

# 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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## NEW AND NOTABLE

*Drug sentencing reform and criminal justice policymaking in Ohio feels like Groundhog Day.*

*Sentencing Commission Executive Director Sara Andrews explains why in "[Criminal Justice and Drug Sentencing Reform in Ohio after Issue 1](#)", pointing out that incremental and piecemeal changes in drug sentencing structure beleaguer criminal justice reform.*

*Long lasting reform must be based upon more than limited circumstances, anecdotal experience and insufficient data. We will not solve the "drug problem" or further the administration of justice without knowing a lot more about the people we are trying to help.*

*How can Ohio break out of the infinite loop of underachieving or failed reform?*

*The answer is movement toward a data informed environment and only the Ohio Criminal Sentencing Commission can harness that data and lead the way. It is essential for future success, fundamental for true reform and consequential for every Ohioan.*

Read more about the stunning data disconnect in Ohio in the first of a series of Data Briefs,

[The Data Disconnect: Adult Criminal Justice Data in Ohio.](#)

**Welcome to the 133<sup>rd</sup> General Assembly – beginning January 7, 2019.**

## LEGISLATION IMPACTING SENTENCING

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

The bill was introduced February 12, 2019 and is currently a placeholder. The bill expresses the intent of the legislature to develop and enact legislation to reform Ohio's drug sentencing laws. The bill was originally introduced during lame duck 2018 **132-SB343 (OBHOF, EKLUND)**, but did not survive the legislative session. The bill had a first hearing in the Senate Judiciary Committee on February 13, 2019 and is on the March 6, 2018 committee agenda for amendment.

### **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 had a second hearing in the Senate Judiciary Committee on February 27, 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 had a first hearing in the Senate Government Oversight and Reform Committee on February 26, 2019.

### **SB13 JUVENILE HUMAN TRAFFICKING VICTIMS (FEDOR)**

The bill was introduced February 12, 2019. The bill requires a juvenile court to hold a delinquency complaint in abeyance in human trafficking cases and provides that the same elements for the offense of trafficking in persons that apply to a victim younger than 16 also apply to a victim who is age 16 or 17. The bill had a first hearing in the Senate Judiciary Committee on February 13, 2019.

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

The bill was introduced February 12, 2019 and referred to the Senate Judiciary Committee on February 13, 2019. The bill prohibits restraining or confining a woman during pregnancy or postpartum recovery.

### **SB19 EXTREME RISK PROTECTION ORDER (WILLIAMS)**

The bill was introduced on February 12, 2019. The bill allows family members, household members, and law enforcement officers to obtain a court order that temporarily restricts a person's access to firearms if that person poses a danger to themselves or others.

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

The bill was introduced February 12, 2019 and referred to the Senate Judiciary Committee on February 13, 2019. 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.

### **SB43 DOMESTIC VIOLENCE, STRANGULATION (KUNZE, ANTONIO)**

The bill was introduced on February 12, 2019. The bill addresses domestic violence through firearms restrictions, penalty enhancements, and prohibits strangulation. The bill also makes an appropriation to the Attorney General – Domestic Violence Program. The bill was referred to the Senate Government Oversight and Reform Committee on February 20, 2019.

## LEGISLATION IMPACTING SENTENCING continued

### **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 permits record sealing in those cases. The bill was introduced February 12, 2019 and had a first hearing on February 27, 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 statutorily required amount of time and authorizes the court to release the person from detention in connection with those charges pending trial. The bill was introduced on February 12, 2019 and referred to the Senate Judiciary Committee on February 20, 2019.

### **SB54 DEATH SENTENCE – MENTAL ILLNESS (EKLUND, WILLIAMS)**

The bill, which is a reintroduction of legislation from the last two sessions of the General Assembly, provides that a person convicted of aggravated murder who 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. The bill was introduced on February 19, 2019 and referred to the Senate Judiciary Committee on February 26, 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, 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” and was introduced on February 19, 2019. On February 26, 2019, the bill was referred to the Senate Judiciary Committee.

### **SB58 NONVIOLENT CRIMINALS WITH MENTAL ILLNESS (GAVARONE)**

The bill expresses the intent of the General Assembly to reform the process of restoring the competency of individuals with serious mental illness charged with nonviolent crimes and to provide alternatives for treatment. It was introduced on February 21, 2019 and referred to the Senate Judiciary Committee on February 26, 2019.

