

# Legislative & Judicial Brief

## A Message from Sara Andrews, Director



*The Legislative & Judicial Brief is designed to share information and spark conversation. The Commission strives to move ideas to solutions that advance public safety, realize fairness in sentencing, preserve judicial discretion, provide a meaningful array of sentencing options and distinguish the most efficient and effective use of correctional resources.*

-Sara Andrews



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## LEGISLATION IMPACTING SENTENCING RECENTLY INTRODUCED

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### **SB99 MANDATORY JUVENILE BINDOVERS (THOMAS)**

The bill was introduced March 11, 2019 and eliminates mandatory bindovers and reverse bindovers. The bill also modifies the law governing a discretionary bindover of an alleged juvenile offender from a juvenile court to an adult court. The bill was referred to the Senate Judiciary Committee on March 12, 2019.

### **SB100 PAROLE ELIGIBILITY – JUVENILES (THOMAS)**

The bill was introduced on March 11, 2019 and expands parole eligibility for persons with an indefinite or life sentence imposed for an offense committed when the person was less than 18 years of age. It had a first hearing in the Senate Judiciary Committee on March 27, 2019.

### **SB118 INCREASE ASSAULT PENALTIES – SPORTS OFFICIALS (ROEGNER)**

The bill was introduced on March 26, 2019 and increases the penalty for assault if the victim is acting as a sports official or the assault is committed in retaliation for the victim's actions as a sports official. The bill was referred to the Senate Judiciary Committee on March 28, 2019.

### **HB128 SOLICITING PENALTY (KOEHLER, MILLER)**

The bill was introduced on March 12, 2019. The bill increases the penalty for soliciting when the person solicited is age 16 or older and the offender offered payment to engage in sexual activity and increases the penalty for soliciting a person age 18 or older if the offender offered payment to engage in sexual activity and solicited the other person within 1,500 feet of a school or place of worship. The bill also authorizes a court to impose a fine of up to \$1,500 for soliciting in the circumstances aforementioned. The bill also allows the court to designate up to \$750 of the fine be deposited into the Victims of Human Trafficking Fund and permits money in the Victims of Human Trafficking Fund to be used for providing education or treatment programs for persons who have solicited another to engage in sexual activity for hire.

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

The bill was introduced on March 14, 2019 and prohibits the death penalty if the offender was mentally ill at time of offense. The bill was referred to the House Criminal Justice Committee on March 26, 2019.

### **HB161 ABUSE OF CORPSE (SMITH, R.)**

The bill was introduced on March 25, 2019 and increases the penalties for abuse of a corpse in circumstances that involve dismemberment or mutilation of the corpse. The bill had a first hearing in the House Criminal Justice Committee on April 4, 2019.

### **HB180 CHILDREN-SEXUAL ACT SIMULATION (SCHAFFER)**

The bill was introduced on April 1, 2019 and prohibits a performance in which a child simulates sexual activity and, if the offender is a D liquor permit holder, requires the court to order the revocation of the permit. The bill was referred to the House Commerce and Labor Committee on April 4, 2019.

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## **FY2020-2021 BUDGET**

### **HB166 OPERATING BUDGET (OELSLAGER)**

The bill was introduced on March 25, 2019 and makes operating appropriations for the biennium beginning July 1, 2019, and ending June 30, 2021, and provides authorization and conditions for the operation of state programs. [The bill and related documents can be accessed here.](#)

The bill contains several provisions of note, including:

- Voluntary Targeted Community Alternatives to Prison (TCAP) in every county (starting at p. 372)
  - Local funding for probation departments in counties with services from the Adult Parole Authority (APA) (starting at p. 312)
  - APA responsibility to supervise all offenders on Post Release Control (PRC) (starting at p. 376)
  - Increased funding for specialized dockets Increased funding for indigent defense (starting at p. 1669)
  - Continued funding for specialized docket payroll subsidy, which may also be used to defray costs of treatment and recovery supports (starting at p. 1645)
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## LEGISLATION IMPACTING SENTENCING – UPDATES

