

Legislative & Judicial Brief

A Message from Sara Andrews, Director



The upcoming months will afford us the opportunity to launch criminal justice matters in Ohio in dramatic trajectory. While there are many moving parts and the spectrum is awe-inspiring, we promise to undertake the work in a deliberate, inclusive and informed way – appreciating the long range and historic denouement.

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



Contents

Legislation Impacting Sentencing	2
Member Profile: Judge Kenneth Spanagel Parma Municipal Court	2
Court Decisions	2
Rule Amendment	3
Court of Appeals Decision	3
Ohio Attorney General Opinion	3
Mark Schweikert Retires	3
Commission Annual Report	3
Working Committees of the Commission	4
Commission Roster	4
Commission Meeting Dates	4



Member Profile



Judge Kenneth Spanagel was elected to the Parma Municipal Court in 1987. He attended Northwestern University and Case Western Reserve Law School where he earned his Juris Doctorate.

Judge Spanagel is a frequent contributor to Continuing Legal Education programs for numerous organizations, including the Ohio State, Cleveland, Cuyahoga County, and Parma Bar Associations; school programs and the Cleveland Bar Association's "Peoples Law School".

His memberships include an Ohio Traffic Rules Review Commission Subcommittee, the Ohio Judicial Conference Civil Law and Procedure and Traffic Law and Procedure Committees, fellow of the Ohio State Bar Foundation, the Association of Municipal/County Court Judges of Ohio and the American Judges Association. Judge Spanagel is also a trained mediator in the Government Assistance Program.

Legislation Impacting Sentencing

HB 478 – Offender – No Contact Order

The bill authorizes a court that sentences an offender for a felony to prison, or for a misdemeanor to jail, to impose in the sentence, in addition to the period of incarceration, an order that prohibits the offender from having contact with any person specified in the order. The bill was introduced in response to *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, which found that a court couldn't impose a prison term and no-contact order for the same offense. The bill was introduced on March 1, 2016.

HB 494 – Gun Possession – Convicted Offender

The bill requires a court that issues a protection order to determine if the respondent is prohibited from carrying or possessing a firearm or if an offender convicted of certain offenses is also so prohibited and if it so finds, require the respondent or offender to transfer all firearms in the person's possession to law enforcement. The bill was introduced on March 24, 2016.

HB 497 – Opioid therapy

The bill establishes a statewide pilot program for the provision of long-acting opioid antagonist therapy for offenders confined in a state or local correctional facility or a community residential facility under a sentence imposed for a felony opioid-related offense or a sentence of at least 30 days for a misdemeanor opioid-related offense who will be released on supervised release and specifies that the therapy is to be provided during both their confinement and their supervised release. The bill was introduced on March 24, 2016.

Court Decisions Regarding Sentencing

In re D.S., Slip Opinion No. 2016-Ohio-1027, (March 16, 2016)

When a delinquent child disputes that he or she was at least 14 years old at the time the offenses were committed and age cannot be established from the undisputed allegations in the complaint, the juvenile court must make a determination of age eligibility before or during the sex-offender classification hearing and prior to subjecting the child offender to registration and notification requirements under R.C. 2152.82 through 2152.86 and Chapter 2950. Conducting a sex-offender-classification hearing under R.C. 2152.83 upon a delinquent child's release from a secure facility does not violate the prohibition against double jeopardy. The imposition of juvenile-offender-registrant status under R.C. 2152.82 or 2152.83(B) with corresponding registration and notification requirements that continue beyond the offender's reaching age 18 or 21 does not violate the offender's due-process rights.

State v. Klembus, Slip Opinion No. 2016-Ohio-1092, (March 24, 2016).

A unanimous Supreme Court ruled that raising the felony level and imposing an additional mandatory prison term on offenders convicted of operating a motor vehicle while under the influence (OVI) five or more times within the previous 20 years does not violate the Equal Protection Clause of the U.S. or Ohio constitutions. According to the opinion, authored by Justice Lanzinger, a specification, such as the repeat OVI penalty enhancement, does not prohibit conduct, but is just a factor that increases the punishment. Equal protection does not forbid the legislature from making classifications, such as that for repeat OVI offenders, but simply prohibits "treating differently persons who are in all relevant respects alike."

