, the [Ad Hoc Committee on Bail and Pre-Trial Services Reform](#) has completed its report and recommendations. The [report is posted](#) on the website and we invite public comment through May 15, 2017.

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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Legislation Impacting Sentencing



HB 38 CRIMINAL OFFENSES – VIOLENCE (GREENSPAN)

The bill provides that purposely causing the death of a first responder or military member is aggravated murder and requires an offender to serve the prison term imposed for felonious assault on a peace officer, investigator, first responder, or military member consecutively to the prison term imposed for any related offense. A substitute bill accepted by the committee includes provisions for attempted murder and clarifies the application and definitions in the bill. The bill had its third hearing on March 28, 2017.

HB 1 DATING VIOLENCE PROTECTION ORDERS (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. The bill was passed by the House on February 28, 2017. The bill had its second hearing in the Senate Judiciary Committee on March 28, 2017.

HB 4 COCAINE AMOUNTS DETERMINATION (CUPP, ROGERS)

The bill provides that in determining the amount of cocaine for trafficking and possession offenses, it also includes a compound, mixture, preparation, or substance containing cocaine. The bill passed the House and was referred to the Senate Judiciary Committee on February 22, 2017. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017. There is also a similar bill, Senate Bill (SB 42 – Eklund) which had its third hearing in the Senate Judiciary Committee on March 28, 2017.

HB 6 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 provides criminal and civil remedies for a violation of the prohibition. The bill had its second hearing on February 21, 2017 and passed the House on March 15, 2017.

HB 49 OPERATING BUDGET (SMITH)

The bill makes appropriations for FY 2018-2019, specifically, the Department of Rehabilitation and Correction and the executive recommendation for the FY18/19 budget for community programs. By FY19, Ohio will have increased community resources by \$100.3 million, a 71 percent increase over FY11 levels. DRC reports in 2016, approximately 8,300 of the nearly 20,000 people committed to prison were sent there to serve one year or less and approximately 4,100 of those were Felony 5 offenses. The proposed budget builds on an existing pilot program to divert nonviolent, fifth degree felons from prison and DRC estimates the target population to be approximately 3,400 offenders per year. Hearings on HB 49 continue in the House Finance Committee. DRC Director Mohr gave testimony regarding his agency's budget before the full committee on February 14, 2017 and before the Transportation Subcommittee on March 14, 2017.

Legislation Impacting Sentencing – continued

HB 56 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, permits a person convicted of certain prostitution-related offenses to apply for the 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. The bill was referred to the House Criminal Justice Committee on February 21, 2017 and had its first hearing in the House Criminal Justice Committee on March 7, 2017.

HB 68 VOYEURISM VICTIM DEFINITION (ANIELSKI)

The bill would include an impaired person as a potential victim of voyeurism and 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. The bill also prohibits 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 had its second hearing in the House Criminal Justice Committee on March 21, 2017.

HB 81 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 shows that they 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 that they had a serious mental illness at the time of committing the offense. This bill had its first hearing in the House Criminal Justice Committee on March 7, 2017. A companion bill in the Senate (SB 40) had its first hearing in the Senate Judiciary Committee on February 21, 2017.

SB 94 DEATH PENALTY (BROWN)

The bill would abolish the death penalty. The bill was introduced on March 7, 2017.

HB 97 ELIMINATE SPOUSAL EXCEPTIONS – SEXUAL CRIMES (JOHNSON, BOGGS)

The bill would eliminate the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, and public indecency. The bill also permits a person to testify against the person's spouse in a prosecution for any of those offenses. The bill had its first hearing in the House Criminal Justice Committee on March 21, 2017.

HB 95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is the apparent cause of the violation and reenacts provisions that specified that certain electronic wireless communications device violations were allied offenses of similar import that were found unconstitutional in *Linndale v. Ohio*, 2014-Ohio-4024, by the Tenth District Court of Appeals. The bill was introduced on February 27, 2017 and was referred to the Transportation and Public Safety Committee on March 7, 2017.

HB 96 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 introduced on February 27, 2017 and had its second hearing in the House Criminal Justice Committee on March 28, 2017.

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. The bill had its third hearing on February 28, 2017 and an amended version passed the Senate on March 29, 2017.

SB 7 PROTECTION ORDER VIOLATIONS (BACON, MANNING)

The bill, which is a reintroduction of legislation from the last General Assembly provides 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 had actual notice of the order or agreement and the person recklessly violated its terms. The bill was referred to the Senate Ways and Means Committee and later re-referred to the Local Government, Public Safety and Veteran's Affairs Committee. An amended version of the bill was reported and passed by the Senate on March 7, 2017. The bill was referred to the House Criminal Justice Committee and had its second hearing on March 28, 2017.

