



Legislative & Judicial Brief

A Message from Sara Andrews, Director



The Commission is convening in May for a meeting devoted to the discussion of certain agency budget proposals impacting sentencing and criminal justice. We've outlined several of those provisions in this issue. The Commission does not take a position regarding agency budget initiatives, but believes the discussions are an important part of our work to craft, develop and implement statewide criminal justice policy recommendations.

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



Did you know.....

No new legislation that impacts sentencing has been introduced since our last edition on April 3, 2017.

That we are pleased and excited to announce the Ohio Criminal Sentencing Commission has a new Research Specialist? We welcomed Lisa Hickman, PhD to our staff on April 17, 2017.

HB 64 EXPUNGEMENT – MISTAKEN IDENTITY

(SCHURING, REECE)

The bill provides for the expungement of records related to apprehension, arrest, charging, or trial of a person based on mistaken identity. The bill had its second hearing in the House Community and Family Advancement Committee on April 26, 2017.

HB 117 OPIOD THERAPY FOR DRUG OFFENDERS

(HUFFMAN, BRENNER)

The bill establishes a statewide pilot program for the provision of long-acting opioid antagonist therapy for offenders convicted of an opioid-related offense who will be released on supervised release. The bill requires the therapy to be provided during the offender's confinement and during the supervised release. The bill had its second hearing in the House Criminal Justice Committee on March 28, 2017.

SB 4 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. 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 interventions in lieu of conviction for persons charged with committing an offense while a victim of compelling prostitution. The bill had its third hearing in the Senate Judiciary Committee on May 2, 2017.

SB 20 PERMANENTLY DISABLING CRIME SPECIFICATION (HACKETT)

The bill requires an additional prison term of 3 to 8 years for an offender who is convicted of or pleads guilty to a felony offense of violence if the victim suffered permanent disabling harm. The bill passed the Senate on April 5, 2017. A similar House bill (**HB 30**) calls for the same mandatory sentence for permanently disabling harm if the victim was under the age of 6 years old. HB 30 had its second hearing in the House Criminal Justice Committee on February 21, 2017.

SB 32 CRIMINAL TRIAL PROCESS (EKLUND)

The bill provides a prosecutor an additional fourteen days to commence a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required amount of time and to authorize the court to release the person from detention in connection with those charges pending trial. The bill was passed by the Senate on May 3, 2017.

HB 49 OPERATING BUDGET (SMITH)
Makes appropriations for FY 2018-2019.

The Ohio Department of Rehabilitation and Correction (DRC)

§§2929.34, 5120.116, 5149.36, 5149.38 DRCCD4

The executive budget increased funding for community diversion programs by 51.8% to \$61.3 million in FY 18 and 32.2% to \$81.1 million in FY 19. DRC reports in 2016, approximately 8,300 of the nearly 20,000 people committed to prison were sent there to serve one year or less and approximately 4,100 of those were Felony 5 offenses. The executive budget built on an existing pilot program to divert nonviolent, fifth degree felons from prison and DRC estimates the target population to be approximately 3,400 offenders per year. The House version creates a local confinement exemption under which counties may send a limited number of offenders sentenced to less than 12 months for a F5 to prison. The House version also allows F5 offenders to be sent to prison if they are also convicted of another sentence that must be served in prison or if an offender is sentenced for multiple offenses having a total prison term greater than 12 months. The bill passed the House on May 2, 2017. The bill was officially referred to the Senate Finance committee on May 3, 2017 although the Senate has been holding informal hearings for several weeks.

§2953.25 DRCCD6

The changes to the Certificate of Qualification for Employment process in the budget mirror changes proposed in SB 3 (Balderson, Beagle), including: eligibility for out-of-state applicants to apply for a CQE by filing in the Ohio county where the conviction was entered (currently only Ohio residents are eligible for a CQE); authorizing DRC to establish criteria that would allow an individual to apply for a CQE before final release; changing the CQE application to require a general statement as to how the CQE would assist the individual, rather than a complicated legal explanation of specific “collateral consequences”; and requiring DRC to revoke a CQE if the CQE-holder is subsequently convicted or pleads guilty to a felony offense. These provisions were in both the Executive and House versions of HB 49.

The Ohio Department of Youth Services (DYS)

§421.10 DYSCD3 The House passed version of the budget continues to fund RECLAIM at over \$155 million in FY 18 and over \$160 million in FY 19.

§421.10 DYSCD2 specifically addresses education in DYS facilities.

