

# 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



### 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 was amended on the floor and passed by the House on May 9, 2019. A substitute bill was reported by the Senate Finance Committee and passed by the Senate on June 20, 2019. The House refused to concur and the bill is now in Conference.

The bill contains several provisions of note, including:

- Increased funding for specialized dockets
- Continued funding for specialized dockets payroll subsidies, which may also be used for treatment and recovery support services
- Increased funding for indigent defense
- Makes Targeted Community Alternatives to Prison (TCAP) in every county voluntary

#### **HCR10 DRUG CARTELS (WIGGAM, PLUMMER)**

The Resolution was introduced on May 8, 2019 and urges the federal government to designate certain drug cartels operating from Mexico as foreign terrorist organizations. The resolution had a third hearing with all testimony in the House Criminal Justice Committee on June 20, 2019.

#### **SB156 DEFRAUDING ALCOHOL OR DRUG TESTS (GAVARONE)**

The bill bans the manufacture, sale, possession or use of fake urine in order to prevent people from using it to pass drug tests (an M2, with a repeat offense an M1). The bill also makes it illegal to use someone else's urine to pass a drug test or to fail to report the use of fake or borrowed urine in a drug test. The bill was introduced on May 28, 2019 and had a first hearing in the Senate Judiciary Committee on June 12, 2019.

#### **SB160 RECORDS EXPUNGEMENT (O'BRIEN, RULLI)**

The bill provides a mechanism for the expungement of records of most convictions that, depending on the category of the offense, are at least 10 years old, 15 years old, or 20 years old, and eliminates the waiting period for sealing a record related to a no bill of prosecution. The bill was introduced on June 10, 2019.

#### **HB263 OCCUPATIONAL LICENSING & CRIMINAL CONVICTIONS (KOEHLER)**

The bill requires licensing authorities to make a list of criminal convictions that would preclude a person from getting a license, relevant to the license type. The bill prohibits not issuing a license for any conviction that is not on the list, for a vague reason like "moral turpitude," or at all after 5 years (with the exceptions of convictions for violent or sexually-oriented offenses). The bill prohibits not issuing a license for criminal charges that do not result in convictions or guilty pleas. Both an administrative and civil appeals process is created if the prohibitions in the bill are violated. The bill was introduced on May 28, 2019 and had a first hearing in the House Commerce and Labor Committee on June 12, 2019.

#### **HB279 STATUTE OF LIMITATIONS – RAPE (BOGGS, GALONSKI)**

The bill eliminates the spousal exceptions for certain sex offenses, permits a person to testify against the person's spouse in a prosecution for any of those offenses and eliminates the period of limitation for the criminal prosecution of a person for rape and for a civil action brought by a victim of conduct that would constitute rape. The bill was introduced on June 11, 2019 and referred to the House Criminal Justice Committee on June 18, 2019. A companion bill, **SB162 (ANTONIO, O'BRIEN)**, was introduced on June 10, 2019.

#### **HB285 LICENSE REINSTATEMENT AMNESTY (GREENSPAN, BRENT)**

The bill establishes a permanent Driver's License Reinstatement Fee Debt Reduction and Amnesty Program. The bill was introduced on June 12, 2019 and referred to the House Transportation and Public Safety Committee on June 18, 2019.

#### **HB290 SEXUAL MISCONDUCT – HEALTH CARE PROFESSIONALS (BOGGS, CRAWLEY)**

The bill adds several licensed health care professionals to the Gross Sexual Imposition statute and increases the penalty. The bill also specifies upon a guilty plea, conviction, or judicial finding, whether in this state or another jurisdiction, automatic suspension from practice. The bill and a companion bill, **SB166 (KUNZE, CRAIG)**, were introduced on June 19, 2019.

## LEGISLATION IMPACTING SENTENCING – UPDATES continued

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

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. It also 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. A substitute bill was accepted in the Senate Judiciary Committee, at the second hearing, on March 6, 2019 and the bill is scheduled for a seventh hearing and possible amendments on June 27, 2019.

### **SB55 ENHANCE PENALTIES-DRUG TRAFFICKING (GAVARONE)**

The bill enhances the penalties for most drug trafficking offenses when committed on the premises of a substance addiction services provider’s facility, or within 1,000 feet of the premises of such a provider’s facility, if the offender recklessly disregards whether the offense is being committed within that vicinity. The bill sets the new penalty enhancements at the same level as existing penalty enhancements for the same drug trafficking offenses when committed in the vicinity of a school or juvenile. The bill is also referred to as the “Relapse Reduction Act”. The bill was passed by the Senate on May 15, 2019, 31-2 and had a first hearing in the House Criminal Justice Committee on May 30, 2019.

### **SB143 AGGRAVATED BULLYING (WILLIAMS)**

The bill creates the M3 offense of Aggravated Bullying, defined as knowingly causing emotional harm or knowingly making someone believe that emotional or physical harm to person or property will be caused. Under the definition, both offender and victim must be primary or secondary public school students. The bill was referred to the Senate Judiciary Committee on June 4, 2019.

### **SB144 AGGRAVATED BULLYING-DISCIPLINARY PROCEDURE (WILLIAMS)**

The bill creates an M3 offense of Aggravated Bullying and requires a tiered disciplinary program for aggravated bullying in schools. It was referred to the Senate Judiciary Committee on June 11, 2019.

### **SB145 MISLEADING CALLER IDENTIFICATION (BURKE)**

The bill creates the offenses of theft or conversion of a telephone number or exchange and providing misleading caller identification information. The bill had a first hearing in the Senate Judiciary Committee on June 12, 2019.

