



# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*We are happy to welcome several new Commission Members: Gwen Howe-Gebers, Henry County Prosecutor; Brooke Burns, Chief Counsel-Juvenile Department, Office of the Ohio Public Defender; Chief Gary York, Madison Township Police Department; and Kathleen Hamm, Wood County Public Defender.*

*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 - 9
Supreme Court of Ohio Decisions Impacting Sentencing	10
Working Committees of the Commission	11
Commission Roster	11
Commission Meeting Dates	11

## Legislation Impacting Sentencing Recently Introduced



### **HB553 EXPAND THEFT IN OFFICE PENALTIES (CUPP)**

The bill increases penalties for theft in office based on the amount of property or services stolen and includes as restitution certain audit costs of the entity that suffered the loss. The bill was introduced on March 13, 2018 and had a first hearing in the House Criminal Justice Committee on April 10, 2018.

### **HB555 RETROACTIVE PENALTY REDUCTION (WEST, SYKES)**

The bill makes a reduction of a penalty, forfeiture, or punishment apply retroactively when an offender was sentenced for the offense under the law in effect prior to the reduction, as long as the offense is not an offense of violence. The bill was introduced March 15, 2018 and referred to the House Criminal Justice Committee on March 20, 2018.

### **HB561 SPOUSAL EXCEPTIONS-SEXUAL CRIMES (BOGGS, LANESE)**

The bill eliminates the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning and permits a person to testify against the person's spouse in a prosecution for any of those offenses. The bill was introduced March 19, 2018 and referred to the House Criminal Justice Committee on April 10, 2018.

### **HB563 FIREARM BACKGROUND CHECKS (WEST)**

The bill prohibits a federally licensed firearms dealer from transferring a firearm while a background check is pending unless 30 days have elapsed. The bill was introduced on March 19, 2018 and referred to the House Federalism and Interstate Relations Committee on April 10, 2018.

### **HB564 FIREARM WAITING PERIOD (WEST)**

The bill requires a 72-hour waiting period between the purchase and delivery of firearms and imposes a fine if the requirement is violated. The bill was introduced on March 19, 2018 and referred to the House Federalism and Interstate Relations Committee on April 10, 2018.

### **HB568 SOPHIE'S LAW-ACCIDENT INVESTIGATIONS (BUTLER)**

The bill authorizes a law enforcement officer to order the administration of a chemical test if the officer gets a warrant, if the officer asks for a warrant and does not get a response within an hour, or if the officer decides it is unfeasible to wait for a warrant. The officer is able to make an arrest if there is probable cause that a moving violation resulted in serious harm or death. The bill requires the bind-over of a 16- or 17-year-old who is alleged to have committed aggravated vehicular homicide. The act is referred to as "Sophie's Law". The bill was introduced on March 20, 2018 and referred to the House Criminal Justice Committee on April 10, 2018.

### **HB585 AMMO & FIREARM OWNERSHIP LIMITS (HENNE)**

The bill expands the definition of dangerous ordnance to include armor-piercing ammunition and expands the definition of an automatic firearm to include any device within the federal definition of "machine gun." The bill expands the conditions under which a person may not possess a firearm (if under indictment for any felony offense, if convicted of domestic violence or violation of protection order, if the subject of a protection order including an extreme risk protection order, if dishonorably discharged from armed forces, if prohibited from gun ownership under federal law, and if renounced citizenship) and eliminates the ability to apply for relief from a weapons disability. The bill prohibits a person from buying, purchasing, obtaining, or furnishing a firearm on behalf of a third party. The bill also creates an extreme risk protection order, to be issued by a common pleas court and requires that all protection orders be entered into LEADS within 24 hours and that they be in a format that can be submitted to the federal NCIC database. The bill was introduced on April 5, 2018 and had a first hearing in the House State and Local Government Committee on April 10, 2018.

## Legislation Impacting Sentencing SIGNED BY THE GOVERNOR

### **HB1 DATING VIOLENCE (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 Senate on February 20, 2018 and the House concurred to the amendments on February 28, 2018. The bill was signed by the Governor on April 5, 2018, effective in 90 days.

