



OHIO

CRIMINAL SENTENCING COMMISSION

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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 next week, November 9, 2017!

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 IntroducedLegislation Impacting Sentencing
Recently Introduced**HB395 FIREARM DEVICES-
PROHIBITIONS (PATMON)**

The bill prohibits the manufacture, sale, or transfer of any trigger crank, bump-fire device, or other product that accelerates a semi-automatic firearm's rate of fire but does not convert it into an automatic firearm. It was introduced on October 26, 2017 and referred to the Federalism and interstate Relations Committee on October 31, 2017.

**SB219 FIREARM DEVICES-
PROHIBITIONS (THOMAS)**

The bill prohibits certain conduct regarding trigger cranks, bumpfire devices, and other items that accelerate a semi-automatic firearm's rate of fire but do not convert it into an automatic firearm. The bill was introduced October 17, 2017.

SB207 FELONIOUS ASSAULT-OFFENSE EXPANSION (KUNZE)

The bill expands the offense of felonious assault to include knowingly causing or attempting to cause physical harm to another person by means of strangulation or suffocation. The bill was introduced on October 3, 2017 and referred to the Senate Judiciary Committee on October 25, 2017.

SB214 FEMALE GENITAL MUTILATION (LEHNER, TERHAR)

The bill makes female genital mutilation an F5; the offense is defined as the act of mutilation or the act of intentionally transporting a minor to the place where the mutilation takes place. The bill was introduced October 5, 2017 and has been referred to Senate Judiciary Committee.

HB373 CONCEALED HANDGUN IN COURTROOMS (VITALE)

The bill permits any person who holds a valid concealed handgun license to carry a concealed handgun in a courthouse, a courtroom, or a government facility or in a government facility of a political subdivision of this state if the political subdivision has not enacted an ordinance or policy that prohibits a licensee from carrying a concealed handgun into the building or the court has not enacted a rule that prohibits a licensee from carrying a deadly weapon or dangerous ordnance into the courthouse or courtroom. The bill was introduced on October 10, 2017 and referred to the Federalism and Interstate Relations Committee on October 17, 2017.

HB374 CHILD ENTICEMENT PROHIBITIONS (DUFFEY, CUPP)

The bill creates additional criminal prohibitions within the offense of criminal child enticement and classifies criminal child enticement as a tier I sex offense when committed by a registered sex offender. The bill was introduced October 10, 2017 and referred to the House Criminal Justice Committee on October 17, 2017.

HB389 ABOLISH DEATH PENALTY (ANTONIO)

The bill would abolish the death penalty and was introduced October 23, 2017 and referred to the House Criminal Justice Committee on October 31, 2017.

**HB394 MANDATORY JUVENILE BINDOVERS AND OTHER JUVENILE LAW
CHANGES (REZABEK)**

The bill proposes to eliminate mandatory and reverse bindovers, and modify the procedures for discretionary bindovers, of an alleged juvenile offender from a juvenile court to a criminal court; revises the procedures for determining the delinquent child confinement credit; revises certain delinquent child financial sanction dispositions and procedures and establishes a separate restitution disposition; and provides special parole eligibility dates for persons with an indefinite or life sentence imposed for an offense other than aggravated murder or another crime involving the purposeful killing of multiple persons committed when the person was under age 18 and provides for special Parole Board procedures in those cases. The bill was introduced October 26, 2017 and referred to the House Criminal Justice Committee on October 31, 2017.

Legislation Impacting Sentencing – Signed by Governor Kasich

HB6 RECORDS PUBLICATION FEES (BARNES, JR.)

The bill, a reintroduction of HB172 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. Governor Kasich signed the bill on October 19, 2017 and it becomes effective in 90 days.

Legislation Impacting Sentencing – Updates

HB30 PERMANENTLY DISABLING CRIME SPECIFICATION (KOEHLER)

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 offender is convicted of or pleads guilty to a specification that the victim suffered permanent disabling harm and that the victim was under 6 years of age at the time of the offense. A substitute bill was accepted by the House Criminal Justice Committee on October 10, 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, had its third hearing in the Senate Local Government, Public Safety and Veterans Affairs Committee on September 26, 2017 and was reported out on October 24, 2017.

HB137 MANDATORY REPORTING-CHILD ABUSE (KENT)

The bill makes municipal and county peace officers mandatory reporters of child abuse or neglect and was reported out of the House Criminal Justice Committee on October 10, 2017 and on November 1, 2017, passed in the House by a vote of 93-0.

HB 141 INVOLUNTARY MANSLAUGHTER (DEVER, WIGGAM)

The bill provides that causing or contributing to the death of another person as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and is a strict liability offense. The bill had its third hearing in the House Criminal Justice Committee on October 24, 2017.

SB 1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking, drug possession and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound; revises the manner of determining sentence for certain violations of the offense of permitting drug abuse, and adds lisdexamfetamine to the list of schedule II controlled substances. The bill had a second hearing in the House Criminal Justice Committee on October 10, 2017.

SB 150 DOMESTIC VIOLENCE-FIREARM ACCESS (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 and establishes a procedure for surrendering all firearms in the person's possession and names the act the "Domestic Violence Survivors Protection Act." The bill had its first hearing in the Senate Judiciary Committee on October 3, 2017.

Legislation Impacting Sentencing – Updates

SB201 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 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). The bill was referred to the Senate Government Oversight and Reform Committee and had a first hearing on October 25, 2017 and a second hearing November 1, 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). The bill was referred to the Senate Government Oversight and Reform Committee and had a first hearing on October 25, 2017 and a second hearing November 1, 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 had its first hearing in the Senate Judiciary Committee on October 03, 2017.

