

Legislative & Judicial Brief



A Message from Sara Andrews, Director



The lame duck session proved to be as fast and furious as many predicted – in a word, wow. We too, have been busy. Check out the [final report](#) and [quick reference guide](#) from our Rights Restoration and Recording Sealing Ad Hoc Committee, our academic partnerships, data analysis and visualization work puts us on track to provide informed, valuable, insightful and robust policy recommendations and soon you'll find our redesigned website.

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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Bills Enacted – 131st General Assembly After November 2016 (Lame Duck session)

HB 436 – OVI-grant limited driving privileges-terminate immobilization order

Introduced 01-26-16, the bill authorizes a judge that grants limited driving privileges to a second-time OVI offender to order the termination of the mandatory immobilization order. The bill was enacted on December 7, 2016 and awaits the Governor's signature.

HB 471 – Sunset Review Committee

The bill amends the sunset review law to specify a Sunset Review Committee must be convened during each odd numbered year of a General Assembly. Any agency in existence on January 1 of the first year of a General Assembly expires on December 31 of the 2nd year unless renewed. The bill also renews the Ohio Criminal Sentencing Commission and the Advisory Committee. The bill was enacted on December 8, 2016 and awaits the Governor's signature.

HB 300 – License Suspensions

The bill modifies the law governing the termination or modification of a lifetime driver's license suspension or a class two suspension that exceeds fifteen years, to specify that a class one driver's license suspension for a specified aggravated vehicular homicide offense begins upon the offender's release from prison, and to expand the purposes for which limited driving privileges may be granted during a driver's license suspension. The bill was enacted on November 16, 2016 and signed by Governor Kasich on December 13, 2016.

We've followed and reported many bills this General Assembly. So, after the lame duck session it seemed like a good idea to summarize them into plain and simple categories – bills enacted (before and after lame duck), bills that had hearings (during lame duck) but were not passed and bills that just weren't mentioned (in lame duck).

Bills Enacted – 131st General Assembly After November 2016 (Lame Duck session)

HB 185 – Arson/Property Ownership

The bill expands the offense of arson by prohibiting damage by fire or explosion to a structure that is not an occupied structure without requiring proof that the owner did not consent and creates an affirmative defense that the owner consented to the damage. In a lame duck amendment the bill also modifies the existing statute regarding the Department of Rehabilitation and Correction contracting for the private operation and management of correctional facilities to: (1) expand the types of facilities that may be the subject of such a contract, and (2) authorize the use of the facility for out-of-state prisoners in certain circumstances. The bill was enacted on December 6, 2016 and awaits the Governor's signature.

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, and making changes to the disposal of forfeited property and the disposition of funds. 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 \$15,000. The bill modifies the procedure in execution regarding goods claimed by a third party. The bill was enacted on December 8, 2016 and awaits the Governor's signature.

HB 325 – Drug Addiction Treatment

The bill seeks to encourage pregnant women to seek drug treatment by establishing that a public children services agency cannot file a complaint/remove a child simply because the newborns mother used a controlled substance while pregnant so long as the pregnant woman does the following: 1) Enrolls in a drug treatment program before the end of her 20th week of pregnancy 2) Successfully completes or is in the process of completing a program and is in compliance with the programs terms and conditions as determined by the treatment provider 3) Maintain(s) her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy. Passed Senate on November 30, 2016. The bill was amended into SB 319 which was enacted on December 7, 2016 and awaits the Governor's signature.

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 was enacted on December 6, 2016 and awaits the Governor's signature.

Bills Enacted – 131st General Assembly *After November 2016 (Lame Duck session) - continued***HB 410 – Truancy**

The bill makes several changes to truancy laws in an effort to keep kids in school. First, the habitual truant calculation will use school hours, rather than days (based on a six hour school day). Once the habitual truant threshold is met, within ten days of the qualifying absence, the student is assigned an “absence intervention team” at the school level. This team must prepare a plan to address attendance, which could include a court diversion program. If the student refuses to participate or fails to complete the program on the school level, a complaint is filed with the court. The complaint is then held in abeyance pending participation in a “diversion program.” Within 30 days of the filing of the complaint, the court develops a diversion program for the child which must include specific goals and timelines. If the child completes the program to the court's satisfaction, the court dismisses the complaint. If the child fails to make progress toward completion of the program to the court's satisfaction, the court can modify the program or consider the complaint. Late amendments to the bill exempt schools with rates of absent students less than 5% from the requirements of the bill. The bill was enacted on December 8, 2016 and awaits the Governor's signature.