**Legislation Impacting Sentencing Recently Introduced – continued****HB590 REASONABLE FORCE UNDER THREAT (VITALE, KELLER)**

The bill defines what constitutes reasonable force and specifies when a person is justified in its use or threatened use (“Stand Your Ground”). It provides that a person has no duty to retreat from any place where the person is lawfully present prior to using or threatening to use reasonable force and establishes civil and criminal immunity for a person who uses or threatens to use reasonable force. The bill further revises the circumstances under which a person who uses or threatens to use deadly force is presumed to be acting in self-defense or in defense of another and establishes a procedure and standards for asserting and disproving self-defense, defense of another, or defense of a residence in a criminal or civil case. The bill was introduced on April 9, 2018.

**HB592 OHIO SECOND CHANCE ACT (RAMOS)**

The bill permits sealing of records pertaining to multiple criminal offenses that resulted from drug-seeking behavior if the offender has successfully completed a drug treatment program and is called the Ohio Second Chance Act. The bill was introduced on April 10, 2018.

**HB609 EXPULSION-THREAT OF VIOLENCE (HUGHES)**

The bill is companion legislation to SB289 (see this issue) and was introduced on April 19, 2018.

**HB612 CHILD ABUSE REGISTRY (PERALES)**

The bill specifies the establishment and maintenance of a publicly accessible child abuse registry containing information on offenders who commit certain offenses against minors under 14 years of age. The act is to be named “Jacob's Law”. The bill was introduced on April 19, 2018.

**SB274 BAIL MODIFICATIONS (McCOLLEY)**

The bill requires courts to use the results of a validated risk assessment tool in bail determinations; it allows nonmonetary bail to be set; it requires courts to collect certain data on bail, pretrial release, and sentencing; and it requires the Supreme Court to 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](#). Commission staff also recently prepared an [addendum to that report](#). The bill is a companion to HB439 (Dever, Ginter) and was introduced on March 20, 2018 and referred to the Senate Judiciary Committee on March 21, 2018.

**SB278 EXTREME RISK PROTECTION ORDERS (SCHIAVONI, WILLIAMS)**

The bill allows family, household members, or law enforcement 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 was introduced March 26, 2018 and referred to the Senate Government Oversight and Reform Committee on April 11, 2018.

**SB279 IMPROPER FIREARM STORAGE (TAVARES, SYKES)**

The bill prohibits a person from improperly storing a firearm if the person knows that a minor is able to gain access to the firearm (M3) and to provide criminal penalties, including forfeiture of firearms, if a minor gains unauthorized access to an improperly stored firearm (M1; F3 if death or harm results). The bill was introduced March 26, 2018 and referred to the Senate Government Oversight and Reform Committee on April 11, 2018.

**SB280 STRICT LIABILITY OFFENSES-PUNITIVE DAMAGES (EKLUND)**

Current tort law contains a limitation to an exemption from punitive or exemplary damages in cases where a felony conviction involved purposeful or knowing conduct. The bill would make the limitation also apply when the felony conviction was for a strict liability offense. The bill was introduced on March 26, 2018 and referred to the Senate Judiciary Committee on April 11, 2018.

**SB288 DANGEROUS ORDNANCE CLASSIFICATION AND RESTRICTIONS (EKLUND, KUNZE)**

The bill is companion legislation to HB585 and was introduced on April 9, 2018 and referred to the Senate Government Oversight and Reform Committee on April 11, 2018.

---

## Legislation Impacting Sentencing –Recently Introduced (continued)

### **SB289 THREATS OF SCHOOL VIOLENCE (KUNZE)**

Under the bill, if a student communicates a threat (verbally, in writing, or electronically) to physically harm people or property while on school grounds, in a school bus, or at a school event, the student can be expelled for no more than 60 days. If the student is required by the Board to undergo an assessment and fails to do so, the expulsion can extend to up to a year. The bill was introduced on April 9, 2018 and referred to the Senate Education Committee on April 11, 2018.

### **SB290 MISLEADING CALLER IDENTIFICATION (BURKE)**

The bill creates offenses of theft or conversion of a telephone number or exchange and providing misleading caller identification information, known as “spoofing”. The bill bars a person from using or repeating a phone number, exchange, or misleading call ID information not assigned to the person with the intent to defraud, cause harm or wrongfully obtain something of value. The legislation would not apply to blocked or unknown phone numbers. The bill was introduced on April 11, 2018.

