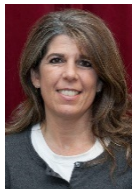




# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*Welcome to the spring session and now summer wrap up edition! We again have a new Commission Member to welcome – Lt. Chandler from the Westerville Police Department. We are also pleased to announce Todd Ives joined our office in June 2018 as a Researcher.*

*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 - 8
The Honorable Jeffrey Rezabek	2
Supreme Court of Ohio Decisions Impacting Sentencing	9
National Association of Sentencing Commissions	9
Working Committees of the Commission	10
Commission Roster	10
Commission Meeting Dates	10

## Legislation Impacting Sentencing

\*\*\*SIGNED BY THE GOVERNOR\*\*\*



### Congratulations!

On July 6, 2018, Governor Kasich appointed **Jeffrey S. Rezabek** to serve as a Judge on the Montgomery County Juvenile Court. Rezabek replaces Judge Nick Kuntz, who sadly recently passed away. Rezabek was sworn in July 12, 2018 and is running for election for the judicial seat's full-term, which begins January 1, 2019.

Rezabek was elected to the Ohio House of Representatives 43rd District in 2014 and has served on the Criminal Sentencing Commission since 2016. We will miss him on the Commission, but hope he will join us from time to time in his new role.

#### 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. The bill was signed by the Governor on May 2, 2018 – effective in 90 days.

#### 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. On May 15, 2018 the bill was reported out at the second hearing and on May 16, 2018 the bill was passed by the Senate, 30-2. On June 7, 2018 the House concurred with Senate amendments, 86-0 and on June 29, 2018 the bill was signed by the Governor – effective in 90 days.

#### SB4 RECORDS EXPUNGEMENT (KUNZE, OELSLAGER)

The bill allows a person who is found not guilty of an offense or who is the defendant named in a dismissed criminal charge to apply for a court order to expunge the person's official records in the case if the charge or not guilty finding was the result of the applicant having been a human trafficking victim. It also allows a person convicted of certain prostitution-related offenses to apply for the expungement of the conviction record of any offense, other than a specified disqualifying offense, the person's participation in which was a result of having been a human trafficking victim, and allows intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. SB4 was a companion bill to HB 56 and was amended to allow expungement for all but three F1 offenses and to require an additional balancing test before the determination is made to expunge any F1 or F2. The bill had a third hearing in the House Criminal Justice Committee on December 12, 2017. At the fifth hearing on May 22, 2018, the bill was reported out of committee. On June 20, 2018 the bill passed the House, 81-12. On June 29, 2018 the bill was signed by the Governor – effective in 90 days.

## Legislation Impacting Sentencing

### \*\*\*UPDATES\*\*\*

#### **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 a fourth hearing on May 22, 2018.

#### **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 and a substitute bill was accepted at the fourth hearing on May 15, 2018. A companion bill in the Senate (SB 40) had a third hearing in the Senate Judiciary Committee on March 7, 2017.

#### **HB 92 PUBLIC INDECENCY CLASSIFICATION (SCHAFFER)**

The bill requires an offender who knowingly commits the offense of public indecency involving exposure of private parts likely to be viewed by minors and for the purpose of sexual arousal or gratification to register as a Tier I sex offender/child-victim offender. The bill was introduced on February 27, 2017 and was reported out of committee at the fifth hearing on May 22, 2018. The House passed the bill on June 27, 2018, 92-0.

#### **HB 95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)**

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is a contributing factor of the violation. The bill passed the House of Representatives on June 21, 2017, 82-12 and was referred to the Senate Local Government, Public Safety and Veterans Affairs Committee on June 28, 2017. The bill was reported out of committee at the fourth hearing on October 24, 2107 and on June 27, 2018 passed by the Senate, 31-1.

#### **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. The bill was passed by the House on February 28, 2018, 97-0. On March 21, 2018 the bill was referred to the Senate Judiciary Committee and had a second hearing on May 15, 2018.

#### **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 was referred to the Senate Judiciary Committee on February 20, 2018 and had a second hearing on May 15, 2018.

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

The bill enhances the penalties for trafficking in Schedule I and II controlled substances (aggravated trafficking in drugs), and trafficking in cocaine, L.S.D., heroin, hashish, and controlled substance analogs, but not including marijuana when committed on the premises or within 1,000 feet of a community addiction services provider when the offender recklessly disregards whether the offense is being committed within the vicinity of a community addiction services provider. 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 and the bill was reported out of committee at the fifth hearing on May 15, 2018. The bill was passed by the House on June 20, 2018, 92-1.