### **SB3 DRUG SENTENCING REFORM (EKLUND, O'BRIEN)**

A substitute bill was accepted in the Senate Judiciary Committee, at the second hearing, on March 6, 2019. The bill redefines the current controlled substance trafficking offenses and controlled substance possession offenses with new offenses located in five Revised Code sections and reclassifies the offenses as aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, possession of a controlled substance, possession of marijuana, and possession of hashish. The bill also clarifies the meaning of "technical violation" in the provisions that impose a 90-day or 180-day limit, in specified circumstances, on the use of a prison term as a sanction for a felony community control sanction violation. Further, the bill specifies that a municipal court or county court does not have jurisdiction to hear any charge of a drug possession offense the bill reclassifies from a felony to a misdemeanor unless the particular court operates a drug court, and that if a municipal court or county court does not have a drug court, the common pleas court is required to hear all such charges. It modifies the criteria governing applications for, and granting of, a probate court order requiring involuntary treatment for a person suffering from alcohol or other drug abuse. Modifies the eligibility for applying for sealing of official records to include a specific reference to persons convicted of a drug possession offense the bill reclassifies from a felony to a misdemeanor; specifies that such persons are to be considered as convicted misdemeanants; and authorizes an offender convicted of any of the new possession offenses enacted under the bill to apply upon successful completion of a court-ordered treatment program or intervention plan. The bill modifies the not guilty/dismissed charges for record sealing provisions to ensure that they apply to a person charged with any of the bill's new possession offenses who had the charge held in abeyance under the bill, successfully completed the treatment program or intervention plan, and had the charges dismissed.

### **SB5 PROMOTING PROSTITUTION PENALTIES (KUNZE, DOLAN)**

The bill was introduced February 13, 2019. Current law states a violation of RC 2907.22 (Promoting Prostitution) is an F4 and increased to an F3 if a minor is involved. The bill increases the penalty to an F3 in additional circumstances: a previous conviction of violence; 2 or more previous convictions under RC 2925.03 (Drug Trafficking). The bill was passed 32-0 by the Senate on March 6, 2019 and had a first hearing in the House Criminal Justice Committee on April 4, 2019.

### **SB10 THEFT IN OFFICE PENALTIES (WILSON)**

The bill was introduced on February 12, 2019 and increases the penalty for theft in office when the value of property or services stolen is \$150,000.00 or more. The bill also requires the person convicted to pay restitution for the costs of auditing any public entity that suffered as a result of the theft. The bill was passed by the Senate 32-0 on March 13, 2019 and referred to the House Criminal Justice Committee on March 19, 2019.

### **SB18 CONFINING PREGNANT DEFENDANTS (ANTONIO, LEHNER)**

The bill prohibits restraining or confining a woman during pregnancy or postpartum recovery. The bill had a first hearing in the Senate Judiciary Committee on March 13, 2019.

### **SB28 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)**

The bill increases the penalty for violating a protection order to an F3 if there are 2 or more previous protection order convictions, 3 or more previous Menacing, Aggravated Menacing, or Aggravated Trespassing Convictions, or 2 or more previous Menacing by Stalking convictions. The bill had a second hearing in the Senate Judiciary Committee on March 13, 2019.

### **SB47 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. The bill had a second hearing in the Senate Judiciary Committee on April 3, 2019.

### **SB48 SPEEDY TRIAL (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 had a third hearing in the Senate Judiciary Committee on April 3, 2019.

### **SB55 ENHANCE PENALTIES-DRUG TRAFFICKING (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. The bill is also referred to as the "Relapse Reduction Act" The bill had a fourth hearing in the Senate Judiciary Committee on April 3, 2019.

## ICYMI

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### Justice Donnelly

At the full meeting of the Ohio Criminal Sentencing Commission on March 21, 2019, Justice Donnelly shared his experience and offered suggestions for future work.

As noted in [Court News Now](#), during his speech, Justice Donnelly shared what he's learned behind the bench – such as the merits of eliminating negotiations between lawyers in his chambers and having all discussions in open court. He also presented multiple suggestions to help get information to those who need it. One example was a statewide database tracking all criminal cases.

[The full story can be found here.](#)

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### Sealed Records

[Court News Now](#) recently did an in depth feature on sealed records and their impact on people's lives.

The feature provides insight and information on the process and eligibility for record sealing, expungement and other informative resources on the subject.

[The complete story can be accessed here.](#)

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## LEGISLATION IMPACTING SENTENCING UPDATES continued

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### SB68 LICENSE REINSTATEMENT-COMMUNITY SERVICE (WILLIAMS)

The bill allows a court to authorize completion of a community service program in lieu of payment of driver's license reinstatement fees when the court determines that an offender cannot reasonably pay the fees. The bill had a second hearing in the Senate Local Government, Public Safety and Veterans Affairs Committee on March 26, 2019.

