

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

SB256 BAR LIFE SENTENCES FOR JUVENILES (MANNING, LEHNER)

The bill was introduced December 23, 2019 and prohibits a sentence of life without the possibility of parole for offenders who were younger than 18 at the time of the offense. Instead, the offender is to be sentenced to an indefinite prison term of 30 years to life. If an offender received a sentence of life imprisonment with or without parole for an offense that was committed when the offender was younger than 18, the offender's parole eligibility is to be determined under the bill. When sentencing someone who committed an offense when younger than 18, the court must consider youth and its hallmarks (including risk-taking, immaturity, impetuosity), family and home environment, extent of participation in the event, extent to which youth contributed to a more serious charge, and evidence of rehabilitation. The parole board considers the same factors when making its determination. The bill had a second hearing in the Senate Judiciary Committee on February 19, 2020.

SB265 DOMESTIC VIOLENCE PENALTY (KUNZE)

The bill was introduced on January 29, 2020 and had a first hearing in the Senate Judiciary Committee on February 12, 2020. The bill increases the penalty for domestic violence if the victim is functionally impaired (defined as infirmity caused by age or an impairment that prevents providing for own care or protection). Causing physical harm, now an M1, would be an F4 if the victim is functionally impaired; threatening harm, now an M4, would be an M3.

SB278 PAROLE PROCEDURES (EKLUND, LEHNER)

The bill was introduced February 12, 2020 and modifies parole procedures regarding prisoner access to information, presence of counsel, and appeals of decisions.

HB472 CRIMINAL PERIOD OF LIMITATIONS – RAPE (ROGERS)

The bill was introduced January 14, 2020 and referred to the House Criminal Justice Committee on January 28, 2020. The bill eliminates the period of limitations for the criminal prosecution of a person for rape.



LEGISLATION IMPACTING SENTENCING – UPDATES

SB13 JUVENILE HUMAN TRAFFICKING VICTIMS (FEDOR)

The bill was introduced February 12, 2019. 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. The bill was passed by the Senate July 17, 2019, 31-0. The bill had a second hearing in the House Criminal Justice Committee February 13, 2020.

LEGISLATION IMPACTING SENTENCING – UPDATES (continued)

SB162 ELIMINATE PERIOD OF LIMITATION-RAPE (ANTONIO, O'BRIEN)

The bill eliminates the spousal exceptions for certain sex offenses, permits a person to testify against the person's spouse in a prosecution for any of those offenses and eliminates the period of limitation for the criminal prosecution of a person for rape and for a civil action brought by a victim of conduct that would constitute rape. The bill had a second hearing in the Senate Judiciary Committee on February 19, 2020.

SB205 ANIMAL CRUELTY (HOTTINGER, O'BRIEN)

The bill 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 third hearing in the Senate Judiciary Committee on February 26, 2020.

SB239 PROHIBIT SEXTING (MANNING)

The bill prohibits the electronic dissemination of a nude photograph (also known as "sexting") between two juveniles. For anyone younger than 19, the offense is a misdemeanor requiring diversion. The bill requires all juvenile, municipal, county, and common pleas courts to utilize a diversion programs in these cases. The bill had a second hearing in the Senate Judiciary Committee on February 5, 2020.

SB247 PROHIBIT PROSTITUTION (SCHAFFER, FEDOR)

The bill prohibits a person from engaging in prostitution and receiving proceeds of prostitution, modifies certain soliciting offenses and penalties, creates the Sexual Exploitation Public Database, and makes an appropriation. It had a second hearing in the Senate Judiciary Committee on February 19, 2020. Similar bills include **HB431 SEXUAL EXPLOITATION DATABASE (ABRAMS, CARFAGNA)** which had a third hearing in the House Criminal Justice Committee on February 26, 2020. The bill authorizes the Attorney General to create and maintain a Sexual Exploitation Database. Whenever a person is convicted of certain prostitution offenses, the clerk of courts must send the offender's record to the Attorney General. The database does not require registration; names stay on the database for 5 years, unless there is a repeat offense. This database is in addition to any sex offender registration that may be required. **HB415 PROCEEDS FROM PROSTITUTION (POWELL)** prohibits a person from knowingly receiving proceeds of prostitution. The bill makes it an F3 on first offense and an F2 if the prostitution involved someone younger than 18. It had a second hearing in the House Criminal Justice Committee on February 13, 2020.