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## Legislation Impacting Sentencing – Updates (continued)

### **HB349 POLICE ANIMALS (LATOURETTE)**

The bill includes search and rescue animals in the statute and sets the penalties for assaulting those animals at the same level as existing penalties for assaulting a police dog or horse (2921.321(E)(1)(a)). The bill was amended at the fourth hearing in the House Criminal Justice Committee on May 15, 2018 and reported out of committee at the fifth hearing on May 22, 2018. On June 27, 2018 the bill was passed by the House, 78-15.

### **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 was reported out of committee on May 22, 2018. The House passed the bill on June 27, 2018, 94-0.

### **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 bill also requires the Ohio Criminal Sentencing Commission to appoint an Offender Supervision Study Committee. 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 was reported out of the House Criminal Justice Committee as amended on May 22, 2018 and passed by the House on June 20, 2018, 90-3.

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

The bill proposes to eliminate mandatory and reverse bindovers except for those charged with aggravated murder and the child was age 16 or 17 at the time of the act charged, and modifies 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 for those offenders that receive or received a definite sentence of more than 18 years for an offense committed when the offender was under age 18 and provides for special Parole Board procedures in those cases. On May 15, 2018, at the third hearing in the House Criminal Justice Committee a substitute bill (-3) was accepted. On May 22, 2018 at the fourth hearing the bill was reported out of committee.

## Legislation Impacting Sentencing – Updates (continued)

### **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 that had a second hearing on June 5, 2018 in the Senate Judiciary Committee. On March 13, 2018, the bill was reported out at the fourth hearing in the House Government Accountability and Oversight Committee. On June 7, 2018, the bill was passed by the House, 77-11 and on June 19, 2018, the bill was referred to the Senate Judiciary Committee.

### **HB423 MASKED INTIMIDATION MISDEMEANOR (LANG, SEITZ)**

The bill prohibits wearing a mask or disguise to purposely obstruct the law, intimidate a person performing a legal duty or prevent a person from exercising their constitutional or legal rights. The bill classifies the crime as a first degree misdemeanor. The bill was introduced on November 21, 2017 and had a second hearing in the House Criminal Justice Committee on May 22, 2018.

### **HB461 DELINQUENCY ABEYANCE-CHILD TRAFFICKING (FEDOR, GALONSKI)**

The bill requires a juvenile court to hold a delinquency complaint in abeyance if the court has reason to believe that the act charged might be prostitution related or that the child might be a victim of human trafficking. The bill also provides that the same elements that apply for the offense of trafficking in persons under the age of sixteen also apply to a victim who is age sixteen or seventeen. The bill had a second hearing in the House Criminal Justice Committee on May 22, 2018.

### **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 was amended at the third hearing on May 23, 2018 and reported out of committee at the fourth hearing on June 6, 2018. On June 27, 2018, the bill passed in the House, 93-0.

### **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. The bill was passed by the House on June 7, 2018, 88-0 and had a first hearing on June 26, 2018 in the Senate Health, Human Services and Medicaid Committee.

### **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 had a first hearing in the House Criminal Justice Committee on June 5, 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 and modifies the process 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 (ERPO), to be issued by a probate court and requires that all ERPO's be entered into LEADS within 24 hours and that in a format that can be submitted to the federal NCIC database. The bill further provides that upon termination or cancellation of the extreme risk protection order, law enforcement take all steps necessary to ensure it is removed from LEADS within 24 hours of receipt of the notice of termination, cancellation or overturning and that it is also cleared or canceled in the NCIC database. The bill further provides that law enforcement, in certain circumstances, can take possession of firearms. HB585 was introduced on April 5, 2018 and a substitute bill was accepted at the fourth hearing in the House State and Local Government Committee on June 26, 2018.

Companion legislation, SB288 Dangerous Ordnance Classification and Restrictions (Eklund, Kunze) was introduced on April 9, 2018 and had a first hearing in the Senate Government Oversight and Reform Committee on May 22, 2018.

## Legislation Impacting Sentencing – Updates (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 and referred to the House Criminal Justice Committee May 15, 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 and referred to the House Criminal Justice Committee May 15, 2018.