SB 139 – Post-conviction Trial File

The bill, a product of the Joint Task Force to Review Ohio's Death Penalty, requires the clerk of court to retain a copy of the original trial file in death cases, specifies that there are no page limits on postconviction petitions in death cases, provides for depositions and subpoenas during discovery in postconviction proceedings, and requires a judge to state specifically the findings of fact and conclusions of law why each claim in a postconviction petition is denied or granted. The bill was enacted on December 8, 2016 and awaits the Governor's signature.

SB 195 – Bestiality

The bill prohibits a person from engaging in sexual conduct with an animal and authorizes a sentencing court to require an offender to undergo psychological evaluation or counseling. The bill was passed by the Senate on November 30, 2016. Subsequently the provisions of the bill were amended into SB 331(Dog Sales) which was enacted on December 7, 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)). An amendment added late in the process requires a court to take a person's or child's fingerprints at the time of sentencing or adjudication as an alternative to requiring a sheriff or police chief to take the fingerprints, if fingerprinting was required but not done at the time of arrest, arraignment, or first appearance. The bill was enacted on December 8, 2016 and awaits the Governor's signature.

Bills Enacted – 131st General Assembly *Prior to November 2016***HB 110 - Failure to Stop**

The bill increases the penalty for failure to stop after an accident when the offense results in serious physical harm to a person from a felony of the fifth degree to a felony of the fourth degree. If death, it increases from a third degree to a felony of the second 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 signed by the Governor on June 13, 2016 and became effective on September 13, 2016.

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 signed by the Governor on June 14, 2016 and became effective on September 14, 2016.

HB 151 – Stalking/Telecommunications Harassment

The bill expands the offenses of menacing by stalking and telecommunications harassment. The bill was signed by the Governor on May 17, 2016 and became effective on August 16, 2016.

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 signed by the Governor on June 14, 2016 and became effective on September 14, 2016.

Bills Enacted – 131st General Assembly *Prior to November 2016 (continued)***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 signed by the Governor on June 14, 2016 and became effective on September 14, 2016.

SB 97 – Repeat Violent Offenders

This bill is part of an initiative by the Attorney General to discourage certain violent, repeat offenders from using guns and re-offending. The bill increases the mandatory prison term required for a gun specification; requires a mandatory prison term for a “violent career criminal” convicted of committing a violent crime while armed with a gun; prohibits “violent career criminals” from knowingly acquiring, having, carrying, or using any firearm or weapon; and limits the firearm disability relief mechanism. The bill changes the way jail time credit is counted in determining eligibility for judicial release; for certain offenders with prison terms of 5 years, judicial release is available after serving 4 years of the stated term (rather than after 4 years after being delivered to prison), and for certain offenders with prison terms of more than 5 years (but less than 10 years), judicial release is available after serving 5 years (rather than after 5 years after being delivered to prison). The bill was signed by the Governor on June 14, 2016 and became effective on September 14, 2016.

SB 204 – Discretionary Driving Suspensions

This bill started as part of the effort to limit collateral sanctions under 2013 SB 337, but mandatory driving suspensions for drug charges were not changed because of a federal mandate. The federal law that mandates the driving suspension also provides an opt-out and in the 130th GA, SCR 27 and HCR 55, were approved by their respective chambers and the Governor issued a certificate officially opting out of the federal mandate that all drug charges must result in driving suspensions. In convictions under R.C. 2925, under SB 204 and HB 307, a judge will have the discretion to decide whether to suspend an offender’s driving license or not. Additionally, if a person has had his license mandatorily suspended prior to the passage of the bill, that person can petition the court to lift the suspension and the judge may choose to either lift or keep the suspension. The bill was signed by the Governor on June 13, 2016 and became effective on September 13, 2016.

Pending Bills with hearings in Lane Duck – 131st General Assembly**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 was amended to add the provisions of SB 284 which allows for expungement of records of human trafficking victims. Also added casino employee language from SB 265. The bill was passed by the Senate on December 8, 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 had its first hearing in the House Judiciary committee on November 29, 2016. Subsequently, on December 7, 2016 Senate Criminal Justice amended it into HB 172 and on December 8, 2016 it was passed by the Senate.