## \*\*\* Legislation Impacting Sentencing – Updates \*\*\*

### **HB30 PERMANENTLY DISABLING CRIME SPECIFICATION (KOEHLER)**

The bill, which is a companion to SB 20 (also in this edition) requires an additional prison term of 3 to 8 years for an offender who is convicted of or pleads guilty to a felony offense of violence if the offender is convicted of or pleads guilty to a specification that the victim suffered permanent disabling harm and that the victim was under 6 years of age at the time of the offense. The bill was introduced on February 1, 2017 and a substitute bill was accepted at the third hearing in the House Criminal Justice Committee on October 10, 2017 and on March 20, 2018, at the fourth hearing the substitute bill was reported out as amended.

### **HB38 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. The bill was introduced on February 7, 2017, reported out of the House Criminal Justice Committee at the fifth hearing on May 16, 2017 and passed by the House, 96-0 on May 17, 2017. On June 20, 2017 had a first hearing in the Senate Judiciary Committee and a fourth hearing on April 10, 2018.

### **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. On April 10, 2018, the bill had a first hearing in the Senate Judiciary Committee.

### **HB228 USE OF FORCE IN SELF-DEFENSE (JOHNSON, LATOURETTE)**

The bill, as introduced, shifts the burden to the state to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person’s residence. The bill expands the circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person’s residence. The bill further modifies the Concealed Handgun Licensing Law regarding a licensee’s duty to keep the licensee’s hands in plain sight, the penalties for illegally carrying a concealed firearm or improperly handling firearms in a motor vehicle, and the posting of warning signs regarding the possession of weapons on specified premises. The bill has been referred to as a “stand your ground” bill and was amended at a third hearing, with all testimony heard, on February 13, 2018 in the House Federalism and Interstate Relations Committee. The bill had a fifth hearing on April 17, 2018.

### Legislation Impacting Sentencing – Updates (continued)

#### **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 had a first hearing in the Senate Judiciary Committee on March 20, 2018.

#### **HB296 DRUG CRIME NEAR ADDICTION SERVICES (GAVARONE)**

The bill enhances the penalties for certain drug offenses when committed on the premises or within 1,000 feet of a community addiction services provider, regardless of whether the offender knows the offense is being committed within that vicinity. The bill specifies the new penalty enhancements are at the same level as existing penalty enhancements for drug offenses committed in the vicinity of a school or juvenile. A substitute bill was accepted at the fourth hearing in the House Criminal Justice Committee on April 10, 2018.

#### **HB336 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 had a third hearing on March 21, 2018 in the Transportation, Commerce and Workforce Committee.

#### **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 Senate Judiciary Committee at the third hearing on March 13, 2018 and was considered by the Senate, 33-0 on April 11, 2018.

#### **HB355 SEXTING UNDER 21 (HILL, REZABEK)**

The bill generally prohibits sexting by a person 19 years of age and under but allows diversion from penalty. The bill requires every court in Ohio to create a "sexting educational diversion program" for Ohioans under 21 convicted of sending sexually explicit material featuring minors, as long as it is a first conviction, there is not more than a 5-year difference in ages between offender and person portrayed in the material, and there was no exchange of money or other item of value. The bill also creates several exceptions, including for people with explicit photos of themselves or their spouses (so long as they don't distribute the photos) and those who receive unsolicited photos and immediately delete them. The bill was amended at the first hearing on February 13, 2018 in the House Criminal Justice Committee and had a third hearing on April 10, 2018.

#### **HB366 CHILD SUPPORT LAW (GAVARONE)**

The bill repeals the existing statutory basic child support schedule and requires the Department of Job and Family Services (ODJFS) to adopt rules to create a new schedule that incorporates a self-sufficiency reserve and update the same every four years to reflect changes in the Consumer Price Index for All Urban Consumers. The bill also repeals the existing statutory worksheet forms to calculate child support and the instruction manual and provides that ODJFS can revise the worksheet as needed, but requires revisions at least once every five years. The bill also addresses health care expenses and insurance coverage and directs a Child Support Agency Enforcement (CSEA) to apply deviations from existing orders, establishes a rebuttable presumption regarding amounts withheld or deducted and permits a court or CSEA to consider reasons for deviation from the presumed amount. The bill was introduced October 2, 2017 and reported out of the House Community and Family Advancement Committee at the sixth hearing on January 31, 2018. On March 7, 2018, the bill was passed by the House, 96-0 and on April 10, 2018, had a first hearing in the Senate Judiciary Committee.

