



Legislative & Judicial Brief

A Message from Sara Andrews, Director



Recently, state leaders from all three branches of government expressed their interest in reengaging the Justice Reinvestment Initiative (JRI) process and endorsed the Ohio Criminal Sentencing Commission (Commission) to propel Ohio's next phase of criminal justice reform. As a JRI site, Ohio agreed to identify

participants for a JRI Ad Hoc Committee that will agree to milestones for a data collection and analysis strategy. The group will identify areas in the criminal justice system for study, review data analyses, policy and current law, participate in crafting legislative recommendations and generally drive state wide policy efforts in the next phase of criminal justice reform for Ohio. This group will kick off its work this Fall, stay tuned!

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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Legislation Impacting Sentencing

Recently Introduced



The bill specifies that the penalty for trafficking in, possession of, or funding of trafficking in fentanyl or carfentanil is the same as the penalty for those crimes involving heroin; increases to a third degree felony the trafficking in or possession of at least one gram but less than five grams of any of those drugs; provides that deception to obtain a dangerous drug involving fentanyl or carfentanil is a third degree felony, and provides a per se prohibited concentration of fentanyl and carfentanil regarding operating a vessel or motor vehicle that is the same as the per se prohibited concentration for heroin. The bill was introduced on September 19, 2017.



The bill revises provisions of the law governing nuisance, dangerous, and vicious dogs, revises its enforcement, and establishes a notification process regarding complaints of certain violations of that law. The bill was introduced September 19, 2017 and has its first hearing in the Senate Judiciary Committee on October 3, 2017. The House companion bill is HB 352 (Huffman and Rezabek).

SB196 DEFINE CRIME OF AGGRAVATED BULLYING (Williams, Brown)

The bill creates the charge of aggravated bullying a misdemeanor of the third degree, for juveniles. The bill was introduced September 19, 2017 and has its first hearing in the Senate Judiciary Committee on October 3, 2017.

SB101 REAGAN TOKES LAW-INCARCERATION (BACON, O'BRIEN)

The bill provides for indefinite prison terms for first or second degree felonies and specified third degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term. The bill also is designed to generally allow the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration and allow the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specified findings. The bill was introduced on September 27, 2017 and the act's provisions are to be named the Reagan Tokes Law. There is a companion/part 2 Senate Bill (SB202) and House companion bill HB365 (Hughes, Boggs) was introduced October 2, 2017.

SB202 REAGAN TOKES LAW-MONITORING (BACON, O'BRIEN)

The bill requires the Department of Rehabilitation and Correction to establish a reentry program for all offenders released from prison that are to reside in a halfway house or similar facility but have not been accepted to such a facility. It further requires the Adult Parole Authority to establish maximum work-load and case-load standards for its parole and field officers and have enough trained officers to comply with the standards. The bill requires the GPS monitoring used for offenders released from prison to specify restrictions, including inclusionary zones and necessary exclusionary zones; requires the Department to establish system requirements for GPS monitoring of such offenders by the Department or third-party contract administrators; requires the Department to operate a statewide database for law enforcement use containing specified information about such offenders; and requires third-party administrators for GPS monitoring under a new contract with the Department provide and use a law enforcement-accessible crime scene correlation program. The bill was introduced on September 27, 2017 and the act's provisions are to be named the Reagan Tokes Law. There is a companion/part 1 Senate Bill (SB201) and the House companion bill HB365 (Hughes, Boggs) was introduced October 2, 2017.





SR294 (OBHOF, KUNZE)

A Senate Resolution Honoring John E. Murphy on his retirement was introduced on September 21, 2017. After serving more than 40 years with the Ohio Prosecuting Attorneys Association, he is retiring from his role as the Executive Director.

John has been steady and unflappable in representing the interests of Ohio's Prosecuting Attorneys. His grit, cleverness and wisdom is unmatched. We hope to see him around because he is a true living legend.

Legislation Impacting Sentencing: Recently Introduced – continued

HB327 ONLINE IMPORTUNING PENALTIES (SCHAFFER, SMITH)

The bill requires the imposition of a mandatory prison term on a first offense of "importuning" for a violation of either of two prohibitions relating to a person's solicitation of another who is less than 13 years of age to engage in sexual activity. The bill further specifies the imposition of a mandatory prison term on a first offense of "importuning" for a violation of either of two prohibitions relating to a person's solicitation of another between the ages of 13 and 18 to engage in sexual activity or sexual conduct, if the offender is ten or more years older than the person solicited. The bill was introduced on August 24, 2017 and had its first hearing in the House Criminal Justice Committee September 19, 2017.