### **HB597 TELEPHONE SPOOFING CRIME (FABER, DEVER)**

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 had a first hearing in the House Criminal Justice Committee on June 5, 2018 and its companion legislation SB290 (Burke) was introduced on April 11, 2018 and was referred to the Senate Judiciary Committee on May 10, 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 and had a first hearing on June 20, 2018 in the House Government Accountability and Oversight Committee.

### **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. On June 26, 2018 the bill was reported out of Conference Committee at the first hearing, on June 27, 2018 the House accepted the report of the Conference Committee, 82-12 and on the same date the Senate considered the report, 31-1.

### **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 was reported out as amended at the fourth hearing in the House Criminal Justice Committee on May 22, 2018. On June 27, 2018, the bill was amended on the Floor and passed by the House, 90-2. On June 27, 2018, the Senate considered and concurred with House amendments, 29-0.

### **SB 171 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)**

The bill increases the penalty that applies to the offense of violating a protection order if the offender had previously been convicted of a protection order violation or aggravated menacing or menacing. The bill also requires probation agencies (instead of law enforcement) to oversee electronic monitoring of those convicted of violating juvenile protection orders or menacing by stalking protection orders. The bill was introduced on July 6, 2017 and reported out of the Senate Judiciary Committee at the fourth hearing on May 15, 2018. On May 16, 2018, the bill was passed by the Senate, 32-0 and on June 5, 2018, the bill was referred to the House Criminal Justice Committee.

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**SB235 SEX OFFENDER REGISTRY CHANGES (EKLUND)**

The bill creates a procedure for certain tier II sex offenders convicted of unlawful sexual conduct with a minor to petition a court for reclassification or removal from the sex offender registry and to permits record sealing in those cases. To be eligible for review of registration requirements, the offender must have been between 18 and 21 at the time of the offense and not an authority figure over the other party; the other party cannot have been younger than 14; and the offender must have complied with all conditions of community control. The bill was introduced on November 27, 2017 and had a first hearing in the Senate Judiciary Committee on May 15, 2018.

**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 had a first hearing in the Senate Judiciary Committee on May 15, 2018. Its companion bill, HB520 (Hughes, Miller), was introduced on February 21, 2018 and had a first hearing in the House Criminal Justice Committee on March 13, 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 was reported out at the fourth hearing in the Senate Government Oversight and Reform Committee on May 16, 2018 and passed by the Senate, 32-0. On June 20, 2018, the bill had a first hearing in the House Government Accountability and Oversight Committee.

**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. On May 15, 2018, the bill was referred to the House Criminal Justice Committee.

**SB202 REAGAN TOKES LAW-MONITORING (BACON, O'BRIEN)**

The bill requires the Department of Rehabilitation and Correction to establish a reentry program for all offenders released from prison that are to reside in a halfway house or similar facility but have not been accepted to such a facility. It further 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. The bill requires the GPS monitoring used for offenders released from prison to 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 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 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 1 Senate Bill (SB201) and the House companion bill HB365 (Hughes, Boggs). On June 27, 2018, the bill had a third hearing in the Senate Government Oversight and Reform Committee.

**SB207 FELONIOUS ASSAULT-OFFENSE EXPANSION (KUNZE)**

The bill expands the offense of felonious assault to include knowingly causing or attempting to cause physical harm to another person by means of strangulation or suffocation. The bill was introduced on October 3, 2017 and referred to the Senate Judiciary Committee on October 25, 2017 and had a third hearing in the Senate Judiciary Committee June 5, 2018.

**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. On May 15, 2018, the bill was referred to the House Criminal Justice Committee.

## Legislation Impacting Sentencing – Updates (continued)

### **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 had a first hearing in the Senate Government Oversight and Reform Committee on May 16, 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 had a first hearing in the Senate Judiciary Committee on May 22, 2018.

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## Legislation Impacting Sentencing

### **\*\*\*Recently Introduced\*\*\***

### **HB614 DRUG PARAPHERNALIA (WEST)**

The bill expands the Good Samaritan provision in current law by providing criminal immunity for the charge of possession of drug paraphernalia for a person who seeks or obtains medical assistance for a drug overdose (currently the immunity applies only to a minor drug possession charge). The bill was introduced April 24, 2018 and referred to the House Criminal Justice Committee on May 15, 2018.

### **HB622 JUDGES-CONCEALED HANDGUNS IN COURT (PERALES)**

The bill provides that no provision in a “court-adopted weapons ban” may be enforced against a judge or magistrate who is a concealed-carry license holder with respect to the judge or magistrate’s conveyance of a handgun into a court facility. The bill was introduced on May 1, 2018 and had a first hearing in the House Federalism and Interstate Relations Committee on May 22, 2018.