### Legislation Impacting Sentencing – Updates (continued)

#### **HB365 REAGAN TOKES LAW (HUGHES, BOGGS)**

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; generally allows the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration; allows the Department to rebut the release presumption and keep an offender in prison up to the maximum term pursuant to specified findings. The bill also requires the Department to establish a reentry program for all offenders released from prison that the Department determines placement in a halfway house or similar facility is necessary, but the offender has not been accepted by any such facility; requires the Adult Parole Authority to establish maximum work-load and case-load standards for its parole and field officers and have enough trained officers to comply with the standards. It requires that GPS monitoring used for offenders released from prison under such monitoring specify restrictions, including inclusionary zones and necessary exclusionary zones; requires the Department to establish system requirements for GPS monitoring of such offenders by the Department or third-party contract administrators; requires the Department to operate a statewide database for law enforcement use containing specified information about such offenders; and requires that third-party administrators for GPS monitoring under a new contract with the Department provide and use a law enforcement-accessible crime scene correlation program. The provisions are to be named the Reagan Tokes Act. There is companion Senate legislation, part 1 Senate Bill 201 and part 2 Senate Bill 202 (Bacon, O'Brien). The bill had its first hearing in the House Criminal Justice Committee on October 17, 2017 and at the fifth hearing on March 13, 2018 a substitute bill was accepted.

## Legislation Impacting Sentencing – continued

### **HB394 MANDATORY JUVENILE BINDOVERS (REZABEK)**

The bill proposes to eliminate mandatory and reverse bindovers, and modify the procedures for discretionary bindovers, of an alleged juvenile offender from a juvenile court to a criminal court; revises the procedures for determining the delinquent child confinement credit; revises certain delinquent child financial sanction dispositions and procedures and establishes a separate restitution disposition; and provides special parole eligibility dates for persons with an indefinite or life sentence imposed for an offense other than aggravated murder or another crime involving the purposeful killing of multiple persons committed when the person was under age 18 and provides for special Parole Board procedures in those cases. On March 20, 2018, at the second hearing in the House Criminal Justice Committee a substitute bill was accepted.

### **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 introduced on November 7, 2017 and on January 23, 2018 was reported out as amended of the House Criminal Justice Committee. On March 21, 2018, the bill was passed by the House, 92-1 and on April 11, 2018, it was referred to the Senate Judiciary Committee.

### **HB411 WRONGFUL IMPRISONMENT LAW (SEITZ, SYKES)**

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 amends the current statutory provision that allows a wrongful imprisonment claim for an "error in procedure" and allows only the error of a Brady violation (i.e. prosecution withholding evidence) to be eligible for a claim based on "error in procedure." The bill mirrors the Senate introduced version, SB248. On March 13, 2018, the bill was reported out at the fourth hearing in the House Government Accountability and Oversight Committee.

### **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 bill has been amended several times and was amended again at a sixth hearing in the House Community and Family Advancement Committee on April 11, 2018.

### **HB439 RISK ASSESSMENT-BAIL SETTING (DEVER, GINTER)**

The bill requires courts to use the results of a validated risk assessment tool in bail determinations; it allows nonmonetary bail to be set; it requires courts to collect certain data on bail, pretrial release, and sentencing; and it requires the Supreme Court to 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](#). Commission staff also recently prepared [an addendum to that report](#). On March 13, 2018 a substitute bill was accepted by the House Criminal Justice Committee and the bill had a third hearing on March 20, 2018. Companion legislation is SB274 (McColley).

### **HB496 TRANSIT EMPLOYEE ASSAULT PENALTY (KELLY)**

The bill makes assault an F5 (F4 if repeat offense) if the victim is a transit bus or rail car operator or transit maintenance worker. A court may impose a fine of up to \$5,000 and may prohibit the offender from riding any Ohio transit system bus or rail car for six months. The bill was introduced on February 6, 2018 and had a first hearing in the House Criminal Justice Committee on March 13, 2018.