### **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 was introduced on February 26, 2019.

### **SB70 PROHIBIT FELONY QUESTION-JOB APPLICATIONS (WILLIAMS)**

The bill prohibits private employer job applications from including any question concerning whether an applicant has been convicted of or pleaded guilty to a felony. The bill was introduced on February 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 introduced on February 12, 2019 and referred to the House Criminal Justice Committee on February 20, 2019.

### **HB87 OVI SEALING OF CHARGES (ANTANI)**

The bill was introduced on February 20, 2019 and 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.

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

The bill was introduced on February 19, 2019 and 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 legislation was originally unveiled and introduced as 132-**HB781 (WILKIN)** and 132-**SB345 (PETERSON)** during 2018 lame duck, but did not survive the legislative session.

## GENERAL UPDATES

### LICENSE REINSTATEMENT FEE AMNESTY

Per 132-HB336, beginning January 31, 2019 until July 31, 2019, a [license reinstatement fee amnesty](#) is in effect. To be eligible, petitioners must have completed all court-ordered sanctions related to the eligible offense other than the payment of reinstatement fees. Additionally, at least 18 months must have expired since the end of the period of the suspension ordered by the court. More details can be found on the [Bureau of Motor Vehicles website](#).

### REQUEST FOR CLARIFICATION – COMMUNITY CONTROL VIOLATION CAPS

The Supreme Court was asked, on January 14, 2019, in a [memorandum of support from the Public Defender](#), to clarify language from 2017 132-HB49 which capped prison sentences for technical violations of community control to 90 and 180 days for underlying F5s and F4s, respectively (RC 2929.15). The memorandum asserts that “prison sentences for all violations not based upon felony-level criminal conduct should be subject to the statute's caps.”

### OHIO PUBLIC DEFENDER APPOINTED COUNSEL STANDARDS, GUIDELINES, FEE SCHEDULE, REIMBURSEMENT

The Ohio Public Defender has updated the [Standards and Guidelines for Appointed Counsel Reimbursement, the State Maximum Fee Schedule for Appointed Counsel Reimbursement, the County Public Defender Office Reimbursement Standards, and the State Public Defender Billing, Payment and Reimbursement](#).

### TASK FORCE TO EXAMINE THE OHIO BAIL SYSTEM

In January 2019, Chief Justice O'Connor announced a [24-member task force to examine Ohio's bail system](#). The purpose of the task force is to examine Ohio's bail system under Crim.R. 46 and make recommendations that will ensure public safety and the accused's appearance at future court hearings, while protecting the presumption of innocence. The work of the Ohio Criminal Sentencing Commission has been helpful to the task force – the Commission issued two reports: [The Ad Hoc Committee on Bail and Pretrial Services Final Report and Recommendations](#) in June 2017 and an [Addendum to the Final Report and Recommendations](#) in March 2018. The group has met twice and the next meeting is scheduled for March 11, 2019. It is expected the task force will make its recommendations in April 2019.

### GOVERNOR DEWINE CREATES A WARRANT TASK FORCE

[On February 13, 2019](#), Governor DeWine signed an [executive order creating a task force](#) to examine the current system of issuing and serving arrest warrants in Ohio. The Governor's Warrant Task Force will make recommendations regarding the prioritization of warrants for serious offenders and threats to public safety; the substantial volume of outstanding warrants in Ohio; the mass issuance of warrants by courts across Ohio; and best practices for serving outstanding warrants.

The new task force replaces the [National Instant Criminal Background Check System \(NICS\) Compliance Working Group](#), which was previously created to examine local and state compliance with law enforcement and court data submissions, including warrant information, to NICS. In addition to the task force's new objectives members will continue its original purpose of monitoring NICS compliance.

### DEWINE HALTS DEATH PENALTY TO REVIEW EXECUTION PROTOCOL

On Tuesday February 19, 2019, at the Associated Press Forum, Governor Mike DeWine said he was halting executions in Ohio until the state can find a method of lethal injection not deemed "cruel and unusual punishment" by the courts. DeWine granted Death Row inmate Warren Keith Hanness a reprieve last month after a federal judge linked the state's execution protocol to “severe pain and needless suffering.”