SB67 VIOLENT OFFENDER REGISTRY (GARDNER)

The bill requires the Attorney General to establish a State Registry of Violent Offenders and to name the act "Sierah's Law." A substitute bill was accepted in the Senate Judiciary Committee on October 17, 2017.

HB365 REAGAN TOKES LAW (HUGHES, BOGGS)

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; generally allows the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration; allows the Department to rebut the release presumption and keep an offender in prison up to the maximum term pursuant to specified findings. The bill also requires the Department to establish a reentry program for all offenders released from prison that the Department determines placement in a halfway house or similar facility is necessary, but the offender has not been accepted by any such facility; 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. It requires that GPS monitoring used for offenders released from prison under such monitoring 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 that 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 provisions are to be named the Reagan Tokes Act. There is companion Senate legislation, part 1 Senate Bill 201 and part 2 Senate Bill 202 (Bacon, O'Brien). The bill had its first hearing in the House Criminal Justice Committee on October 17, 2017 and a second hearing November 1, 2017.

Legislation Impacting Sentencing – continued

HB352 REVISE LAW RELATING TO NUISANCE, DANGEROUS, AND VICIOUS DOGS

(REZABEK, HUFFMAN, S)

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 referred to the Government Accountability and Oversight Committee on October 10, 2017. The Senate companion bill is SB195 (Beagle, Lehner).

SB195 REVISE LAW RELATING TO NUISANCE, DANGEROUS, AND VICIOUS DOGS (BEAGLE, LEHNER)

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 had its second hearing in the Senate Judiciary Committee on October 24, 2017. The House companion bill is HB 352 (Huffman, Rezabek).

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 had a first hearing in the House Criminal Justice Committee on October 17, 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 had a second hearing in the House Criminal Justice Committee on October 17, 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 had a second hearing in the House Criminal Justice Committee October 10, 2017.

HB327 ONLINE IMPORTUNING PENALTIES (SCHAFER, 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 had its third hearing in the House Criminal Justice Committee on October 24, 2017.

HB348 FENTANYL TRAFFICKING PENALTIES (GINTER)

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 referred to the House Criminal Justice Committee on October 10, 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 court in Ohio to create a "sexting educational diversion program" for Ohioans under 21 convicted of sending sexually explicit material featuring minors, as long as it is a first conviction, there is not more than a 5-year difference in ages between offender and person portrayed in the material, and there was no exchange of money or other item of value. The bill also creates several exceptions, including for people with explicit photos of themselves or their spouses (so long as they don't distribute the photos) and those who receive unsolicited photos and immediately delete them. The bill was referred to the House Criminal Justice Committee on October 10, 2017.

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.

Supreme Court of Ohio Decisions Impacting Sentencing

STATE V. BEMBRY, SLIP OPINION No. 2017-OHIO-8114

On October 10, 2017, the Supreme Court of Ohio decided that once a warrant has been issued, the exclusion of evidence is not the appropriate remedy under Article I, Section 14 of the Ohio Constitution for a violation of the knock-and-announce statute, R.C. 2935.12.

STATE V. D.S., SLIP OPINION No. 2017-OHIO-8289

On October 25, 2017, the Supreme Court by majority opinion ruled that a Franklin County Common Pleas Court judge had the power to dismiss a delinquency charge against a boy who was 12 years old at the time he engaged in sexual conduct with another boy who was almost 10. In the Court's lead opinion, Justice William M. O'Neill wrote that Juvenile Rule 9(A) gives the juvenile court the power to end the criminal prosecution and order treatment at an early stage of the proceedings, instead of formal action, when in the best interests of the child.

CLARK V. ADULT PAROLE AUTH., SLIP OPINION No. 2017-OHIO-8391

On November 2, 2017, the Supreme Court unanimously rejected the request of Leodius Clark to have his 36-months of re-incarceration ordered by the Ohio Adult Parole Authority (APA) nullified because his parole officer previously ordered him to 90 days of electronic monitoring. In a per curiam opinion, the Court stated that double jeopardy clauses prohibit only multiple "criminal punishments" for a single offense. In other words, two separately issued parole violation sanctions, including a three-year prison sentence, did not violate the "double jeopardy" clauses of the U.S. and Ohio constitutions.

STATE V. BATISTA, SLIP OPINION No. 2017-OHIO-8304

On October 26, 2017, the Supreme Court unanimously upheld the constitutionality of R.C. 2903.11(B)(1), Ohio's HIV-disclosure statute, which makes it a crime for a person who has tested positive for HIV to knowingly engage in sexual conduct with another without disclosing that information does not violate either the free speech provision of the First Amendment or the Equal Protection Clauses of the United States or Ohio Constitutions. In a majority opinion authored by Justice Terrence O'Donnell, the Court concluded that because R.C. 2903.11(B)(1) regulates conduct, not speech, it does not violate the First Amendment, and because it is rationally related to the state's legitimate interest in preventing the transmission of HIV to sexual partners who may not be aware of the risk, it does not violate equal protection.

Ohio Criminal Sentencing Commission Members

CHAIR

Maureen O'Connor, *Chief Justice*

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Nick Selvaggio, *Common Pleas Court Judge*

John Eklund, *State Senator*

Cecil Thomas, *State Senator*

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Steve McIntosh, *Common Pleas Court Judge*

Terri Jamison, *Juvenile Court Judge*

Robert Fragale, *Juvenile Court Judge*

Charles "Chip" McConville, *County Prosecutor*

Lara Baker-Morrish, *City of Columbus, Chief
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Larry Sims, *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

State Representative – *appointment pending*

County Prosecutor (Juvenile) – *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:

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