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 passed by the Senate on September 18, 2019, 33-0 and had a second hearing in the House Criminal Justice Committee on January 30, 2020.

SB156 DEFRAUDING ALCOHOL OR DRUG TESTS (GAVARONE)

The bill bans the manufacture, sale, possession or use of fake urine in order to prevent people from using it to pass drug tests (an M2, with a repeat offense an M1). The bill also makes it illegal to use someone else's urine to pass a drug test or to fail to report the use of fake or borrowed urine in a drug test. The bill was passed by the Senate on February 12, 2020, 31-0.

ICYMI

CORONAVIRUS INFORMATION

The Ohio Department of Health (ODH) has a public hotline open for information on the coronavirus, COVID-19 – it is available seven days a week from 9 a.m. to 8 p.m. The number is 1-833-4-ASK-ODH (1-833-427-5634).

There is also a website

www.coronavirus.ohio.gov.

TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

On February 13, 2020, Chief Justice O'Connor issued guidelines for a new task force set to convene in the near future.

[More information can be found here.](#)

GOVERNOR'S WORKING GROUP ON POST RELEASE CONTROL

On March 9, 2020, Governor Mike DeWine announced he has directed the Ohio Department of Rehabilitation and Correction (ODRC) to implement a series of changes related to its post-release control supervision. Among the directives is the development of new crime-scene correlation technology linked to a centralized database of offenders on electronic GPS monitoring. [The full report from the working group can be found here.](#)

ATTORNEY GENERAL'S FACIAL RECOGNITION TASK FORCE

On February 20, 2020, Ohio Attorney General Yost was provided the report and recommendations for the state's facial recognition system. The task force was empaneled last year following a review of Ohio's facial recognition software, which found no evidence of misuse.

[The full report and recommendations are available here.](#)

LEGISLATION IMPACTING SENTENCING – UPDATES

(continued)

HB3 DOMESTIC VIOLENCE (BOYD, CARRUTHERS)

The bill, known as Aisha's Law, contains many provisions some of which are: in both civil and criminal domestic violence cases, the bill eliminates some hearsay prohibitions but usually requires other corroboration; the bill would also require a judge and support staff at a courthouse at all times to accept petitions for protection orders in all DR and juvenile jurisdictions; the bill makes purposely causing the death of a family member, if the victim is the victim of a prior offense of violence or domestic violence committed by the offender and requires the prior offense of violence or domestic violence to have resulted in serious physical harm, Aggravated Murder; and the bill makes strangulation of a family or household member an enhanceable felony of the third degree. The bill also specifies that while prosecution for multiple offenses is not precluded, domestic violence may be an allied offense of similar import with felonious assault, aggravated assault, or assault, under certain circumstances. The bill was amended at the fifth hearing in the House Criminal Justice Committee on February 26, 2020.

HB215 MANAGEMENT OF RELEASED OFFENDERS (BOGGS, CARFAGNA)

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; 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 was amended at the fourth hearing in the House Criminal Justice Committee on February 26, 2020 to clarify appellate procedures, change the calculation of the maximum portion of a non-life felony indefinite prison term, clarify the presumptive release process and make conforming changes to existing statutes. A companion bill, **SB133 (OBRIEN, MANNING)** remains pending in the Senate Judiciary Committee following a fourth hearing on November 13, 2019.