HB349 POLICE ANIMALS (LATOURETTE)

The bill increases the penalty for assaulting a police animal (from F2 to F4; from F3 to F2 if death results) and includes search and rescue animals in the statute. The bill was introduced September 19, 2017.

HB354 TIFFIN-FOSTORIA COURT DRUG PROGRAM (REINEKE)

The bill allows the Tiffin-Fostoria Municipal Court to have jurisdiction concurrent with the Seneca County Common Pleas Court to run a drug recovery program. The bill was introduced September 20, 2017.

HB355 SEXTING UNDER 21 (HILL, REZABEK)

The bill generally prohibits sexting by a person under 21 years of age but allows diversion from penalty. The bill requires every county in Ohio to create a "sexting educational diversion program" for Ohioans under 21 convicted for the first time of sending sexually explicit material featuring minors. The bill also creates several exceptions, including for people with explicit photos of themselves or their spouse (so long as they don't distribute the photos) and those who receive unsolicited photos and immediately delete them. The bill was introduced on September 21, 2017.

Legislation Impacting Sentencing: Recently Introduced - continued

HB 336 LICENSE REINSTATEMENT FEE AMNESTY (BARNES, GREENSPAN)

The bill prohibits license reinstatement fees for (1) a juvenile whose license was suspended because of an unruly or delinquent adjudication, unless it was for an offense involving alcohol, drugs, or weapons, (2) a juvenile whose license was suspended because of habitual truancy, if the juvenile provides a diploma or GED, (3) a temporary driving permit, except for a commercial permit, (4) an adult whose license, except for commercial licenses, was suspended for lack of insurance, too many points, or a municipal ordinance violation, unless it for an offense involving alcohol, drugs, or weapons. The bill was introduced September 5, 2017.

Legislative Updates (from previous issues)

HB6 RECORDS PUBLICATION FEES (BARNES)

The bill, a reintroduction of HB 172 from the 131st General Assembly, prohibits a person who publishes or disseminates criminal record information from soliciting or accepting a fee to remove, correct, modify, or refrain from publishing or otherwise disseminating the information. The bill also provides criminal and civil remedies for a violation of the prohibition. On September 27, 2017, the bill passed the Senate 33-0.

HB8 PUBLIC RECORDS-MINORS (HAMBLEY, REZABEK)

The bill exempts from the Public Records Law certain information concerning a minor that is included in a record related to a traffic accident involving a school vehicle in which the minor was an occupant at the time of the accident. The bill also establishes a process under which the parent or guardian of a minor whose personal information is included in a record related to a school vehicle traffic accident may request a copy of the record. On September 26, 2017, a substitute bill was accepted.

HB38 CRIMINAL OFFENSES-VIOLENCE (GREENSPAN)

The bill provides that purposely causing the death of a first responder or military member is aggravated murder and requires an offender to serve the prison term imposed for felonious assault on a peace officer, investigator, first responder, or military member consecutively to the prison term imposed for any related offense. The bill had its second hearing on September 12, 2017.

HB68 VOYEURISM VICTIM DEFINITION (ANIELSKI)

The bill identifies an impaired person as a potential victim of voyeurism, includes conduct involving an impaired person within the offenses of pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity oriented material or performance, and to prohibit an owner, operator, administrator, or employee of a care facility from creating, sharing, reproducing, or publishing any image of a care facility resident without a proper purpose and without prior written consent from the resident. The bill had its first hearing in the Senate Judiciary Committee on September 19, 2017.

HB95 DISTRACTED DRIVING PENALTY (HUGHES, SEITZ)

The bill establishes an enhanced penalty for committing a moving violation while distracted if the distraction is a contributing factor of the violation. The bill passed the House of Representatives on June 21, 2017 and had its third hearing in the Senate Local Government, Public Safety and Veterans Affairs Committee on September 26, 2017.

HB125 TRAFFIC ORDINANCE JURISDICTIONS (CRAIG, SEITZ)

The bill specifies the jurisdiction of municipal and county courts over municipal traffic ordinances and establishes requirements governing fines, fees, or other charges for traffic violations and infractions imposed by a municipal corporation that does not have the authority to establish a mayor's court. The bill was voted out of the House of Representatives on June 21, 2017 and was amended September 26, 2017.