### **HB627 STATUTE OF LIMITATIONS-RAPE (GALONSKI, SMITH)**

The bill eliminates the period of limitation for the criminal prosecution for rape. The bill was introduced May 1, 2018 and referred to House Criminal Justice Committee on May 15, 2018.

### **HB638 STATUTE OF LIMITATIONS-CHILD ABUSE & NEGLECT (KENT)**

Currently, the statute of limitations for child abuse begins to run either when the child reaches the age of majority or the proper authorities are notified of the abuse. The bill begins running the statute of limitations only when the child reaches 18. The bill was introduced May 9, 2018 and had a first hearing in the House Criminal Justice Committee on June 5, 2018.

### **HB692 TRANSITIONAL CONTROL SENTENCING (PATMON, SEITZ)**

The bill eliminates the ability of a sentencing court to disapprove a prisoner's transfer from prison before the minimum term is served to transitional control. The bill was introduced May 22, 2018 and referred to the House Criminal Justice Committee on June 5, 2018.

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## Supreme Court of Ohio Decisions Impacting Sentencing

### **STATE V. GORDON, SLIP OPINION No. 2018-OHIO-1975**

In a decision on May 23, 2018, the Supreme Court cleared up a conflict in appellate decisions and held while the sentencing court must notify the offender of post release control under R.C. 2929.19(B)(2)(e), the court is not required to inform the offender of the provisions in R.C. 2929.141(A)(1) and (2) specifically. When an offender serving a term of post release control commits a new felony offense, R.C. 2929.141(A)(1) and (2) allow a court to terminate post release control and impose an additional, consecutive prison term for the violation.

### **STATE EX REL. OLIVER V. TURNER, SLIP OPINION No. 2018-OHIO-2102**

On June 1, 2018, the Court granted a writ of habeas corpus and held that failure to specify findings that a sentence was to run consecutive to a parole violation meant that the sentences were to run concurrently. Oliver was on parole for a 1993 conviction for Involuntary Manslaughter when he was convicted for domestic violence in 2005. The trial court mistakenly believed that under old law sentence on the new felony had to run consecutive to the parole violation. However, SB2's presumption of concurrent sentences applied, and the trial court did not explicitly order consecutive sentences in its sentencing entry.

### **STATE V. JACKSON, SLIP OPINION No. 2018-OHIO-2169**

A social worker investigating an abuse allegation interviewed the defendant in her capacity as a Children and Family services employee. The defendant made admissions in the interview, and the social worker testified at his trial. The Court held that despite statutory duties of cooperation and information sharing a social worker investigating child abuse allegations is not an agent of law enforcement for 5<sup>th</sup> and 6<sup>th</sup> Amendment purposes unless evidence shows that the social worker is acting at the direction of or under the control of a law enforcement agency. The case was decided June 7, 2018.

### **STATE EX REL. SMITH V. SCHWEITZER, SLIP OPINION No. 2018-OHIO-2396.**

In contrast with *Oliver* above, Smith was a pre-SB2 defendant who was on parole when he was sentenced to another pre-SB2 felony. Though his sentencing entry was silent as to whether the sentences ran consecutively, on June 28, 2018, the Court held the sentences ran consecutively by operation of pre-SB2 law. The distinction here is that both sentences occurred prior to the enactment of SB2.



Aug. 13-15, 2018

### **Conference Agenda**

Hosted by the Ohio Criminal Sentencing Commission

The NASC (National Association of Sentencing Commissions) conference is the only national conference focusing on sentencing and its related issues. This conference provides an opportunity to network and share ideas, experiences, and expertise. This year, NASC is offering pre-and post-conference workshops on sentencing and evaluating sentencing guidelines.

**[There is still time to register!](#)**

## 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, City Solicitor General*  
**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*  
**Lt. 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](#).

## 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, September 27, 2018 at the Vern Riffe Center**  
(note date change for September meeting)

**Thursday, December 13, 2018 at the Vern Riffe Center**

### 2019 Meeting Schedule

\*Working committees meet between Full Commission meeting dates.

Unless otherwise noted, all meetings are held beginning at 10:00 a.m. at the Thomas J. Moyer Ohio Judicial Center, 65 South Front Street, Columbus, Ohio 43215.

#### Contact Us:

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 Columbus, Ohio 43215-3431

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

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