

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 signed by the Governor July 18, 2019 and most provisions with appropriation go into effect immediately while provisions without appropriation are effective 90 days after the Governor's signature.

The final version of the budget contained, among many other provisions: voluntary TCAP in every county; increased funding for indigent defense reimbursement; increased funding for specialized dockets through Ohio Mental Health and Addiction Services; continued funding for specialized docket payroll subsidies, which may also be used for treatment and recovery supports; extension of the Driver's License Reinstatement Fee Amnesty Program to December 31, 2019; authority for a parent in a crisis situation to voluntarily enter into a host family agreement; corrections to the juvenile/domestic relations jurisdiction transfer provisions in §2151.233 – .236.

The Governor vetoed a provision in the budget that would have created a court reimbursement program for medication-assisted treatment; the provision was vetoed because it was specific to Vivitrol, with no reimbursement for other addiction treatments.

The final version of the budget also allows certain counties to opt for funding rather than probation supervision services from the Ohio Department of Rehabilitation and Correction.

HB294 SCHOOL BULLYING (DENSON, MILLER)

The bill modifies the definition of school harassment, intimidation or bullying. The legislation allows school districts to address a bullying incident if at least one of two standards are met: 1. the victim suffered from mental or physical harm at the hands of another student 2. the bullying was sufficiently severe, persistent or pervasive and caused an intimidating, threatening or abusive educational environment for the victim. The bill maintains existing due process measures for all parties involved, as well as local school board discretion. The bill was introduced on June 19, 2019 and referred to the House Primary and Secondary Education Committee on June 26, 2019.

HB298 STATUTE OF LIMITATIONS (KENT)

Under current law, the statute of limitations for child abuse begins to run either when the child reaches the age of majority or when authorities have been notified of an incident of child abuse. The bill modifies the law by making the statute of limitations start only when the child reaches the age of majority. The bill was introduced on June 20, 2019 and referred to the House Criminal Justice Committee on June 25, 2019.

HB299 PENALTY ENHANCEMENT (GREENSPAN)

The bill makes causing the death of a corrections, parole, or probation officer, or a parole board member Aggravated Murder. Current law provides that Felonious Assault (RC 2903.11) is either an F1 or F2; the bill makes it an F1 if the victim is a corrections, parole, or probation officer or a parole board member. The bill was introduced on June 20, 2019 and referred to the House Criminal Justice Committee on June 25, 2019.

HB302 INCLUDE CHILD ABUSE IN VIOLENT OFFENDER DATABASE (PERALES)

The bill requires certain child abuse offenses are included in the violent offender database (see 132-SB231 SIERAH'S LAW - VIOLENT OFFENDER DATABASE). The bill also suggests an appropriation and is named "Jacob's Law". The bill was introduced on June 26, 2019 and referred to the House Criminal Justice Committee on June 30, 2019.

HB307 PENALTY ENHANCEMENT (ANTANI, PLUMMER)

The bill increases the charge of Voyeurism from an M2 to an M1, and to an F5 or F4 for repeat offenses. It was introduced on June 27, 2019 and referred to the House Criminal Justice Committee on June 30, 2019.

HB309 ASSAULT-TRANSIT OPERATOR (DENSON, PERALES)

The bill increases the penalty for assault when the victim is an operator of an Ohio transit system bus or rail car; authorizes Ohio transit systems to post a sign regarding abuse or assault of staff; and increases the penalty for evading payment of the known fares of a public transportation system. The bill was introduced on July 2, 2019.

HB310 SCHOOL BULLYING AND HAZING (GREENSPAN)

The bill requires a student identified as a bully to serve a disciplinary period, during which the student may be required to participate in a community service program. The bill also encourages schools to offer tutoring, academic support and counseling services to bullying victims. The bill known as The Ohio Anti-Bullying and Hazing Act was previously introduced as 132-HB360 and was passed out of the House but was not voted on by the full Senate. The bill was introduced on July 9, 2019.

LEGISLATION IMPACTING SENTENCING – UPDATES

SB3 DRUG SENTENCING REFORM (EKLUND, O'BRIEN)

[The text of the bill can be found here.](#) A substitute bill was accepted in the Senate Judiciary Committee, at the second hearing, on March 6, 2019. At the seventh hearing on June 27, 2019, the following amendments were accepted:

- AM0229X1 – extends jurisdiction over the unclassified misdemeanor possession offenses to both municipal and common pleas courts, and gives the county prosecutor discretion on where to charge those offenses.
- AM0230 – provides limited retroactivity for criminal acts from before the effective date to offenders who have pending charges or have not yet been sentenced and whose charges are reclassified under the bill.
- AM0232 – amends the definition of technical violation to exclude behavior demonstrating an “articulated” or “repeated” refusal to participate.
- AM0233X1 – reduces the number of revivals from opioid antagonist from three to 1 to demonstrate a drug abuse problem; instead of requiring half of the cost of treatment paid in advance, provides for evidence of intent to pay some of the cost of treatment; allows for professional examination rather than only a physician’s exam; and establishes provisions for an order to allow a 72-hour commitment for drug treatment.
- AM0234X1 – specifies that prior convictions for possession of marijuana or hashish do not exclude a person from having prosecution of a subsequent possession held in abeyance.
- AM0235 – clarifies that civil commitment procedures are not limited to opioid abuse, but applicable for any substance abuse disorder.
- AM0236X1 – creates a new offense of trace amount possession, criminalizing possession of less than .025g as a minor misdemeanor.
- AM0283 – expands the definition of “Sexual Assault Enabling Drug” to include any drug that a person knowingly uses to prevent resistance to sex and then actually engages in sex with the drugged person.
- AM0284 – makes clear that the exemptions for possession and trafficking offenses are specific to medical professionals and are affirmative defenses.
- AM0499 – authorizes the Ohio Criminal Sentencing Commission as a criminal justice agency and tasks the Commission with studying and reporting on the impact of the legislation.
- AM0752 – makes petitions filed for civil commitment of a person with a substance abuse disorder confidential and provides that a physician can complete a certificate to admit a that person to treatment.
- AM0753 – re-instates existing enhancements for trafficking drugs in the vicinity of a school or juvenile.