Legislation Impacting Sentencing – continued

HB142 NOTIFYING POLICE OF CONCEALED CARRY (WIGGAM)

The bill modifies the requirements that a concealed handgun licensee or active duty military member notify a law enforcement officer or employee of the motor carrier enforcement unit when stopped that the person is carrying a concealed handgun or has a loaded handgun in the vehicle. The bill also reduces the criminal penalties associated with failure to comply with the notification requirements to a minor misdemeanor with a maximum fine of \$25 and eliminates the possibility of having a concealed handgun license suspended due to a violation of those requirements. The bill was reported out of the House Federalism and Interstate Relations Committee on September 19, 2017.

HB233 HANDGUN DECRIMINALIZATION-LEAVING UPON REQUEST (BECKER)

The bill enacts the "Decriminalization Effort For Ending Notorious Deaths (DEFEND)" to provide an opportunity for a concealed handgun licensee or qualified military member to avoid guilt for carrying a concealed handgun into a prohibited place if the person leaves upon request, and penalizes as disorderly conduct failing to leave upon request or returning with a firearm. The bill was passed by the House of Representatives on July 6, 2017. The bill was referred to the Senate Government Oversight and Reform Committee on September 20, 2017.

HB259 LIQUOR LICENSE-VIOLENCE DATABASE (SEITZ, WEST)

The bill requires the Attorney General to establish a database of persons who have committed an offense of violence at specified liquor permit premises and allow access to the database to holders of liquor permits in the specified categories. The bill was introduced on June 6, 2017. The bill had its first hearing in the House Criminal Justice Committee on September 12, 2017.

SB1 DRUG LAWS (LAROSE)

The bill defines "fentanyl-related compound", increases the penalties for drug trafficking and aggravated funding of drug trafficking convictions and, in most cases, drug possession convictions, when the drug involved is a fentanyl-related compound. The bill provides for an additional mandatory prison term of 3, 4, 5, 6, 7, or 8 years for a drug trafficking or aggravated funding of drug trafficking conviction, and for a drug possession conviction other than one described in the preceding point, when the drug involved is a fentanyl-related compound and the offender also is convicted of a major drug offender specification. The bill specifies an exception: an offender is guilty of possession of marijuana or possession of drugs, and not of possession of a fentanyl-related compound, when all of the following apply: the drug involved is a fentanyl-related compound mixed with marijuana or a Schedule III, IV, or V controlled substance; the total amount of the combination of the fentanyl-related compound and the other controlled substance is less than 40 unit doses or is less than 4 grams; and the offender does not know that the combination involved contains a fentanyl-related compound. The bill also adds certain fentanyl-related compounds to the statutory controlled substance Schedule I and revises the manner of determining the sentence for the offense of permitting drug abuse, when based on felony illegal manufacture of drugs, cultivating marijuana, or illegal assembly or possession of chemicals for the manufacture of drugs. The bill adds lisdexamfetamine to the list of Schedule II controlled substances. Additionally, the bill specifies that a prison term imposed for an involuntary manslaughter conviction based on a drug trafficking or drug possession offense, or a funding of drug trafficking offense that does not involve marijuana, runs consecutively to any prison term imposed for the base offense. The bill had its first hearing in the House Criminal Justice Committee on September 12, 2017.

HB260 LIMITED DRIVING ON SUSPENDED LICENSE (BUTLER, SYKES)

The bill requires a court to grant limited driving privileges to a person in relation to a driver's license suspension if: 1) no element of the offense for which the suspension was imposed relates to the operation or physical control of a motor vehicle or failure to comply with a requirement for the use, possession or registration of a motor vehicle; and 2) the suspension was not required to be imposed due to the involvement of a motor vehicle in the offense or the failure to obtain a valid license. The bill does not contemplate administrative suspensions. The bill had its first hearing in the House Transportation and Public Safety Committee on September 13, 2017.

HB276 THREATENING UTILITY WORKERS (REZABEK, GREENSPAN)

The bill enhances the penalty for aggravated menacing if the offender knows or has reasonable cause to know the victim is a utility worker and the offender threatens the worker with a deadly weapon with intent to obstruct the operation of a utility. The bill was introduced on June 14, 2017 and had its first hearing in the House Criminal Justice Committee September 12, 2017.