Rule Amendment

Sup.R. 5.01 – Shackling of juvenile offenders

The Supreme Court of Ohio has adopted Rule 5.01 of the Rules of Superintendence for Ohio Courts which mandates that local courts adopt rules to regulate the shackling of youth appearing in court proceedings. Under Sup.R. 5.01, local restraint rules would create a presumption against shackling. However, local courts can restrain children on a case-by-case basis if a judge or magistrate finds on the record it is necessary because the juvenile's behavior is a significant threat or the juvenile is at risk of fleeing. The judge or magistrate must also find that restraint is necessary because no less restrictive alternatives exist.

Court of Appeals Decision

State v. McCarthy, 2016-Ohio-1249

The Seventh District Court of Appeals struck down a trial court ruling from Mahoning County that would have sent a man who was released 18 days into a 251-day jail sentence due to overcrowding back to jail several years after he was originally sentenced. The defendant was sentenced to serve one year in jail, with 114 days suspended, in 2010. More than four years after his sentence he received a notice of probation violation due to failure to serve his jail sentence.

In a unanimous decision, the Seventh District Court of Appeals cited the Ohio Supreme Court's 1998 decision in *State v. Zucal*, 82 Ohio St.3d 215, 694 N.E.2d 1341 (1998), stating that the high court drew a line at five years in serving sentences for misdemeanor convictions. The Supreme Court, according to the opinion authored by Judge Mary DeGenaro, "drew that line at five years," by concluding that in convictions for misdemeanor offenses, a delay in execution of the sentence resulting from jail overcrowding that exceeds five years is unlawful. The Supreme Court found it "manifestly unfair, if not unconstitutional" to subject an offender to that long of a delay.

Ohio Attorney General Opinion

OAG Opinion No. 2016-010

Requested by Paulding County Prosecuting Attorney Joseph R. Burkard.

In response to the question presented, the Attorney General determined that the judges of a court of common pleas, in the reasonable exercise of their discretion, may expend moneys generated by the court's special projects fee imposed pursuant to R.C. 2303.201(E)(1) to purchase incentives that reward a participant's compliance with the terms of the court's drug court program, provided the judges determine that the incentives contribute to the efficient operation of the court.

Mark Schweikert retires from the Ohio Judicial Conference

Executive Director of the Ohio Judicial Conference since 2006, retired Judge Mark R. Schweikert will retire from the Conference on April 1. He said it was a privilege aiding Ohio's judges.

On March 18, 2016 Schweikert received a certificate of recognition signed by Ohio Supreme Court Chief Justice Maureen O'Connor.

Prior to serving the Judicial Conference, Schweikert was a Hamilton County Common Pleas Court judge from 1995 through 1999 and was the county's court administrator for both the municipal and common pleas divisions from 1981 until 1995.

Schweikert said he's only semi-retiring as he plans to regularly work as a judge sitting by assignment across Ohio.

He received his law degree from Chase College of Law at Northern Kentucky University and was admitted to the Ohio bar in 1980.

Commission releases 2015 Annual Report

On March 17, 2016, at the meeting of the full Ohio Criminal Sentencing Commission, the Commission released its first published annual report illustrating its mission and vision to enhance justice and ensure fair sentencing across the state.

The publication highlights the work of the Commission and its committees in 2015 and previews the priorities for 2016.

The report is available on line <http://www.sc.ohio.gov/Publications/criminalSentencing/2015CSCAR.pdf>.

Ohio Criminal Sentencing Commission Members

CHAIR

Maureen O'Connor, *Chief Justice*

VICE-CHAIR

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John Eklund, *State Senator*

Cecil Thomas, *State Senator*

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Tim Young, *State Public Defender*

Gary Mohr, *Director, Department of Rehabilitation and Correction*

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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

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.

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**, Room 101

Thursday, **Sept. 15, 2016**, Room 101

Thursday, **Dec. 15, 2016**, Room 101

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