

# Legislative & Judicial Brief



## A Message from Sara Andrews, Director



*In the final days of May the Ohio General Assembly passed a number of bills that had been the subject of discussions for some time. This flurry of activity preceded the summer recess which is expected to last until after the November elections. Work continues, however, in the Criminal Justice Recodification Committee. That committee has maintained an aggressive schedule and plans to have its recommendations finalized in August.*

*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

### HB 110 - Failure to Stop

The bill increases the penalty for failure to stop after an accident when the offense results in the death or serious physical harm to a person from a felony of the third degree to a felony of the fourth degree. The bill was amended to also include "Good Samaritan" language that provides limited criminal immunity for minor drug possession for a person who seeks medical help for himself or someone else due to an overdose. The bill was enacted on May 24, 2016 and awaits Governor's signature.

### HB 123 – Presentence Investigation Reports

The bill eliminates the requirement of a pre-sentence investigation in cases where a judge is imposing a community control sanction or placing an offender on probation so long as both the defendant and prosecutor agree. The bill was enacted on May 24, 2016 and awaits the Governor's signature

### HB 164 - Record Sealing

The bill allows a person who is convicted of an offense that on the date of conviction could not be sealed apply to have the conviction sealed if, after the date of conviction, the penalty or classification of the offense is changed so that the conviction could be sealed. The bill was enacted on May 24, 2016 and awaits Governor's signature

### HB 171 – Heroin Possession

The bill lowers the threshold needed for possession of heroin to be considered a first degree felony, as well as for the offender to be considered a major drug offender. Under the bill the amount needed for the maximum sentence is 1,000 unit doses or 100 grams of heroin. The bill was enacted on May 25, 2016 and awaits the Governor's signature.

### HB 172 – Misuse of Criminal Record Information

The bill creates the offense of misuse of criminal record information and makes a violation a first degree misdemeanor. The new offense prohibits a person engaged in publishing or disseminating criminal record information from negligently soliciting, or accepting from a subject individual payment to remove, correct, modify or refrain from publishing criminal record information. The bill passed the House of Representatives on May 18, 2016.

### HB 347 – Forfeiture Law

The bill modifies the Forfeiture Law by revising the civil forfeiture process, changing seizure procedures, shifting the burden of proof and revising evidence requirements for criminal forfeiture, making changes to the disposal of forfeited property and the disposition of funds, and restricting the transfer of forfeited property to a federal agency. It establishes the offense of receiving proceeds of a drug abuse, theft, or trafficking in persons offense, and authorizes the state to file a civil action against a person who is alleged to have committed that offense if the proceeds involved exceed \$25,000. The bill modifies the procedure in execution regarding goods claimed by a third party. The bill passed the House of Representatives on May 25, 2016.

## Court Decision Impacting Sentencing

### *In re Von*, Slip Opinion No. 2016-Ohio-3020

The Ohio Supreme Court ruled that a statutory procedure allowing sex offenders to terminate reporting requirements available to Adam Walsh Act (AWA) offenders who committed certain sexual offenses after the state's 2008 implementation of the AWA is not available to Megan's Law sex offenders who committed crimes prior to the 2008 implementation date.

The issue before the court was whether the procedures to relieve an AWA offender from the obligation to report applied to a Megan's Law offender. The old law, designated as Megan's Law, established a comprehensive system of classifying sex offenders into three categories: sexually oriented offenders, habitual sex offenders, and sexual predators. In contrast, the new law, the AWA, had new standards for sexual-offender classification and registration in conformity with the federal Adam Walsh Child Protection and Safety Act, and pursuant to R.C. Chapter 2950 offenders were divided into tier I, tier II, and tier III sex or child-victim offenders. The court noted that, in order to be an "eligible offender" under R.C. 2950.15(A) the person must be a "tier I sex offender/child-victim offender" which did not apply in the case at bar.

The Court also noted that the General Assembly made no reference to Megan's Law in the Adam Walsh Act and that was indicative of its intent that those offenders not be eligible for termination of Megan's law registration duties.