HB278 LAW ENFORCEMENT VEHICULAR ASSAULT (PATTON, KELLY)

The bill includes negligently causing serious physical harm to a law enforcement officer while operating a motor vehicle as a violation of the offense of vehicular assault. The bill was introduced on June 20, 2017 and had its first hearing in the House Criminal Justice Committee on September 19, 2017.

HB296 DRUG CRIME NEAR ADDICTION SERVICES (GAVARONE)

The bill enhances the penalties for certain drug offenses when committed on the premises or within 1,000 feet of a community addiction services provider, regardless of whether the offender knows the offense is being committed within that vicinity. 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 was introduced on June 28, 2017 and had its first hearing in the House Criminal Justice Committee on September 19, 2017.

SB64 JUVENILE MANDATORY BINDOVERS (THOMAS)

The bill, also a product of the Ohio Criminal Sentencing Commission, eliminates mandatory bindovers and reverse bindovers and modifies the procedures regarding discretionary bindover of an alleged juvenile court to a criminal court. The bill was referred to the Senate Judiciary Committee on February 22, 2017 and was amended on September 19, 2017.

SB94 DEATH PENALTY ABOLITION (BROWN)

The bill provides for the abolishment of the death penalty and declares an emergency. The bill was introduced on March 7, 2017 and had its first hearing in the Senate Judiciary Committee on September 26, 2017.

SB150 PROHIBIT PERSON CONVICTED OF DOMESTIC VIOLENCE FROM HAVING FIREARM (BROWN)

The bill prohibits a person convicted of domestic violence or assault of a family member, or a person subject to certain protection orders, from having a firearm; establishes a procedure for surrendering all firearms in the person's possession; and names the act the "Domestic Violence Survivors Protection Act." The bill was introduced May 16, 2017 and will have its first hearing in the Senate Judiciary Committee on October 3, 2017.

Legislation Impacting Sentencing - continued

SB4 RECORDS EXPUNGEMENT (KUNZE, OELSLAGER)

The bill allows a person who is found not guilty of an offense or who is the defendant named in a dismissed criminal charge to apply for a court order to expunge the person's official records in the case if the charge or not guilty finding was the result of the applicant having been a human trafficking victim, unless the records pertain to an aggravated murder, murder, or rape conviction. If the application for expungement is for a first or second degree felony the court must consider certain factors and requires the court find that the interest in having the record expunged are not outweighed by legitimate government needs to maintain the records. The bill also allows a person convicted of certain prostitution-related offenses to apply for the expungement if the person's participation was a result of having been a human trafficking victim. Finally, the bill allows intervention in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill passed the Senate on May 17, 2017 and had its second hearing in the House Criminal Justice Committee on September 19, 2017.

SB171 PROTECTION ORDER VIOLATION PENALTIES (HOTTINGER)

The bill increases the penalty that applies to the offense of violating a protection order if the offender had previously been convicted of a protection order violation or aggravated menacing or menacing. The bill also requires probation agencies (instead of law enforcement) to oversee electronic monitoring of those convicted of violating juvenile protection orders or menacing by stalking protection orders. The bill was introduced July 6, 2017 and referred to the Senate Judiciary Committee on September 07, 2017.

SB180 FIREARM RELATED LAWS-CHANGES (UECKER, HOTTINGER)

The bill shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence. The bill also expands circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence; reduces certain concealed handgun offenses to minor misdemeanors in circumstances where the offender does not commit a separate offense while carrying the concealed handgun and eliminates the mandatory posting of signs that warn against the conveyance of a deadly weapon or dangerous ordnance onto specified premises. The bill was introduced August 15, 2017 and had its first hearing in the Senate Judiciary Committee on September 19, 2017.

HB305 PROTECTION ORDER FIREARM TURNOVER (ANTONIO, BOYD)

The bill requires a court that issues a protection order to determine if the respondent is prohibited from carrying or possessing a firearm; or whether an offender who has been convicted of specified offenses is prohibited from carrying or possessing a firearm; and requires a respondent or offender who the court determines is prohibited from carrying or possessing a firearm to transfer all firearms in the person's possession to a law enforcement agency or a federally licensed firearms dealer. The bill was introduced on July 18, 2017 and referred to the Federalism and Interstate Relations Committee on September 12, 2017.