### **HB1 INTERVENTION IN LIEU OF CONVICTION (PLUMMER, HICKS-HUDSON)**

The bill expands intervention in lieu of conviction by requiring an eligibility hearing on an application for ILC if the offender alleges that drugs or alcohol were factors of the underlying offense. It also removes the caps on F4 and F5 offenses on eligibility for sealing and raises the caps on specific felony and misdemeanor offenses. The bill also changes the waiting period (after final discharge) for applying for record sealing to 1 year for any F4 or F5 and 3 years for any F3. The bill was passed by the House on June 19, 2019, 90-6.

### **HB3 DOMESTIC VIOLENCE (BOYD, CARRUTHERS)**

The bill, known as Aisha’s Law, contains many provisions some of which are: in both civil and criminal domestic violence cases, the bill eliminates some hearsay prohibitions but usually requires other corroboration; the bill would also require a judge and support staff at a courthouse at all times to accept petitions for protection orders in all DR and juvenile jurisdictions; the bill makes purposely causing the death of a family member, if there is a prior conviction for domestic violence against the victim, Aggravated Murder; and the bill makes strangulation of a family or household member an enhanceable felony of the third degree. A substitute bill was accepted at the third hearing in the House Criminal Justice Committee on June 13, 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 had a first hearing in the Senate Government and Oversight Reform Committee on June 11, 2019.

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

The bill was amended in the House Criminal Justice committee and voted out of the House on June 5, 2019. The bill prohibits the death penalty in cases where the offender has a specific mental illness at the time of the crime. The bill was amended to make life without parole mandatory if the mentally ill person is guilty but not death eligible under the bill (both retroactively and prospectively). A second amendment removed “major depressive order” from the list of possible ailments that would make someone not death-eligible under the bill (the rest of the list, retained in the bill, is: schizophrenia, schizoaffective disorder, bipolar disorder, and delusional disorder). A companion bill, **SB54 (EKLUND, WILLIAMS)** had a second hearing in the Senate Judiciary Committee on June 12, 2019.

## ICYMI

### JUDICIAL FUNDRAISING

The Supreme Court of Ohio adopted the [amendments, effective June 1, 2019, to the Ohio Code of Judicial Conduct](#). The amendments lengthen the time a judicial candidate's campaign can start soliciting contributions.

### CERTIFICATION STANDARDS

The Supreme Court of Ohio has adopted the [new Certification Standard 12 Effectiveness Evaluation](#). The standard requires data collection from specialized dockets, which is mandatory as of July 1, 2019, with data reporting required by at least August 15, 2019 and by the 15th of each month thereafter.

### 2018 ANNUAL REPORT

On June 14, 2019, [the Supreme Court of Ohio released its 2018 Annual Report](#).

### [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 on or after March 22, 2019.

Contact us for more information or training opportunities.

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

## LEGISLATION IMPACTING SENTENCING UPDATES continued

### HB205 GOOD SAMARITAN EXPANSION (GALONSKI)

Current law allows a limited immunity (for minor drug possession offenses, RC 2925.01 (EE)) for anyone seeking medical help (for self or someone else) during an overdose. The bill expands current law so that the immunity applies also to violations of RC 2925.12 (possession of drug abuse instruments), RC 2925.14(C)(1) (possession of drug paraphernalia), or RC 2925.141 (possession of marijuana paraphernalia). The bill had a first hearing in the House Criminal Justice Committee on June 6, 2019.

## COURT DECISIONS IMPACTING SENTENCING

### **Flowers v. Mississippi US Supreme Court No. 17-9572**

Decided June 21, 2019. Defendant's conviction in quadruple homicide case reversed for violations of *Batson v. Kentucky*, 476 U.S. 79. This was defendant's sixth trial on these charges, and the pattern State's use of preemptory challenges to excluded black prospective jurors throughout those trials and factually inaccurate explanations of state's reasons for their preemptory strikes both demonstrate discriminatory intent.

### **State v. Martin, SLIP OPINION No. 2019-OHIO-2010**

Decided May 29, 2019. The Court held that failure to specifically journalize the reasons for that defendant's request for a continuance did not require that speedy trial time be charged against the state. Where it is clear from the record that the defendant requested a continuance in open court and stated the reasons for that request, speedy trial time is tolled regardless of what is stated on the trial court's journal entries.

### **State v. Romero, SLIP OPINION No. 2019-OHIO-1839**

Decided May 15, 2019. Defendant, a lawful permanent resident of the United States, alleged ineffective assistance of counsel due to failure of his attorney to notify him that his guilty plea could result in him being deported. The trial court rejected the claim, citing the transcript of the guilty plea wherein the trial court advised the defendant of potential deportation. The Court held that the proper analysis was not whether the plea was knowingly and voluntarily entered, but rather the two-prong analysis of *Strickland v. Washington*, 466 U.S. 668, and remanded the case for the trial court to consider (1) whether trial counsel's performance was in fact deficient and (2) whether Romero was prejudiced by that deficiency.

### **State v. Hairston, SLIP OPINION No. 2019-OHIO-1622**

Decided May 2, 2019. Officers responding to 4-5 gunshots they heard nearby conducted a *Terry v. Ohio*, 392 U.S. 1, pat-down of the sole subject they could locate in the area. The search revealed the individual to be in possession of a concealed handgun. The Court held that officers had reasonable suspicion to conduct the stop, and the fact that they approached with their firearms drawn did not elevate the *Terry* stop into an arrest for purposes of Fourth Amendment analysis.

## 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).

## Full Commission Meeting Dates

**Next Meeting of the Full Commission:  
Thursday June 27, 2019 10:00 a.m. – Rhodes Tower**

*\* 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:

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**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-Gebers – 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](#).