

Legislative & Judicial Brief

A Message from Sara Andrews, Director



Thank you to those who let us know this publication is a welcome and informative piece. We're proud of the work and consider connectivity among all of our partners in criminal justice and public safety reform a top priority.

I'm also pleased to introduce our recently appointed Vice-Chair, the Honorable Nick A. Selvaggio, Champaign County Court of Common Pleas. Judge Selvaggio was elected to the court in 2012 for a six-year term that commenced on January 1, 2013. Prior to being elected Judge, he served as the Champaign County Prosecutor for sixteen years.

We look forward to Judge Selvaggio serving as Vice-Chair and expect his perspicuous, analytical and problem-solving approach will contribute to especially insightful, purposeful debate and constructive collaboration throughout the work of the Commission.

The Legislative & Judicial Brief is designed to share information, spark conversation, enlighten minds and 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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Member Profile



Senator John Eklund is serving his first term as State Senator for the 18th District, comprised of portions of Geauga and Lake

Counties as well as all of Portage County. Senator Eklund has a long and noted legal career in Northeast Ohio. For the 131st General Assembly, Senator Eklund serves as the Chairman of the Senate Criminal Justice Committee, Vice-Chair of the Financial Institutions Committee and is a member of several other standing committees and is a member of the Great Lakes Commission.

Eklund is a partner at Calfee, Halter & Griswold LLP where he has worked for more than 30 years. He is a graduate of Washington and Lee School of Law and holds a bachelor's degree from Union College. He has been named an Ohio Super Lawyer in antitrust litigation and is listed in *Best Lawyers in America* for Antitrust Law.

Since his appointment to the Ohio Criminal Sentencing Commission he has served with inspired leadership while providing notable and constructive contributions to its work in advancing criminal justice and public safety reform.

Legislation Impacting Sentencing

HB 405 – Importuning

This bill was drafted as a response to a news report that claimed that offenders charged with importuning were not getting prison time for that crime. One of the reasons for this is that importuning charges can result when a police officer poses as a minor online and there is no “real” victim; and sentencing guidelines dictate that certain factors affect the penalty, including the impact on the victim. To ensure that offenses that involve a police decoy get a prison sentence, the sponsor is proposing a mandatory prison term for a first offense of importuning, including when a police decoy is the “victim.” According to the Ohio Department of Rehabilitation and Corrections, fewer than 200 people were charged with importuning in 2014; reported data does not always make clear which subsection of ORC Sec. 2907.07 (Importuning) was charged.

SB 97 – Firearm restrictions

This bill is part of an initiative by the Attorney General to discourage certain violent, repeat offenders from using guns and re-offending. The bill increases the mandatory prison term required for a gun specification; requires a mandatory prison term for a “violent career criminal” convicted of committing a violent crime while armed with a gun; prohibits “violent career criminals” from knowingly acquiring, having, carrying, or using any firearm or weapon; and limits the firearm disability relief mechanism. The bill changes the way jail time credit is counted in determining eligibility for judicial release; for certain offenders with prison terms of 5 years, judicial release is available after serving 4 years of the stated term (rather than after 4 years after being delivered to prison), and for certain offenders with prison terms of more than 5 years (but less than 10 years), judicial release is available after serving 5 years (rather than after 5 years after being delivered to prison).

HB 427 – Third party-authorize to receive sealed/expunged criminal records

The bill requires the Attorney General to select a qualified third party to receive court notices of sealed or expunged criminal records and to require certain data repositories and web sites that receive the notices from the third party to remove those records from their databases. The bill had its first hearing in the House Judiciary Committee 01-26-16.

HB 436 – OVI-grant limited driving privileges-terminate immobilization order

Introduced 01-26-16, the bill authorizes a judge that grants limited driving privileges to a second-time OVI offender to order the termination of the mandatory immobilization order.

SB 258 – Attorney General-investigate/prosecute-death caused by police officer

The bill would require the Ohio Attorney General's office to appoint a special prosecutor to investigate cases involving the use of lethal force by a police officer against an unarmed suspect. The bill was referred to State and Local Government Committee 01-20-16.

SB 265 – Casino operator/employees-no gaming at own or affiliated casino

Introduced 01-27-16, the bill specifies that the criminal penalty related to casino operators and employees participating in casino gaming applies at their casino facility or an affiliated casino facility.

SB263 – Negotiated criminal pleas-cancel-defendant noncooperative

The bill would authorize a court, upon request of the prosecution, to cancel a negotiated plea in a felony or first degree misdemeanor case if the offender does not provide information, cooperate with law enforcement, or perform another function or activity when required as a condition of the underlying plea agreement. The bill was referred to Criminal Justice Committee 01-27-16.

