

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



SB196 TESTIMONIAL PRIVILEGE (EKLUND), HB337 (STEIN, GALONSKI)

The bills were introduced September 16, 2019 and September 17, 2019, respectively. The bills create a privilege for communications between a qualified advocate rendering advocacy services and a victim of certain offenses, and requires such advocates to report instances of child abuse or neglect. SB196 had a first hearing in the Senate Judiciary Committee on October 9, 2019 and HB337 was referred to the House Criminal Justice Committee on September 24, 2019.

SB205 ANIMAL CRUELTY (HOTTINGER, O'BRIEN)

The bill was introduced on September 30, 2019 and increases the penalties for serious acts of cruelty towards or the killing of a companion animal (from F5 to F3 or F4). It makes those crimes ineligible for sealing. The bill had a first hearing in the Senate Judiciary Committee on October 23, 2019.

SB221 FIREARMS LAW (DOLAN)

The bill was introduced October 15, 2019 and referred to the Senate Government Oversight and Reform Committee on October 23, 2019. The bill increases gun specification terms and penalties for illegal transfers of firearms and improper furnishing of firearms to minors. It creates a safety protection order, which requires seizure of firearms. Seized guns can be legally sold by the owner to a federally licensed dealer; can be legally transferred by the owner to a family member who does not live with the owner; and legally returned to a person, not the defendant, who is the true owner of the firearm. Court orders are required for all these transactions and also to return firearms to someone once the weapons disability has expired. Courts must enter warrant and protection order information into LEADS and NCIC, as well as remove information once a weapons disability expires. Juvenile judges must enter such information if the safety protection order would apply after a juvenile reaches age 18. The bill changes the involuntary civil commitment process, namely in costs collected from the patient (none).

HB362 MASKED INTIMIDATION (LANG, PLUMMER)

The bill was introduced October 8, 2019 and referred to the House Criminal Justice Committee October 9, 2019. The bill creates the crime of masked intimidation, an M1. The bill prohibits wearing a mask or disguise in order to obstruct the execution of the law; to hinder a person in the performance of a legal duty; or to prevent a person from exercising constitutional rights.

HB366 CHILD ENTICEMENT (MIRANDA, PLUMMER)

The bill was introduced October 10, 2019 and referred to the House Criminal Justice Committee on October 22, 2019. The bill adds the requirement of an "unlawful purpose" for the offense of child enticement.

HB368 OHIO COMPUTER CRIMES ACT (BALDRIDGE)

The bill was introduced October 17, 2019 and creates the following new offenses:

- 2913.86 (Computer Trespass), an F4 or F5, or an F3 if an aircraft is involved;
- 2913.88 (Electronic Data Interference), an F4;
- 2913.89 (Electronic Data Tampering), an F3;
- 2913.90 (Electronic Data Manipulation), an F4;
- 2913.91 (Electronic Data Theft), an F3; and 2913.32 (Electronic Data Disclosure), an F3.

LEGISLATION IMPACTING SENTENCING – UPDATES

SB5 PROMOTING PROSTITUTION PENALTIES (KUNZE, DOLAN)

The bill was introduced February 13, 2019 and passed out of the House on October 23, 2019. The bill increases penalties for the crime of Promoting Prostitution and also changes provisions of the Certificate of Qualification for Employment: it caps the fee for a CQE at \$50; it creates a rebuttable presumption for a CQE unless the petitioner is found to have not been rehabilitated.

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" and was passed by the Senate on May 15, 2019, 31-2. The bill was reported out of House Criminal Justice on October 31, 2019.

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. The bill was passed by the Senate, 30-1 on October 23, 2019.

SB134 PASSING SCHOOL BUSES (GAVARONE)

The bill was introduced on April 22, 2019 and creates a new offense for vehicular homicide and vehicular assault related to improperly passing a stopped school bus. The bill also clarifies that (1) cameras may be installed on a school bus to capture an image, images, or video of a person improperly passing the school bus, and (2) the image, images, or video may be used as evidence in any criminal case. The bill further makes appropriation for a grant program administered by the Department of Public Safety and designates the bill the School Bus Safety Act. The bill had a third hearing in the Senate Transportation, Commerce and Workforce on October 9, 2019. Also, there are several bills in the House that were consolidated in the House Criminal Justice Committee on October 31, 2019 when the Committee amended the language of HB89 FAILURE TO STOP FOR SCHOOL BUS (ANTANI) and HB105 SCHOOL BUS STOP (BROWN, SHAFFER) into HB83 SCHOOL BUS PHOTO EVIDENCE (BROWN, SHAFFER).

HB299 PENALTIES-CRIMES AGAINST CORRECTIONS (GREENSPAN)

The bill was introduced June 20, 2019 and had a first hearing in the House Criminal Justice Committee on October 3, 2019. The bill enhances the penalties for aggravated murder or attempted aggravated murder of an off-duty corrections officer, parole officer, probation officer, or parole board member under certain circumstances and enhances the penalty for felonious assault when the victim is an off-duty corrections officer, parole officer, probation officer, or parole board member who was specifically targeted for being a corrections officer, parole officer, probation officer, or parole board member.

HB302 INCLUDE CHILD ABUSE IN VIOLENT OFFENDER DATABASE (PERALES)

The bill was introduced June 26, 2019. It requires persons convicted of domestic violence, permitting child abuse, or endangering children committed when the offender was 18 or older and that involved a victim who was under 14 to enroll in the violent offender database. Existing law enrollment requirements apply to those persons. The bill also makes an appropriation and names the act Jacob's Law. The bill had a second hearing in the House Criminal Justice Committee on October 17, 2019.