---

**Legislation Impacting Sentencing – continued****HB497 SEXUAL IMAGE DISSEMINATION (ROGERS, MANNING)**

The bill prohibits the nonconsensual dissemination of private sexual images and requires that certain property involved in the offense be criminally forfeited. It also creates certain legal rights and employment protections for a victim of the offense. The bill had a second hearing in the House Community and Family Advancement on April 11, 2018.

**HB498 RESISTING ARREST PENALTIES (SCHURING)**

The bill would classify “resisting arrest” as an offense of violence. It also increases the penalty for resisting arrest from an M2 to an M1, and to an F5 (from an M1) if a weapon is brandished or if a law enforcement officer is physically harmed. The bill had a first hearing in the House Criminal Justice Committee on April 10, 2018.

**HB520 SOLICITATION PENALTY – HUMAN TRAFFICKING (MILLER, HUGHES)**

The bill increases the penalty for soliciting when the person solicited is 18 or older, and caps the fine for soliciting in this circumstance at \$2,500, up to \$1,000 of which may be deposited into the Victims of Human Trafficking Fund. The bill was introduced on February 21, 2018 and had a first hearing in the House Criminal Justice Committee on March 13, 2018. Its companion is SB267 (Brown, Kunze) was introduced on February 26, 2018.

**HB523 ANIMAL AND CHILD ABUSE REGISTRY (LANESE, PERALES)**

The bill establishes animal abuse reporting requirements and requires that the Department of Defense Family Advocacy Program be notified when a person serving in the armed forces is investigated for child abuse or neglect or domestic violence. The bill had a second hearing in the House Community and Family Advancement Committee on March 14, 2018.

**HB528 CORPSE ABUSE PENALTIES (SMITH, REZABEK)**

The bill expands the offense of abuse of a corpse to provide that if the person also knowingly dismembers, severs, separates, dissects, or mutilates the corpse, the offense is an F1 subject to a mandatory prison term of 6-11 years. If done as part of a ceremony, rite, initiation, observance, performance, or practice, it is an F2 subject to standard F2 sentencing, but with a mandatory prison term of 6-11 years if done to the corpse of a child. The bill had a first hearing in the House Criminal Justice Committee on March 13, 2018.

**HB535 NALOXONE-NALTREXONE DATA REPORTING (GAVARONE)**

The bill requires hospitals to report drug overdose cases monthly, including the number resulting in death, to the Department of Health and specifies the Department of Health will publish the information on its website. The bill also requires certain reporting of the administration of naloxone to the Department of Health and includes naltrexone within the Ohio Automated Rx Reporting System. The act is to be named the "Opioid Data and Communication Expansion Act." The bill was introduced March 1, 2018 and was reported out of the House Community and Family Advancement Committee at its fourth hearing on April 11, 2018.

**SB1 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. On April 11, 2018 the Senate considered House Amendments, 0-33.

**SB20 PERMANENTLY DISABLING CRIME SPECIFICATION (HACKETT)**

The bill requires an additional prison term of 3 to 8 years for an offender who is convicted of or pleads guilty to a felony offense of violence if the victim suffered permanent disabling harm. The bill was passed by the Senate on April 5, 2017 and had its first hearing in the House Criminal Justice Committee on June 20, 2017. On March 20, 2018 at its second hearing, a substitute bill was accepted and on April 10, 2018 the bill was reported out as amended at its third hearing. A similar House bill (HB30) calls for the same mandatory sentence for permanently disabling harm if the victim was under the age of 6 years old.

---

**SB63 DELINQUENT CHILD CONFINEMENT CREDIT (THOMAS)**

The bill, which reflects language approved by the Ohio Criminal Sentencing Commission, will revise the procedures for determining the delinquent child confinement credit. The bill was referred to the Senate Judiciary Committee on February 22, 2017 and had a first hearing on March 20, 2018.

**SB66 SENTENCING MODIFICATION-REHABILITATION (EKLUND, TAVARES)**

The bill, as introduced, modifies criminal sentencing and corrections law by including rehabilitation as a purpose of felony sentencing and removes the one-year minimum for presumptive fourth or fifth degree felony community control sanctions.

The bill also modifies sanctions for a violation of a community control condition and the manner of calculating confinement credits. The bill modifies the eligibility criteria and procedure for participation in intervention in lieu of conviction and allows offenders convicted of certain multiple fourth or fifth degree felonies eligibility for conviction record sealing.