HB 405 – Importuning

This bill was drafted as a response to a news report that claimed that offenders charged with importuning were not getting prison time for that crime. One of the reasons for this is that importuning charges can result when a police officer poses as a minor online and there is no “real” victim; and sentencing guidelines dictate that certain factors affect the penalty, including the impact on the victim. To ensure that offenses that involve a police decoy get a prison sentence, the sponsor is proposing a mandatory prison term for a first offense of importuning, including when a police decoy is the “victim.” According to the Ohio Department of Rehabilitation and Corrections, fewer than 200 people were charged with importuning in 2014; reported data does not always make clear which subsection of ORC Sec. 2907.07 (Importuning) was charged. The bill had its fourth hearing in the Senate Criminal Justice committee on December 7, 2016.

HB 439 – Voyeurism and Similar Crimes

The bill specifies under RC 2907.321 (Pandering Obscenity involving a Minor), 2907.322 (Pandering Sexually-Oriented Material Involving a Minor), 2907.323 (Illegal Use of a Minor in Sexually-Oriented Material) if the victim is an “impaired person,” the penalty increases the same way it would if the victim was a minor. If the victim is an “impaired person,” Voyeurism is an F5. “Impaired” means diminished ability to resist or consent because of a mental or physical condition or advanced age. The bill was drafted in response to a case where elderly nursing home residents were being exploited. The bill had its third hearing in the Senate Criminal Justice Committee on December 7, 2016.

Legislation Impacting Sentencing – updates continued

Pending Bills *with hearings* in Lane Duck – 131st General Assembly (continued)**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 had its second hearing in the Senate Criminal Justice committee on December 7, 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 longacting 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 had its first hearing in the House State Government committee on November 30, 2016.

HB 521 – Juvenile Parole Eligibility

The bill, which was an Ohio Criminal Sentencing Commission proposal, would establish a mechanism for juvenile offenders to seek review of their sentences in certain circumstances. The bill was amended in the House to change the timing of the review from what the Commission proposed. The bill was further amended in the Senate to exempt juveniles convicted of aggravated murder from the provisions of the bill. The bill had its fourth hearing in the Senate Criminal Justice Committee on December 7, 2016.

HB 613 – Sunset Review Committee

The bill amends the sunset review law to specify a Sunset Review Committee must be convened during each odd numbered year of a General Assembly. Any agency in existence on January 1 of the first year of a General Assembly expires on December 31 of the 2nd year unless renewed. The bill also renews the Ohio Criminal Sentencing Commission and the Advisory Committee. The bill had its third hearing in the House Government Accountability and Oversight Committee on December 7, 2016.

HB 618 – Records – Mistaken Identity

The bill provides for the expungement of official records related to the apprehension, arrest, criminal charging, or trial of a person based on mistaken identity. The bill passed the House of Representatives on December 8, 2016.

SB 162 – Death Penalty – Mental Illness

The bill, another product of the Joint Task Force to Review Ohio's Death Penalty, provides that a person convicted of aggravated murder who shows that they had a serious mental illness at the time of committing the offense cannot be sentenced to death and provides a mechanism for a person previously sentenced to death who proves that they had a serious mental illness at the time of committing the offense to be resentenced to life. The bill passed the Senate Criminal Justice committee on November 30, 2016.

SB 237 – Fentanyl Restrictions

The bill reduces the amount of fentanyl considered a "bulk amount" to 5 mg and eliminates the presumption against prison for F4 or F5 charges of either illegal manufacture of drugs (RC 2925.04) or illegal assembly or possession of chemicals for manufacture of drugs (RC 2925.041). The bill passed the Senate on December 1, 2016.

SB 265 – Casino operator/employees-no gaming at own or affiliated casino

Introduced January 27, 2016, the bill specifies that the criminal penalty related to casino operators and employees participating in casino gaming applies at their casino facility or an affiliated casino facility. The bill passed the Senate on December 1, 2016.

SB 316 – Sexual Imposition – Increased Penalty

The bill would increase the penalty for sexual imposition when the offender previously has been convicted of or pleaded guilty to three or more violations of sexual imposition. The bill had its third hearing in the Senate Criminal Justice committee on December 7, 2016.

HB 57 – Aggravated Murder

The bill lengthens the time before which someone who commits aggravated murder would be eligible for parole. The bill had its third hearing in the Senate Criminal Justice committee on May 25, 2016.