HB338 MENTAL HEALTH AWARENESS AND COMMUNITY VIOLENCE ACT (GREENSPAN)

The bill was introduced September 17, 2019. The bill establishes a process by which law enforcement can petition a probate court for a "potential risk protection order" temporarily enjoining a person from having access to a firearm; requires law enforcement, within 24 hours of receipt of a protection order, to enter that order into LEADS; requires courts that issue protection orders to ensure that they are in a form that is accepted into the protection order database of the national crime information center (NCIC); prohibits anyone convicted of domestic violence or violating a protection order from acquiring, having, carrying, or using a firearm. The bill had a first hearing in the House Health Committee on October 22, 2019.

LEGISLATION IMPACTING SENTENCING – UPDATES

HB350 ANIMAL FIGHTING AND BESTIALITY (HOOPS)

The bill was introduced September 26, 2019 and prohibits bestiality, arranging animal fighting, or attending an animal fighting event. The bill reenacts these provisions from 131 SB 331, which were severed as a violation of the single-subject rule. The bill was referred to the House Criminal Justice Committee.

HB354 WEAPONS DISABILITY PORTAL (PLUMMER, SWEARINGEN)

The bill was introduced October 1, 2019 and had a fifth hearing in the House Finance Committee on October 16, 2019. The bill requires juvenile courts to expunge juvenile records at age 28 (instead of the current age 23); it expands the circumstances under which a person has a weapon under disability; it requires the creation of weapons disability data portal and imposes fines on courts that fail to comply with data submission requirements.

COURT DECISIONS

State v. Hawkins, SLIP OPINION NO. 2019-OHIO-4210

Decided October 16, 2019. The Court held that a reasonable and articulable suspicion existed where an officer initiated a traffic stop after noticing that a vehicle's paint color did not match the registration records in the BMV database and the officer's experience led them to believe that a crime may have occurred.

State v. Braden, SLIP OPINION NO. 2019-OHIO-3246

Decided October 16, 2019. Upon a motion for reconsideration, the Court reversed a December 2018 decision and held that the provisions of R.C. 2947.23 apply retroactively. A trial court may waive, modify, or suspend any court costs that had been imposed at any time, even for cases sentenced prior to the enactment date of the statute.

First District Court of Appeals Decision

State v. Kernall (2019-Ohio-3070), July 31, 2019, the First District found that for purposes of R.C. 2929.15(B)(1)(c), a "technical violation" of a community-control sanction is a violation of any requirement which merely facilitates community-control supervision. An offender's significant failure to comply with any substantive rehabilitative community-control requirement that was specifically tailored to the offender's underlying conduct is a nontechnical community-control violation. It is also a nontechnical community-control violation if the offender engages in a pattern of conduct that demonstrates a failure to comply with the community-control sanction as a whole.



ICYMI

SPECIALIZED DOCKET FUNDING

The Ohio Department of Mental Health and Addiction Services is offering \$7.5 million in grant funding for expansion of specialized dockets that focus on substance use or mental health disorders. Applications will be accepted until all funds have been awarded.

Questions can be sent to specialized.docket@mha.ohio.gov by November 14, 2019.

SUPREME COURT OF OHIO SEEKING PUBLIC COMMENT

Through November 6, 2019 the Supreme Court is accepting public comments on proposed amendments to several Rules, including:

- (1) Civ.R. 4, 4.1, 4.7 implementing a waiver of service provision;
 - (2) Civ.R. 16, 26 requiring a scheduling order for discovery and proportionality during discovery;
 - (3) Civ.R. 53 which streamlines civil jury trials heard by a magistrate;
 - (4) Crim.R. 46 requiring a court to use the least restrictive bond conditions and least amount of monetary bail;
 - (5) Crim.R. 44 requiring a court to appoint counsel in petty offense cases where jail time is possible;
 - (6) Crim.R. 19 allowing magistrates to take pleas in F4 and F5 cases;
 - (7) Evid.R. 601 specifying that all persons, regardless of age, are competent to testify unless the court determines they are not;
 - (8) Evid.R. 810 creating a residual hearsay exception, if the hearsay evidence is trustworthy and the opposing party is notified of its use;
 - (9) Evid.R. 902 allowing for self-authentication of business records;
 - (10) App.R. 3 clarifying that notices of cross-appeals must be filed with the clerk of the trial court;
 - (11) App.R. 19, 21 requiring page limits (rather than word limits) on briefs and limiting oral argument time to 15 minutes;
 - (12) Juv.R. 3 requiring appointed counsel at the earliest stage of proceedings;
 - (13) Juv.R. 4 clarifying that a new attorney is to be appointed if the GAL's duty conflicts with a child's wishes;
 - (14) Juv.R. 42 harmonizing the Rule with the recent statutory change prohibiting minors to consent to marry; and
 - (15) a redesign of the Model Uniform Traffic Ticket.
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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 on or after March 22, 2019.

Contact us for more information or training opportunities.

[Resources and information can be found 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.

Full Commission Meeting Dates

**Next Meeting of the Full Commission:
Thursday December 14, 2019 10:00 a.m. – Riffe Center**

**Working committees meet between Full Commission meeting dates.*

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

Special Thanks to contributor:

Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference

Questions, Comments, Suggestions? Contact: sara.andrews@sc.ohio.gov

Contact Us:

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www.supremecourt.ohio.gov/Boards/Sentencing

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

Sean Gallagher, 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, 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

Elizabeth Poprocki, Victim Representative

Paula Brown, Ohio State Bar Association

Gwen Howe-Gebbers – County Prosecutor (Juvenile)

David Painter – County Commissioner

Chief Brandon Standley – Law Enforcement

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](#).