Additionally, the bill revises procedures for the Adult Parole Authority to grant a final release or to terminate post-release control, and modifies the criteria for considering a prison term sanction for a post-release control violation.

The bill had a second hearing in the House Criminal Justice Committee on April 10, 2018.

**Legislation Impacting Sentencing – continued**

**SB125 CHILD SUPPORT LAW CHANGES (BEAGLE)**

The House companion legislation is HB366 (Gavarone) – also in this issue. SB125 was introduced on April 5, 2017, passed by the Senate on February 28, 2018, 27-5 and had a first hearing in the House Community and Family Advancement Committee on April 11, 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 fourth hearing in the House Criminal Justice Committee on March 13, 2018.

**SB180 FIREARM RELATED LAWS-CHANGES (UECKER, HOTTINGER)**

The bill shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence. The bill also expands circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence; reduces certain concealed handgun offenses to minor misdemeanors in circumstances where the offender does not commit a separate offense while carrying the concealed handgun and eliminates the mandatory posting of signs that warn against the conveyance of a deadly weapon or dangerous ordnance onto specified premises. The bill had its fourth hearing in the Senate Judiciary Committee on April 10, 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 bill was introduced on September 27, 2017 and 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 was amended and reported out of the Senate Government Oversight and Reform Committee on April 11, 2018 and considered by the Senate the same date 33-0.

**SB214 FEMALE GENITAL MUTILATION PROHIBITION (LEHNER, TERHAR)**

The bill makes female genital mutilation an F5; the offense is defined as the act of mutilation or the act of intentionally transporting a minor to the place where the mutilation takes place. The bill had its second hearing in the Senate Judiciary Committee on March 20, 2018.

**SB219 FIREARM DEVICES-PROHIBITIONS (THOMAS)**

The bill prohibits certain conduct regarding trigger cranks, bumpfire devices, and other items that accelerate a semi-automatic firearm's rate of fire but do not convert it into an automatic firearm. The bill was re-referred to the Senate Government Oversight and Reform Committee and had a first hearing on April 11, 2018.

**Legislation Impacting Sentencing – continued****SB231 SIERAH'S LAW-VIOLENT OFFENDERS (GARDNER)**

The bill requires the Ohio Attorney General Bureau of Criminal Investigation to establish a Violent Offender Database (VOD), requires persons convicted of certain violent offenses to enroll in the database and names the provisions of the act "Sierah's Law". The bill also increases the current membership of the Ex-Offender Reentry Coalition from 17 to 21, adding four members of the General Assembly, specifying two of the four will be the chairpersons of the standing committees that primarily address criminal justice matters, modifies the duties of the Coalition and eliminates its repeal. The bill requires halfway houses to use the single validated risk assessment tool selected by the Department of Rehabilitation and Correction for adult offenders and it provides that that the notice of release from prison of specified offenders given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminates the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders. The bill was amended at the second hearing in the Senate Judiciary Committee on February 27, 2018 and reported out at the third hearing on April 10, 2018. The bill was considered by the Senate on April 11, 2018, 31-2.

**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 passed out of the Senate Judiciary Committee on March 13, 2018 and passed by the Senate on March 21, 2018, 33-0. The bill was referred to the House Criminal Justice Committee on April 10, 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 amends the current statutory provision that allows a wrongful imprisonment claim for an "error in procedure" and allows only the error of a Brady violation (i.e. prosecution withholding evidence) to be eligible for a claim based on "error in procedure." The bill had a first hearing in the Senate Judiciary Committee on March 13, 2018. The bill mirrors the House introduced version, HB411.

**SB267 SOLICITING FINE INCREASES – HUMAN TRAFFICKING (BROWN, KUNZE)**

The bill increases the penalty for soliciting when the person solicited is 18 or older, and caps the fine for soliciting in this circumstance at \$2,500, up to \$1,000 of which may be deposited into the Victims of Human Trafficking Fund. The bill was introduced on February 26, 2018 and referred to the Senate Judiciary Committee on March 21, 2018. Its companion bill, HB520 (Hughes, Miller), was introduced on February 21, 2018 and referred to the Criminal Justice Committee on February 27, 2018.