HB 427 – Third party-authorize to receive sealed/expunged criminal records

The bill requires the Attorney General to select a qualified third party to receive court notices of sealed or expunged criminal records and to require certain data repositories and web sites that receive the notices from the third party to remove those records from their databases. The bill had its second hearing in the House Judiciary Committee May 10, 2016.

SB 353 – Private Images

The bill prohibits the nonconsensual dissemination of private sexual images, requires that certain property involved in the offense be criminally forfeited and creates legal rights and employment protections for the victim. The bill was referred to Senate Criminal Justice committee on September 28, 2016.

HB 478 – Offender – No Contact Order

The bill was introduced in response to State v. Anderson which prohibited a court from imposing a prison or jail term and no-contact order for the same offense. The bill would allow courts to have discretion in cases that merit a no-contact order in addition to a jail or prison sentence. The bill had its first hearing on April 19, 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 had its first hearing in the House Judiciary committee on April 19, 2016.

SB 184 – SORN

The bill specifies that the information provided by registrants must be accurate and that any changes need to be registered within seven days of the change. Information that must be updated includes registered addresses, notice of intent to reside, registered vehicle, email, Internet identifiers and telephone information. A failure to register accurate information or to provide an update within seven days of any change would be considered a failure to register under the bill. The bill had its first hearing in the House Judiciary committee on February 9, 2016.

SB 272 – Juvenile Parole Eligibility

The bill, which was an Ohio Criminal Sentencing Commission proposal, would establish a mechanism for juvenile offenders to seek review of their sentences in certain circumstances. The bill had its second hearing in the Senate Government Oversight and Reform committee on May 11, 2016.

SB 258 – Attorney General-investigate/prosecute-death caused by police officer

The bill would require the Ohio Attorney General's office to appoint a special prosecutor to investigate cases involving the use of lethal force by a police officer against an unarmed suspect. The bill was referred to State and Local Government Committee on January 20, 2016

SB263 – Negotiated criminal pleas-cancel-defendant noncooperative

The bill would authorize a court, upon request of the prosecution, to cancel a negotiated plea in a felony or first degree misdemeanor case if the offender does not provide information, cooperate with law enforcement, or perform another function or activity when required as a condition of the underlying plea agreement. The bill had its second hearing in the Senate Criminal Justice committee on May 11, 2016.

Member News

Please join us in welcoming **Frederick Benton, Jr.** to the Commission, representing Criminal Defense Lawyers. Mr. Benton was appointed by Governor Kasich to a term beginning October 21, 2016 and ending August 21, 2017.

Our legislative appointments end their terms on 12-31-16. We appreciate and are grateful for the participation, guidance and support from **Senator John Eklund, Senator Cecil Thomas, Representative Dorothy Pelanda & Representative Herschel Craig** over the last two years. Best regards to them and sincere thanks for their service.

Justices Retiring

As noted in the December 5, 2016 [Court News Now](#), two Justices will 'hang up their robes' the end of this year. Congratulations and our best wishes to Justice Pfeifer and Justice Lanzinger. To read more about both of these amazing jurists, [click here](#).

Executive Director Announced

So much for retirement! Last week the Ohio Judicial Conference announced Justice Pfeifer will take the helm as Executive Director in January. We certainly look forward to working with him and you can read more in [Court News Now](#).

Court Decisions

Stay tuned for an upcoming edition with Supreme Court of Ohio decisions impacting sentencing. With the upcoming retirements and year end approaching, the Court will issue a number of opinions. We've already got a list going and expect a few more – we'll get the information to you as quickly as we can!

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*

Lara Baker-Morrish, *City of Columbus, Chief Prosecutor*

Derek DeVine, *County Prosecutor*

Paul Dobson, *County Prosecutor*

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

Ronald Burkitt, *Juvenile Police Officer*

Frederick Benton, Jr., *Defense Attorney*

Kathleen Hamm, *Public Defender*

Law enforcement – vacant

County Commissioner – vacant

**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

Thursday, **December 15, 2016**

2017 Full Commission Meeting Dates

Thursday, **March 16, 2017**

Thursday, **June 15, 2017**

Thursday, **September 21, 2017**

Thursday, **December 21, 2017**

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 contributors:

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Questions, Comments, Suggestions? Contact: sara.andrews@sc.ohio.gov



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