Court Decisions Regarding Sentencing

***State v. Barry*, Slip Opinion No. 2015-Ohio-5449**

In a 7-0 decision the Supreme Court of Ohio disavowed the “unmistakable crime” doctrine. The Court reversed Chelsey Berry’s tampering with evidence conviction because prosecutors failed to prove beyond a reasonable doubt that she knew an official proceeding or investigation was in progress or likely to be commenced at the time the evidence was concealed. The state cannot infer the defendant knew that concealing evidence was an “unmistakable crime”, but rather it must prove that the defendant knew a criminal investigation was ongoing or likely to follow.

***State v. Leak*, Slip Opinion No. 2016-Ohio-154**

In this case the Ohio Supreme Court ruled that the arrest of an occupant of a legally parked car does not, by itself, justify automatic impoundment of that car; and a warrantless inventory search of the car violated the Fourth Amendment to the U.S. Constitution and Article I, Section 14 of the Ohio Constitution. The Court relied on U.S. Supreme Court rulings that the Fourth Amendment determines the reasonableness of a search based on the totality of the circumstances of each case.

Upcoming Oral Argument on Sentencing

State of Ohio v. William D. Sergent will be argued Wednesday February 10, 2016. The oral arguments are broadcast live on the Ohio Channel – <http://www.ohiochannel.org/>.

(Can a Jointly Recommended Criminal Sentence Be Appealed?)

ISSUE: When a sentence is jointly recommended, must the trial court make its own consecutive sentence finding in order for its decision to not be appealable?

Task Force Announced by Chief Justice O’Connor

Task Force to Examine Improvements to the Ohio Grand Jury System

The Task Force to Examine Improvements to the Ohio Grand Jury System is charged with recommending ways to improve the function of the grand jury system in Ohio and to see what additional steps can be taken to improve the public’s confidence in the justice system. It is not tasked with determining whether the grand jury system should be eliminated. The first meeting of the task force will be February 17, 2016 6:00-8:00p.

For more information, visit
<http://www.supremecourt.ohio.gov/Boards/grandJury/default.asp>

Legislation Recommended and Advanced by the Commission - Update

On November 19, 2015 the full membership of the Ohio Criminal Sentencing Commission convened and favorably voted to advance a proposal recommending amendment to 2967.13(B) [Juvenile Life Without Parole – JLWOP] which was initiated in response to recent U.S. Supreme Court cases and successful legislative efforts in California and West Virginia on the topic.

On February 4, 2016 SB 272, cosponsored by Senator Thomas and Senator Eklund, was introduced.

For more information contact us at sara.andrews@sc.ohio.gov or visit

<http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp>.

SCOTUS & JLWOP

U.S. Supreme Court Holds *Miller* Applies Retroactively – on 01-25-16 the U.S. Supreme Court ruled in [Montgomery v. Louisiana](#) that those sentenced as teenagers to mandatory life imprisonment without parole must have a chance to argue that they be released from prison.

Justice Kennedy, writing for the majority, stated that the 2012 decision in *Miller v. Alabama*, which prohibited mandatory life without parole for juvenile offenders, is a substantive rule of constitutional law, and thus applies retroactively. The Court further stated that a state may remedy a *Miller* violation by extending parole eligibility to juvenile offenders, giving someone like Montgomery, an opportunity to show “that children who commit even heinous crimes are capable of change.”

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*

Dorothy Pelanda, *State Representative*

Hearcel Craig, *State Representative*

Thomas Marcelain,
Common Pleas Court Judge

Robert DeLamatre, *Juvenile Court Judge*

Gary Dumm, *Municipal Court Judge*

Frederick "Fritz" Hany II,
Municipal Court Judge

Sylvia Sieve Hendon, *Appellate Court Judge*

Kenneth Spanagel, *Municipal Court Judge*

Steve McIntosh, *Common Pleas Court Judge*

Terri Jamison, *Juvenile Court Judge*

Robert Fragale, *Juvenile Court Judge*

Derek DeVine, *County Prosecutor*

Paul Dobson, *County Prosecutor*

Bob Proud, *County Commissioner*

Albert Rodenberg, *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 Representative

Ronald Burkitt, *Juvenile Police Officer*

Kort Gatterdam, *Defense Attorney*

Kathleen Hamm, *Public Defender*

Jason Pappas, *Fraternal Order of Police*

*the Commission is assisted by its Advisory Committee, for a complete list contact sara.andrews@sc.ohio.gov

Working Committees of the Commission

Sentencing & Criminal Justice Committee priorities include the study criminal penalties and sentencing statutes and patterns in Ohio, recommend statutory change and review 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 improving as well as building 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 Committee 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.

2016 Full Commission Meeting Dates

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.

*Working committees meet between Full Commission meeting dates.

Thursday, **March 17, 2016**, Room 101

Thursday, **Sept. 15, 2016**, Room 101

Thursday, **June 23, 2016**, Room 101

Thursday, **Dec. 15, 2016**, Room 101

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