**SB268 THEFT IN OFFICE PENALTIES (WILSON)**

The bill establishes first and second degree felony offense levels (current law limits the offense to a third degree felony) for theft in office based on the amount of property or services stolen. The bill also allows for certain audit costs of the entity that suffered the loss involved in the offense to be included an order for restitution. The bill had a second hearing in the Senate Government Oversight and Reform Committee on April 18, 2018.

---

## Supreme Court of Ohio Decisions Impacting Sentencing

### **STATE V. MASON, SLIP OPINION No. 2018-OHIO-1642**

On April 18, 2018, the Supreme Court decided that Ohio's death-penalty scheme does not violate the 6<sup>th</sup> amendment right to a trial by jury. Under Ohio law the jury must find beyond a reasonable doubt that the defendant was guilty and that an aggravating circumstance exists and outweighs any mitigating circumstances. The U.S. Supreme Court decision in *Hurst v. Florida* 574 U.S. \_\_\_ (2016) is not applicable to the Ohio death-penalty scheme as Ohio law requires juries make findings with regards to aggravating circumstances as opposed to the Florida scheme which leaves those findings to the judge. The "weighing process" that occurs after the finding of guilt and a death specification does not constitute "fact-finding" under the Sixth Amendment. Even if the "weighing process" constituted fact-finding subject to the Sixth Amendment, the Ohio death-penalty scheme adequately protects the defendant's rights to a trial by jury.

### **STATE EX REL. COWAN V. GALLAGHER, SLIP OPINION No. 2018-OHIO-1463**

On April 18, 2018, the Supreme Court ruled that a writ of mandamus to enforce the order of an appellate court is an extreme measure and should only be granted where it can be shown that the trial court directly disobeyed the order of the court of appeals. Cowan did not show the trial court had disobeyed the court of appeals order.




---

## Gun Violence

Governor Kasich recently announced "[A Sensible, Consensus Approach to Protecting Ohioans from Gun Violence](#)" and made several policy proposals to advance that effort. On Monday April 23, 2018, he signed an [Executive Order 2018-03K](#) to improve how the data is reported to the National Instant Criminal Background Check System (NCIS). The Executive Order calls for a review of whether local officials are properly reporting names of individuals who should be barred from buying guns. The Department of Public Safety's Office of Criminal Justice Services, Ohio Attorney General's Bureau of Criminal Investigation and the Supreme Court of Ohio, all of which participated on a group that examined the issue in 2015, will work with additional members selected to evaluate progress made since then, make policy recommendations to Governor Kasich by August 1, 2018 and issue a manual for local officials. The Executive Order also requires the state auditor to examine a public office's reporting procedure in annual and biennial audits and report information to the working group if the public office does not.

Members of the Ohio General Assembly have also introduced several bills focused on gun violence – in addition to bills mentioned in this issue, there are several others including: [SB281](#) (Hoagland, Eklund), [SB283](#) (Thomas, Schiavoni), [SB284](#) (Thomas, Schiavoni), [SB285](#) (Thomas, Schiavoni), [SB286](#) (Thomas, Schiavoni).

## Medicaid Work Requirement Update

The Ohio Department of Medicaid (ODM) will soon submit a waiver request to the federal government to implement [work requirements for the Medicaid expansion population](#). A date for submission hasn't been announced, but once submitted (and granted) implementation of the new requirements is likely in 2019.

If granted the waiver, Ohio would be the fourth state (Kentucky, Indiana and Alaska) to get the approval to enact work requirements. ODM has said that individuals who are participating in a drug or alcohol treatment program will be exempt from the work requirement ([see ORC §5166.37](#)), but it is unclear whether individuals who are on waiting lists for these programs will qualify for an exemption.

## 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*

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

**County Commissioner** – *appointment pending*

**Chief Gary York** – *Law Enforcement*

**Juvenile Police Officer** – *appointment pending*

**Kathleen Hamm**, *Defense Attorney*

**Brooke Burns** – *Public Defender*

\*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 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).

---

## 2018 Full Commission Meeting Dates

**Thursday, June 21, 2018**

**Thursday, September 20, 2018**

**Thursday, December 13, 2018 at the Vern 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.

### Contact Us:

Ohio Criminal Sentencing Commission

65 South Front Street, 5<sup>th</sup> Floor

Columbus, Ohio 43215-3431

[www.supremecourt.ohio.gov/Boards/Sentencing](http://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](mailto:sara.andrews@sc.ohio.gov)




---

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

---