SB13 JUVENILE HUMAN TRAFFICKING VICTIMS (FEDOR)

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. A substitute bill was accepted at the fourth hearing in the Senate Judiciary Committee on April 24, 2019, which among other things, extended the Safe Harbor abeyance period up to 18 months. The bill was passed by the Senate on July 17, 2019, 31-0.

SB28 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)

The bill increases the penalties for aggravated menacing and menacing if the victim is a person that the offender knows is a “protected person” and defines “protected person” as a person protected by a civil or criminal protection order. The bill was reported out of the Senate Judiciary Committee as amended at the sixth hearing on July 17, 2019.

SB54 PROHIBIT DEATH PENALTY IF MENTALLY ILL AT TIME OF OFFENSE (EKLUND, WILLIAMS)

The bill prohibits the death penalty in cases where the offender has a specific mental illness at the time of the crime. The bill makes life without parole mandatory if the mentally ill person is guilty but not death eligible under the bill (both retroactively and prospectively). “Major depressive order” has been removed 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 substitute bill was accepted at the third hearing in the Senate Judiciary Committee to align the language with the House-passed companion bill **HB136 (HILLYER)**, which was referred to the Senate Judiciary Committee on June 11, 2019. Substitute SB54 was accepted without objection on July 17, 2019.

SB133 MANAGEMENT OF RELEASED OFFENDERS (O'BRIEN, MANNING)

The bill pertains to post-prison supervision. Among other things, it requires the Criminal Sentencing Commission to convene an offender supervision committee; establishes parameters and requirements for the use of GPS monitoring devices, including 24-hour real-time supervision and law enforcement access through LEADS; requires the Department of Rehabilitation and Correction to establish re-entry programs for certain offenders; and requires the establishment, by the Adult Parole Authority, of standards for parole officer caseload and workload. The bill had a second hearing in the Senate Judiciary Committee on June 27, 2019. A companion bill, **HB215 (BOGGS, CARFAGNA)** also had a second hearing on June 27, 2019 in the House Criminal Justice Committee.

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 had a first hearing in the Senate Judiciary Committee on July 17, 2019.

ICYMI

JAIL RECIDIVISM

The Criminal Sentencing Commission has been working in collaboration with the Buckeye State Sheriffs' Association, the Stepping Up initiative in Ohio and the Council of State Governments on a project to, among other things, define and measure jail recidivism. We're pleased to [share that the definition of jail recidivism can be found here](#).

ADMINISTRATIVE DIRECTOR, THE SUPREME COURT OF OHIO

On July 15, 2019, the Supreme Court of Ohio welcomed Retired Colonel Jeffrey C. Hagler as Administrative Director. He is an Ohio native, and before retiring served as a judge with the U.S. Army Court of Criminal Appeals in Fort Belvoir, Virginia, conducting appellate reviews of Army court-martial convictions. More information can be found in the [April 12, 2019 announcement](#).

SUPREME COURT OF OHIO COMMISSION ON THE RULES OF PRACTICE AND PROCEDURE

At its July 19, 2019 meeting the Supreme Court's Commission on the Rules of Practice and Procedure voted to open several proposals for public comment. Among them:

- A proposal to allow magistrates to periodically preside over an adult court specialized docket, when the judge is unavailable, and only in accordance with the Rules of the Specialized Docket Commission
- A proposal to make changes to several pre-trial procedures in civil cases, including waiver of service
- A proposal to change Rule 46 to encourage use of a risk assessment in determining bail

Proposals to change evidence rules in domestic violence cases were tabled to do more work to prevent conflict with the confrontation clause.

LEGISLATION IMPACTING SENTENCING UPDATES continued

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 had a first hearing in the Senate Judiciary Committee on July 17, 2019.

HB161 ABUSE OF CORPSE (SMITH, R.)

The bill increases the penalties for abuse of a corpse in circumstances that involve dismemberment or mutilation of the corpse. The bill was reported out of the House Criminal Justice Committee at the fifth hearing on June 27, 2019.

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 third hearing in the House Criminal Justice Committee on June 27, 2019.

HB208 ASSAULT PENALTIES (ROEMER AND J. MILLER)

The bill 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 had a second hearing in the House Criminal Justice Committee on June 27, 2019. There is a companion bill in the Senate, **SB118 (ROEGNER)**.

HB232 IMPORTUNING (SCHAFFER, SMITH K.)

The bill was introduced May 2, 2019. For F3 Importuning Offenses (RC 2907.07(A) or (C)), the bill adds a mandatory prison term if either the offender also arranged to meet the importuned person or the offender is 10 or more years older than the importuned person (or the age claimed by a law enforcement officer acting as an importuned person). The bill was referred to the House Criminal Justice Committee on June 30, 2019.

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 was passed by the House on June 26, 2019, 94-1 and referred to the Senate Judiciary Committee on July 17, 2019.

[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 September 19, 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:

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

Contact Us:

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MEMBERS

CHAIR

Maureen O'Connor, Chief Justice

VICE-CHAIR

Nick Selvaggio, Common Pleas Court Judge

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Cecil Thomas, State Senator

William Seitz, State Representative

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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

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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

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](#).