**HB49 OPERATING
BUDGET (SMITH)
DRC continued**

§2967.122 DRCCD11

The DRC’s Adult Parole Authority is required to notify the sheriff of the county in which an offender was convicted and the sheriff of the county where the offender intends to live (1) at least two weeks before an offender’s release from a state correctional institution, (2) at least 60 days before a grant of parole or commutation, (3) at least 60 days before a parole hearing, and (4) at least 60 days before a transfer to transitional control. These provisions were not in the Executive version of HB 49 and were added in the House.

§2967.193 DRCCD3

An incarcerated person who earns a high school diploma or GED while in prison can receive 90 days of earned credit toward the completion of that person’s prison term. The provision was in the Executive version of HB 49 and was changed in the House to allow 90 days of credit, or a 10% reduction, whichever is less. The House also added a restriction to the Executive version that this provision does not apply to offenders serving a mandatory prison term, a term for an offense of violence, or a term for a sexually-oriented offense.

HB 49 OPERATING BUDGET (SMITH)
Makes appropriations for FY 2018-2019 Continued

Attorney General

§§109.38, 109.381, 2953.32, 2953.37, 2953.38, 2953.53 AGOCD15
The Attorney General is required to select a qualified third party that will, for a specified fee, work to remove information associated with a sealed record from private websites, publications, and databases. When a person successfully petitions for criminal record sealing, that person must be notified by the clerk of court that a qualified third party authorized by the Attorney General can, for a fee, help to delete the sealed records from non-government sources. People can opt-out of this service. The provision was not in the Executive version of HB 49 and was added by the House.

Ohio Department of Mental Health and Addiction Services (OMHAS)

The House passed version appropriates an additional \$2.2 million in FY 18 for a County Hub Program to Combat Opioid Addiction, earmarks certain appropriations in various line items to subsidize medication-assisted treatment (MAT), and expands the Addiction Treatment Program, which provides funds to drug courts, to 33 counties.

§337.70 MHACD13 Medication-Assisted Treatment in Specialized Docket Programs for Drugs [up to \$8 million per fiscal year] expands the pilot MAT program currently in 15 counties to 18 additional counties.

§337.71 MHACD31 Pilot Program for Support of Mental Health Courts [\$700,000 per fiscal year] begins a pilot program in 3 counties (Warren, Franklin, Cuyahoga) providing mental health services and recovery supports to offenders participating in a mental health court program.

§337.100 MHACD16 Specialized Docket Support provides a payroll subsidy for a specialized docket and permits the line item to be used to defray costs associated with treatment services and recovery supports.

The Ohio Public Defender Commission (OPD)

The House passed version included an increase in funding for reimbursement for indigent defense services.

§§120.18, 120.28, 120.33, 120.34, 120.35, 2941.51 PUBCD7
Reimbursement for indigent defense services requires the Commission to reimburse counties 50% of expenses incurred in providing indigent defense services in most cases (100% in capital cases) and increases the executive appropriation by \$7.1 million in FY 18 and \$7.9 million in FY 19 for reimbursement purposes.

Court Decision Regarding Sentencing
Supreme Court of Ohio

State v. Rahab, Slip Opinion
No. 2017-Ohio-1401

The Supreme Court of Ohio determined that if a criminal defendant gets a harsher sentence than one offered in a plea bargain, any allegation that the judge imposed the sentence as a “trial tax” must be supported with evidence that clearly and convincingly demonstrates the judge acted vindictively. The Court was not persuaded to adopt a presumption that a judge is acting vindictively when a defendant rejects a plea bargain and receives a harsher sentence when convicted.

The Court noted that the concept of a presumption of vindictiveness stems from the 1969 U.S. Supreme Court decision in *North Carolina v. Pearce* in which the defendant successfully appealed a conviction, then when retried and convicted again, the same trial judge gave the defendant a more severe sentence for the exact same conviction as the first one. However, since the decision in *Pearce*, the U.S. Supreme Court has sharply limited the ruling and subsequent development of the law has allowed judges to consider leniency for those accepting a plea bargain. A presumption of vindictiveness would apply only in those limited situations when there was a “reasonable likelihood” that the sentence was a product of actual vindictiveness.

Ohio Criminal Sentencing Commission Members

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Tim Young, *State Public Defender*

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Chrystal Pounds-Alexander,

Victim Representative

Paula Brown,

Ohio State Bar Association

Ronald Burkitt, *Juvenile Police Officer*

Fredrick Benton Jr., *Defense Attorney*

Kathleen Hamm, *Public Defender*

County Prosecutor (Juvenile) – *appointment*

pending

County Commissioner – *appointment pending*

Law Enforcement – *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

2017 Full Commission Meeting Dates

Thursday, **May 18, 2017 at the Vern Riffe Center

(**meeting recently added to the schedule)

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 14, 2017 at the Vern Riffe Center**

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.

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