HB299 PENALTIES-CRIMES AGAINST CORRECTIONS (GREENSPAN)

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. On February 13, 2020, the bill was amended at the third hearing in the House Criminal Justice Committee to clarify the protections in the bill apply to current or former parole and probation officers and expand the protections to former parole board members.

SUPREME COURT OF OHIO COURT DECISIONS

State v. Christian SLIP OPINION NO. 2020-OHIO-828

Decided March 10, 2020.

In a 5-2 decision, the Supreme Court ruled that when a portion of a criminal defendant's sentence is vacated, the trial court has the authority to resentence the defendant again as long as the defendant is credited for the time served under the original flawed sentence.

State v. Faggs Slip Opinion No. 2020-OHIO-532

Decided February 19, 2020.

The Court held that "reasonable parental discipline" is an affirmative defense to a charge of domestic violence or assault. The burden of proof falls upon the accused, who must prove by a preponderance of the evidence that they were acting reasonably as a parent to discipline their child.



State v. Dibble SLIP OPINION NO. 2020-OHIO-546 – Decided February 20, 2020. The Court upheld the denial of a motion to suppress based on the good faith exception to the exclusionary rule where the trial court considered unrecorded statements that the detective made under oath to the judge when applying for the search warrant.

State v. Craig SLIP OPINION NO. 2020-OHIO-455 – Decided February 13, 2020. Defendant was convicted on two counts but the jury could not return a verdict on the third. They were sentenced to prison and filed an appeal which was dismissed for the lack of a final, appealable order. The Court held that so long as counts remain pending no final appealable order exists upon which to base an appeal and that all counts of the multicount indictment must first be resolved in some manner. In this case, it was later found that the Defendant was incompetent to stand trial on the remaining count, and the Court held that the finding sufficiently severed the charges and created a final, appealable order on these facts.

State v. Davis SLIP OPINION NO. 2020-OHIO-309 – Decided February 4, 2020. The Court held that an indigent defendant must establish that a reasonable probability exists that court costs would have been waived had their counsel requested such to prevail on an ineffective assistance of counsel claim.

State v. Straley SLIP OPINION NO. 2019-OHIO-5206 – Decided December 19, 2019. Defendant filed to withdraw a guilty plea due to the sentencing court mistakenly informing them that their sentences were not mandatory. The Court held that since the defendant was properly informed of the maximum sentence they could face on each count and that the sentence imposed was consistent with the joint recommendation made by the defense and the prosecutor, that the defendant had failed to demonstrate the necessary manifest injustice to allow the plea to be withdrawn.

State v. Wintermeyer SLIP OPINION NO. 2019-OHIO-5156 – Decided December 17, 2019. The State failed to raise the issue of standing during a hearing on a motion to suppress, and the Court held that the state was therefore prohibited from raising the issue on direct appeal after the motion to suppress was granted.

State v. Jones SLIP OPINION NO. 2019-OHIO-5159 – Decided December 17, 2019. The defendant was charged under R.C. 955.22(D) for failure to confine a dangerous dog. The Court resolved a conflict amongst appellate district and held that a prior finding that the dog in question is "dangerous" is not necessary before prosecutions for these violations, and that the State may present evidence of the dangerousness at trial, but that the State failed to do so in this case.

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 also strives to build and improve collaboration of the Commission with other criminal 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.

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 more 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 March 19, 2020 10:00 a.m.**

**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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MEMBERS

CHAIR

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William Seitz, *State Representative*

Kristin Boggs, *State Representative*

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Terri Jamison, *Juvenile Court Judge*

Robert Fragale, *Juvenile Court Judge*

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Aaron Montz, *Mayor*

Colonel Rick Fambro, *Ohio State Highway Patrol*

Ryan Gies,

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Tim Young, *State Public Defender*

Annette Chambers-Smith, *Director, Department of Rehabilitation and Correction*

Elizabeth Poprocki, *Victim Representative*

Paula Brown, *Ohio State Bar Association*

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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](#).