SB 32 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 authorizes the court to release the person from detention in connection with those charges pending trial. The bill was reported out of the Senate Judiciary Committee on March 21, 2017.

SB 42 Drug Offense Penalties (EKLUND)

The bill expressly provides that drug offense penalties that refer to a particular type of drug also apply to a compound, mixture, preparation, or substance containing a detectable amount of that drug and to declare an emergency. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017.

HB 109 CRIMES AGAINST DISABLED OR ELDERLY (PATMON)

The bill creates a specification that imposes an additional two year prison term on a felony offender or a two year mandatory commitment on a juvenile offender who commits the offense against a disabled person or elderly person. The bill was introduced on March 7, 2017.

HB 117 OPIOID THERAPY FOR DRUG OFFENDERS (HUFFMAN, BRENNER)

The bill establishes a statewide pilot program for the provision of long-acting opioid antagonist therapy for offenders convicted of an opioid-related offense who will be released on supervised release. The bill requires the therapy to be provided during the offender's confinement and during the supervised release. The bill was introduced on March 7, 2017.

HB 125 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 had its first hearing in the House Criminal Justice Committee on March 28, 2017.

HB 141 INVOLUNTARY MANSLAUGHTER (DEVER, WIGGAM)

The bill provides that causing or contributing to the death of another person as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and to make this offense a strict liability offense. The bill was introduced on March 21, 2017.

SB 66 SENTENCING MODIFICATION-REHABILITATION (EKLUND, TAVARES)

The bill modifies criminal sentencing and corrections law by including rehabilitation as a purpose of felony sentencing, removing the one-year minimum for presumptive fourth or fifth degree felony community control sanctions, modifying sanctions for a violation of a community control condition, modifying the manner of calculating confinement credits, modifying eligibility criteria and procedures for granting intervention in lieu of conviction, making offenders convicted of certain multiple fourth or fifth degree felonies eligible for conviction record sealing, revising procedures for the Adult Parole Authority to grant a final release or terminate post-release control, and modifying the criteria for considering a prison term sanction for a post-release control violation. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017.

SB 67 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 second hearing in the Senate Judiciary Committee on March 14, 2017.

Court Decisions Regarding Sentencing

Supreme Court of Ohio Cases

State v. Gonzalez, 2017-Ohio-777

After granting a motion for reconsideration, the Supreme Court of Ohio reversed its earlier decision in Gonzalez (2016-Ohio-8319) finding that the state need not prove that the weight of cocaine without filler meets the statutory thresholds. The total weight of the drug, including any fillers, should be weighed to determine the penalty.

In *State v. Moore, 2014-Ohio-0120*, the Court granted a stay of execution of judgment while the State pursues a writ of certiorari in the U.S. Supreme Court on two questions: 1) whether the defendant's consecutive term of years sentence violates the Eighth Amendment (cruel and unusual punishment) when imposed on a juvenile non-homicide offender; and 2) whether a juvenile offender that is eligible for release when he is 92 years old is afforded a "meaningful opportunity for release.

Updates from Recent Commission Discussion

Marsy's Law

"Amendment to Ohio's Constitution that ensures equal rights for victims of crime"

Representatives joined the full Commission meeting for discussion and information on the current status of Marsy's Law in Ohio. For more information about [Marsy's Law and the presentation](#), check our [website](#).

Justice Reinvestment in Ohio – where are we now?

Marc Pelka and Carl Reynolds from the Council of State Government Justice Center joined the Commission at its March 16 meeting and gave us a recap of the 2011 justice reinvestment process, HB 86 policies enacted and state and local initiatives occurring since then. They also shared recent regional and national criminal justice system trends. The conversation then turned to next steps in building the Commission's capacity to compile data, identify trends for Ohio to achieve greater impact from public safety policies, including opportunities to receive external support. [Click here for their presentation](#).

Buckeye Pathway

The Buckeye Pathway, according to Speaker Rosenberger, is the House Republican caucus taking steps to continue Ohio's steady and impressive progress while also reviewing some of our long-term goals.

The Buckeye Pathway is intended to provide some background of the mission and vision for the 132nd General Assembly.

You can find out more about the Buckeye Pathway on [Speaker Rosenberger's home page](#) and we've linked the document here:

[Buckeye Pathway](#).

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*

Hearcel Craig, *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*

Lara Baker-Morrish, *City of Columbus, Chief
Prosecutor*

Derek DeVine, *County Prosecutor*

Albert Rodenberg, *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

Ronald Burkitt, *Juvenile Police Officer*

Fredrick Benton Jr., *Defense Attorney*

Kathleen Hamm, *Public Defender*

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

2017 Full Commission Meeting Dates

****Thursday, May 18, 2017** at the Vern Riffe Center

(**meeting recently added to the schedule)

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 14, 2017**

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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