



OHIO

CRIMINAL SENTENCING COMMISSION

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Legislative & Judicial Brief

A Message from Sara Andrews, Director



It has been a remarkable few weeks for the Sentencing Commission and our work toward meaningful, tangible outcomes. The Ad Hoc Committee on Bail and Pre-Trial Services Reform hosted National Institute of Corrections consultants, sponsor testimony on SB272 and companion HB521 regarding juvenile life without parole was delivered, the Ad Hoc Committee on Sex Offender Registration completed its report and we continue to make significant strides to collect and analyze criminal justice indicators and data.

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: Sheriff A.J. 'Tim' Rodenberg	2
Court Decisions	3
Intervention In Lieu	3
Bail and Pre-Trial Services	3
Working Committees of the Commission	4
Commission Roster	4
Commission Meeting Dates	4



Member Profile



Albert "Tim" Rodenberg entered office as Clermont County Sheriff in January, 1997. Prior to becoming Sheriff, he was an Assistant Prosecuting Attorney with the Clermont County Prosecutor's Office, and before that was in the private practice of law.

Sheriff Rodenberg served on active duty as an Officer with the U.S. Marines during which he was appointed to the Commanding General's Honor List for outstanding academic, leadership performance. He holds three degrees from the University of Cincinnati- A.S. in Police Science, B.S. in Criminal Justice, and J.D. in Law. He is a state certified police and corrections academy instructor and has taught criminal justice and legal courses at four Greater Cincinnati area colleges and universities. He's attended the National Sheriffs' Institute, the F.B.I. National Law Institute and the Law Enforcement Executive Development Seminar (LEEDS) at the F.B.I. Academy.

Legislation Impacting Sentencing

HB 57 – Aggravated Murder

The bill lengthens the time before which someone who commits aggravated murder would be eligible for parole. The bill passed the House of Representatives on April 12, 2016.

HB 151 – Stalking/Telecommunications Harassment

The bill expands the offenses of menacing by stalking and telecommunications harassment. The bill was enacted on April 20, 2016 and awaits the Governor's signature.

HB 172 – Criminal Records Law

The bill was subject to major revisions in committee and now prohibits online criminal records sites from requiring an individual to pay a fee to remove or correct criminal record information on their site. Each payment or solicitation for payment would result in a first-degree misdemeanor charge against the Internet site. The bill was reported from the House Judiciary Committee on April 19, 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 521 – Juvenile Parole Eligibility

The bill, which is a companion to SB 272 (below) received its first hearing in the House Judiciary Committee on May 3, 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 had its second hearing in committee on April 13, 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 first hearing on April 20, 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 was introduced on April 20, 2016.

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. The bill passed the House of Representatives on May 4, 2016.

State v. Sergeant, Slip Opinion No. 2016-Ohio-2696

In a 5-2 decision, the Supreme Court ruled that a trial court judge is not required to make a separate consecutive-sentence finding if presented with a jointly recommended sentence that contains consecutive sentences. Writing for the Supreme Court, Justice Sharon L. Kennedy ruled the justices had to determine if a sentence without a separate finding by the judge that consecutive sentences were justified is “authorized by law,” and not appealable.

State v. Barker, Slip Opinion No. 2016-Ohio-2708

In another 5-2 decision, the Supreme Court of Ohio determined that, in the context of interrogating juveniles in police custody, a state law that presumes the suspect’s statements are voluntary if electronically recorded is unconstitutional.

The Court found R.C. 2933.81(B) violates the due process rights of juveniles. The statute indicates “all statements made by a person who is the suspect of a violation” are presumed voluntary if recorded. The opinion notes that a decision to waive the right to remain silent is not a “statement” and the state cannot use the law to prove that Barker’s waiver of his rights was voluntary. The Court also stated that the law cannot change the constitutional rule that the prosecutor must prove the juvenile knowingly, intelligently and voluntarily waived his rights and that the juvenile’s statements were voluntary. In writing for the Court, Justice French noted, “there is no rational relationship between the existence of an electronic recording and the voluntariness of a suspect’s statement.”

State v. Thompson, Slip Op. No. 2016-Ohio-2769

In a 6-1 decision the Supreme Court of Ohio determined that a trial court’s determination of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) constitutes a special proceeding and affects a substantial right. Both parties agreed with these assertions in their arguments. Because the motion for jail time credit is a special proceeding and affects a substantial right, the Court held that the denial of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) is a final, appealable order.

State v. Heinz, Slip Opinion No. 2016-Ohio-2814

On May 5, 2016 the Supreme Court of Ohio unanimously ruled that the prosecuting attorney has the authority to prosecute all complaints, suits, and controversies in which the state is a party, including community control violation hearings. In early 2014, a Cuyahoga County judge had issued a standing order declaring that the county probation department, not the county prosecuting attorney, represented the state in all community control violation proceedings and that the prosecutor would not be notified of future hearings. The Supreme Court of Ohio determined, however, that revocation of community control is an exercise of criminal sentencing and that the court may extend the offender’s community control or impose more restrictive conditions or a prison term. Community control violation hearings are formal, adversarial proceedings that follow the rules of criminal procedure, afford the offender the right to an attorney, and allow the victim of the crime to be present. Although a probation department supervises offenders on community control and is charged with notifying the court of a violation, the probation department and its officers have no authority to prosecute violations.

State v. Aalim, 2015-0677

On April 20, 2016 the Supreme Court of Ohio heard oral arguments in *State v. Aalim* which presents two issues regarding transfers of juveniles to adult court (mandatory bindovers): 1) Does the mandatory transfer of juveniles pursuant to R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A) violate their constitutional right to due process? 2) Does the mandatory transfer of juveniles to common pleas court pursuant to the same laws violate their constitutional right to equal protection under the law? A decision is expected within six to eight months.

Intervention in Lieu of Conviction

Thanks to Court of Common Pleas Judge R. Routson for this information.....

Parties are now briefing on the constitutionality of Revised Code 2951.041(B)(1), the necessity for a recommendation from the prosecutor to offer Intervention in Lieu to an offender with a prior conviction.

Considering *State v Sterling 2007-Ohio-1790*, this might violate the separation of powers doctrine. Briefs are in process and oral argument will be scheduled.

Bail and Pre-Trial Services Reform

The Ad Hoc Committee on Bail and Pretrial Services Reform hosted two consultants from the National Institute of Corrections to learn more about national trends in Evidence Based Decision Making for Bail and Pre-Trial Services.

Timothy Schnacke, a criminal justice system analyst with more than 30 years of legal experience, gave a nation-wide perspective, while Lori Eville, a correctional program specialist, guided the group in a gap analysis of risk-based evidence and decision making in regard to how courts handle bail and pretrial release decisions. She also presented ideas such as the state develop a legal structure to support the purpose of bail, including a pretrial justice system that considers risk and bail like a dedicated pretrial services agency.

Read more:
<http://www.pretrial.org/two-new-nic-publications-bail/>

Ohio Criminal Sentencing Commission Members

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VICE-CHAIR

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

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



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