SCR13 RECLASSIFY MARIJUANA (YUKO)

The resolution urges the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Administration to reclassify marijuana, or cannabis. The resolution was offered July 19, 2017 and referred to the Senate Health, Human Services and Medicaid Committee on September 07, 2017.

Supreme Court of Ohio Decisions Impacting Sentencing

STATE V. DYE, SLIP OPINION No. 2017-OHIO-7823

On September 27, 2017, the Ohio Supreme Court ruled that a trial court may seal the records in a case dismissed without prejudice prior to the expiration of the statute of limitations. By issuing the opinion, the Supreme Court resolved a conflict between two district courts of appeals. In a majority opinion, authored by Justice Terrence O'Donnell, the Court found that the section of the statute for sealing criminal case records, R.C. 2953.52(B)(4), does not require the expiration of the statute of limitations.

STATE EX REL. PRADE V. NINTH DIST. COURT OF APPEALS, SLIP OPINION No. 2017-OHIO-7651

On September 20, 2017, in a per curiam decision, the Ohio Supreme Court held that R.C. 2945.67(A) and 2953.23(B) unambiguously allow the state an absolute right to appeal a judgment granting post-conviction relief.

STATE V. MORGAN, SLIP OPINION No. 2017-OHIO-7565

On September 13, 2017 the Supreme Court of Ohio ruled that a juvenile, whose parents are deceased, appears at an amenability hearing, the juvenile is not required to ask for the appointment of a guardian ad litem; one must be appointed. R.C. 2151.281(A)(1) and Juv.R. 4(B)(1). The Court found that a juvenile court errs when it fails to appoint a guardian ad litem when a juvenile appears at an amenability hearing with no parent. If the juvenile does not object, the error is subject to the criminal plainerror standard of review and the juvenile must show that the error affected the outcome of the proceeding. Justice Kennedy authored the decision and Justices O'Donnell, Fischer, and DeWine concurred. Chief Justice O'Connor dissented, with an opinion joined by Justices French and O'Neill.

STATE V. MOHAMED, SLIP OPINION No. 2017-OHIO-7468

On September 7, 2017, the Court decided that the term "harm," for purposes of R.C. 2905.01's "safe place unharmed" provision, includes both physical and psychological harm. The decision was written by Justice DeWine and Chief Justice O'Connor, Justices Kennedy and French concurred. Justice O'Donnell, concurred in judgment only, while Justice Fischer concurred with an opinion and Justice O'Neil dissented, with an opinion.



The Executive Committee of the Ohio Prosecuting Attorneys Association (OPAA) recently announced John Murphy's successor, **Louis Tobin,** "to take the OPAA into its next era and to build on the foundation of respect and integrity that John has spent years building". Congratulations Lou!

Lou officially moved to the OPAA Executive Director position effective October 2, 2017. As many of you know, Lou most recently served as the Deputy Director of the Ohio Judicial Conference. We look forward to working with Lou in his new role.

Maureen O'Connor, Chief Justice

VICE-CHAIR

Nick Selvaggio, Common Pleas Court Judge

John Eklund, State Senator

Cecil Thomas, State Senator

Jeffrey Rezabek, 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

Lara Baker-Morrish, City of Columbus, Chief

Prosecutor

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

State Representative – appointment pending

County Prosecutor (Juvenile) – appointment

pending

County Prosecutor – appointment pending

Sheriff – appointment pending

County Commissioner – appointment pending

Law Enforcement – appointment pending

Juvenile Police Officer – appointment pending

Defense Attorney – appointment pending

Public Defender – appointment pending

*the Commission is assisted by its Advisory Committee, a complete list is 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 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.

2017 Full Commission Meeting Dates

Thursday, December 14, 2017 at the Vern Riffe Center

2018 Full Commission Meeting Dates

Thursday, March 15, 2018 at the Vern Riffe Center

Thursday, June 21, 2018

Thursday, September 20, 2018

Thursday, December 13, 2018 at the Vern Riffe Center

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. *Working committees meet between Full Commission meeting dates.

Contact Us:

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Special Thanks to contributor:

Marta Mudri, Esq., Legislative Counsel, Ohio Judicial Conference Questions, Comments, Suggestions? Contact: sara.andrews@sc.ohio.gov