### HB66 THEFT VICTIM RESTITUTION (MERRIN)

The bill is referred to as the "Theft Victims' Restitution Act" and provides for restitution to cover the cost of accounting or auditing done to determine the extent of a victim's economic loss. The bill was reported out of the House Criminal Justice Committee on March 28, 2019 at the third hearing.

### HB85 CAPITAL CASE COSTS (WILKIN, ROGERS)

The bill allows the Controlling Board to transfer money to the Attorney General and State Public Defender to defray county costs associated with certain capital cases. The bill was reported out of the House Criminal Justice Committee at the third hearing on March 28, 2019 and passed by the House on April 3, 2019, 93-2, Emergency Clause 93-2.

### HB87 OVI SEALING OF CHARGES (ANTANI)

The bill allows for the sealing of charges dismissed through intervention in lieu of conviction when those charges are connected to a conviction for operating a vehicle under the influence. The bill had a third hearing in the House Criminal Justice Committee on March 28, 2019.

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### [Reagan Tokes Law Information](#)

The law mandates a system of indefinite sentencing for non-life felonies of the first and second degree and applies to offenses committed after March 22, 2019. Contact Commission staff for more information or training opportunities.

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

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## Working Committees of the Commission

**Sentencing & Criminal Justice Committee** priorities include the study of criminal penalties and sentencing statutes and patterns in Ohio, recommending statutory change and reviewing national developments and trends on matters of sentencing. The committee is also poised to respond and make recommendations regarding more broad areas including probation, risk assessment, release programs, specialized dockets, community corrections and building, as well as improving, relationships and coordinating the work of the Commission with other justice partners – both state and federal.

**Juvenile Justice Committee** priorities include the review of criminal penalties and sentencing statutes and patterns in Ohio and recommending strategies to combat juvenile delinquency and recidivism.

**Data Collection and Sharing Workgroup** primary goals are to develop, coordinate and identify ways to collect and promote methods for sharing appropriate data and information with justice system partners.

Each committee consists of a chair, a vice chair and individual members. The committee chairs are Commission Members or an Advisory Committee member. Committee membership may include individuals outside of the Sentencing Commission and its Advisory Committee that have a vested interest in the Commission's work.

All committees generally meet the third Thursday of each month. For a full list of members, work to date and future meeting information, please visit <http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp> or email Sara Andrews at [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov).

## 2019 Full Commission Meeting Dates

### 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.

#### 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)

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## MEMBERS

### CHAIR

**Maureen O'Connor**, *Chief Justice*

### VICE-CHAIR

**Nick Selvaggio**, *Common Pleas Court Judge*

**John Eklund**, *State Senator*

**Cecil Thomas**, *State Senator*

**William Seitz**, *State Representative*

**Kristin Boggs**, *State Representative*

**Jennifer Muench-McElfresh**, *Common Pleas Court Judge*

**Robert DeLamatre**, *Juvenile Court Judge*

**Gary Dumm**, *Municipal Court Judge*

**Carl DiFranco**, *Municipal Court Judge*

**W. Scott Gwin**, *Appellate Court Judge*

**Kenneth Spanagel**, *Municipal Court Judge*

**Steve McIntosh**, *Common Pleas Court Judge*

**Terri Jamison**, *Juvenile Court Judge*

**Robert Fragale**, *Juvenile Court Judge*

**Charles "Chip" McConville**, *County Prosecutor*

**Lara Baker-Morrish**, *City of Columbus, City Solicitor General*

**Larry Sims**, *Sheriff*

**Aaron Montz**, *Mayor*

**Colonel Rick Fambro**, *Ohio State Highway Patrol*

**Ryan Gies**,

*Director, Department of Youth Services*

**Tim Young**, *State Public Defender*

**Annette Chambers-Smith**, *Director, Department of Rehabilitation and Correction*

**Chrystal Pounds-Alexander**,  
*Victim Representative*

**Paula Brown**, *Ohio State Bar Association*

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

**David Painter** – *County Commissioner*

**Chief Brandon Standley** – *Law Enforcement*

**Assistant Chief Charles Chandler** – *Peace Officer*

**Kathleen Hamm**, *Defense Attorney*

**Brooke Burns** – *Public Defender*

\*the Commission is assisted by its Advisory Committee, a [complete list is here](#).