### QUICK REFERENCE GUIDES

The Commission has recently posted updates to the [Adult Rights Restoration \(Record Sealing\) Chart](#), the [Drug Offense Quick Reference Guide](#), and the [Rape Penalty Sentencing Chart](#). Stay tuned for an updated Felony Sentencing Quick Reference Guide.

### STATEHOUSE TO PRISON PIPELINE

At the end of each general assembly the ACLU of Ohio releases the [Statehouse-to-Prison Pipeline](#). The ACLU reports they [reviewed all 1,144 bills introduced in the 132<sup>nd</sup> General Assembly](#) and found nearly 1 out of 8 bills introduced in either the House or Senate created a new crime or expanded sentences.

## UPCOMING ENACTMENTS IMPACTING SENTENCING

Two bills with substantial impact on criminal sentencing take effect in March 2019. Reference guides for both bills will be on the Sentencing Commission website in near future. Contact Commission staff for information on upcoming trainings on the bills.

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### 132-SB201 REAGAN TOKES LAW-INCARCERATION (BACON, O'BRIEN)

"The Reagan Tokes Law" – Effective for offenses committed after March 22, 2019, mandating a system of indefinite sentencing for non-life felonies of the first and second degree.

The bill creates indeterminate sentences for F1s and F2s, with a presumptive minimum term. The bill allows DRC to recommend both early release, less than the minimum term, and delay release according to the maximum sentence. Post Release Control remains unchanged and operates as it does currently for those that serve the full, indeterminate sentence. As amended, the bill also contains 132-HB607 (WIGGAM) (removing requirement that a municipal judge sit in both Orrville and Wooster) and parts of 132-HB68 (ANIELSKI), which defines "impaired" and includes "impaired" persons – not just minors – as potential victims of pandering obscenity, pandering sexually oriented matter, and illegal use of a person in a nudity-oriented material or performance. The bill also included 132-SB323 (KUNZE) and 132-HB719 (PELANDA) that requires the Attorney General to create and maintain a statewide tracking system for the processing of sexual assault examination kits.

### 132-SB231 SIERAH'S LAW-VIOLENT OFFENDER DATABASE (GARDNER)

"Sierah's Law" – Effective March 20, 2019, offenders convicted of specified violent offenses or who are serving a term of confinement for one of those offenses will be required to enroll in a violent offender database through the sheriff in their county of residence. Qualifying offenders may petition their sentencing court for relief from the duty to enroll.

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 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.

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## UNITED STATES SUPREME COURT CASES

### Timbs v. Indiana – No. 17-1091 –

Argued November 28, 2018 – Decided February 20, 2019

Defendant plead guilty to drug trafficking and conspiracy to commit theft in state court. The drug trafficking charged carried a maximum fine of \$10,000. His \$42,000 SUV was seized at the time of his arrest, and Indiana alleged the vehicle had been used to transport drugs and requested the vehicle be subject to a civil asset forfeiture. The Court held that the defendant's eighth amendment protections against excessive fines were incorporated in the fourteenth amendment and therefore applied to state actions like the civil asset forfeiture in this case.

### Madison v. Alabama – No. 17-7505 –

Argued October 2, 2018 – Decided February 27, 2019

The US Supreme Court remanded a death penalty case for further consideration of the defendant's competency where the defendant was suffering from dementia. The court held that an inmate suffering from dementia may not understand why the state is trying to execute him and therefore would be incompetent to be executed under the 8<sup>th</sup> amendments protections against cruel and unusual punishment.

### Garza v. Idaho – No. 17-1026 –

Argued October 30, 2018 – Decided February 27, 2019

The US Supreme Court held it was ineffective assistance for a defense counsel to refuse to file an appeal when a defendant has signed an appeal waiver as part of a plea agreement.

**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*

**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*

**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*

**Lt. Charles Chandler** – *Peace Officer*

**Kathleen Hamm**, *Defense Attorney*

**Brooke Burns** – *Public Defender*

\*the Commission is assisted by its Advisory Committee, a [complete list of members is located 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).

**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:**

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**Questions, Comments, Suggestions? Contact:** [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov)

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