### **HB 388 – Ignition Interlock**

The bill establishes an alternative to limited driving privileges for a first-time OVI offender: unlimited driving privileges with an ignition interlock device. The bill also makes changes to the requirements related to limited driving privileges granted under the condition that the offender use an ignition interlock device, including requiring an offender using the device to obtain a restricted driver's license and enhancing the penalties for an ignition interlock device violation. The bill makes additional changes to the OVI law by increasing the "lookback" period for OVI and OVI-related offenses from six to ten years, extending the possible term of suspension for a first, second, or third-time OVI offender, and eliminating the restricted license plate requirement for second-time "standard level" OVI offenders. The bill passed the House of Representatives on May 18, 2016.

### **HB 392 – Protection Orders**

The bill authorizes a court to issue a protection order to protect an "intimate partner" (a person who has or had a continuing and significant relationship of a romantic nature with the respondent) from domestic violence by the respondent. The bill passed the House of Representatives on May 25, 2016.

### **HB 521 – Juvenile Extended Sentences**

The bill, which was recommended by the Ohio Criminal Sentencing Commission, was amended by the House Judiciary Committee to change the as introduced timelines for application for parole eligibility for juveniles serving extended sentences. The bill passed the House of Representatives on May 25, 2016.

### **SB 97 – Firearm Specifications**

The bill creates the armed violent career criminal designation for offenders who possess a firearm or dangerous ordnance after having two previous violent felony convictions. It allows a judge to sentence for mandatory range of 2 – 11 years for a person convicted of a violent felony offense and a violent career criminal specification. The bill also increases the current prison term for firearm specifications by fifty percent. The bill was enacted on May 25, 2016 and awaits the Governor's signature.

### **SB 204 - Driving Suspensions**

The bill allows currently mandatory driving suspensions for drug charges to be discretionary and provides a procedure by which a person can petition to lift a mandatory suspension applied before the passage of the bill. The bill was enacted on May 24, 2016 and awaits the Governor's signature.

### **SB 227 - Attorney General**

Among other things, the bill changes the process for record-sealing by requiring a court that orders the sealing of a criminal conviction record to order the person whose record is sealed to be fingerprinted by a sheriff; the fingerprints are to be forwarded to BCII (R.C. 2953.32(C)(4)). The bill also clarifies that all record-sealing fees are the types of fees, costs, and sanctions that a court of record must tax as costs or otherwise require to be paid in a case (R.C. 2746.02(O)). The bill was voted out of the Senate May 10, 2016.

### **SB 284 – Expungement/Sealing**

Expands the list of criminal offenses the records of which may be expunged if the offender was a victim of human trafficking. The bill also allows a victim of compelling prostitution to apply to the court for intervention in lieu of conviction. The bill passed the Ohio Senate on May 25, 2016.

## Member Profile



Representative Dorothy Pelanda is serving her second term as a member of the Ohio House of Representatives after being appointed to serve during the 129th General Assembly. She proudly represents the 86th House District, which includes Union and Marion Counties. Representative Pelanda served as Assistant Majority Whip and was then elected again by her colleagues to serve as Majority Whip for the 131st General Assembly.

A graduate of Marysville High School, Representative Pelanda also graduated from Miami University and the University of Akron School of Law. Representative Pelanda has practiced law more than 30 years, focusing on criminal and civil litigation and domestic relations law.

Representative Pelanda's lifelong commitment to public service is based upon a premise that the future of the State and its economy is in direct relation to the financial, physical, and mental health of Ohio's families. Her legislative focus includes revamping juvenile and elder care laws, and combatting Ohio's heroin epidemic. She has also sponsored several bills regarding medical scope of practice issues and is committed to preserving and protecting a fair elections system. The Representative currently serves on the House Commerce and Labor, Government Accountability and Oversight, Judiciary, and Rules and Reference Committees. She is also member of the Ohio Criminal Sentencing Commission; the Multi-System Youth Task Force; Ohio Criminal Recodification Committee; and Cystic Fibrosis Task Force.

## 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](mailto:sara.andrews@sc.ohio.gov)

## 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](mailto: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, **June 23, 2016**

Thursday, **September 22, 2016**

Thursday, **December 15, 2016**

### Contact Us:

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