

**OHIO CHIEF PROBATION OFFICER'S ASSOCIATION
LEGISLATIVE COMMITTEE
LEGISLATIVE AND JUDICIAL AFFAIRS UPDATE
(As of 02/15/2008)**

-THE LEGISLATIVE COMMITTEE WELCOMES QUESTIONS, BUT PLEASE REMEMBER THAT YOUR LEGAL COUNSEL OR COURT'S INTERPRETATION IS CONTROLLING, PARTICULARLY REGARDING CASE LAW ANALYSIS.

BILLS SIGNED BY GOVERNOR – From the 127 General Assembly beginning 01/01/2007

NOTHING RELEVANT AT THIS TIME

PENDING LEGISLATION – From the 127 General Assembly beginning 01/02/2007

As of February 13, 2007, 477 bills had been introduced in the Ohio House and 289 bills in the Ohio Senate. Introduced bills can be found in their entirety on the Ohio General Assembly website, located at <http://www.legislature.state.oh.us/index.cfm>

The following relevant bills have been introduced since the 127 General Assembly began on 01/01/2007.

OHIO HOUSE OF REPRESENTATIVES

HB 415 To amend section 959.99 of the Revised Code to increase the penalty for animal fighting, including cockfighting and dogfighting. (F-4)

HB 418 To amend sections 959.99, 2152.19, 2903.213, 2903.214, 2919.26, 3113.31, 4732.141, and 4757.33 and to enact section 4731.284 of the Revised Code to revise the penalties and sentencing provisions regarding violations of the cruelty to animals statutes ***and to include the protection of companion animals in temporary protection orders, domestic violence protection orders, anti-stalking protection orders, and related protection orders, and to amend the version of section 2152.19 of the Revised Code that is scheduled to take effect on January 1, 2008, to continue the provisions of this act on and after that effective date.***

- HB 419 To enact section 2927.121 of the Revised Code to create the offense of intimidation of a homeless person.
- HB 425 To amend section 4510.01 and to enact section 4511.204 of the Revised Code to prohibit driving a vehicle while text messaging or typing on a mobile communication device and to establish the violation as a secondary traffic offense.
- HB 430 To amend section 2950.99 and to enact section 2950.035 of the Revised Code to prohibit adult tier III sex offender/child-victim offenders who have committed specified offenses against a victim under sixteen years of age from knowingly being present on school premises or preschool or child day-care premises.
- HB 442 To enact section 3109.054 of the Revised Code to require certain employers to allow a parent to exercise court-ordered parenting time without terminating employment, reducing pay, or taking other similar action against the parent.

Sec. 3109.054. (A) As used in this section:

(1) "Public agency" means an office, agency, department, bureau, or other governmental entity of the state or of a political subdivision of the state.

(2) "Employer" means any of the following:.....(d) Any public agency.

(B) A parent granted parenting time pursuant to an order issued pursuant to section 3109.051 of the Revised Code may provide the parent's employer with a copy of the schedule of parenting time created under that section if parenting time coincides with the parent's regularly scheduled hours of employment. Upon receipt of the schedule, the employer shall allow the parent to exercise parenting time according to the schedule and shall not terminate the parent's employment, reduce the parent's pay, or take any other similar adverse action against the parent for exercising the parenting time.

- HB 447 To enact section 2301.511 of the Revised Code to require a county that does not have a community-based correctional facility or a district community-based correctional facility available for the use of that county's courts to formulate a proposal for such a facility.

HB 453 To enact sections 505.59 and 753.022 of the Revised Code regarding liability for medical care provided to persons imprisoned in a municipal corporation's institution or in the custody of a municipal corporation's law enforcement officer.

HB 467 To amend sections 2152.74 and 2901.07 of the Revised Code to require the collection of a DNA specimen from all persons who are convicted of, plead guilty to, or are adjudicated a delinquent child for a misdemeanor other than a misdemeanor for which a citation is issued.

OHIO SENATE

NOTHING RELEVANT AT THIS TIME

CLOSER LOOKS & UPDATES

SB 17 OVI bill concerning certifying of SCRAM Units, ignition interlock, license suspensions, and penalties

Passed the Senate on May 10, 2007 and was introduced in the House on May 15, 2007 ***NO ACTION SINCE INTRODUCED ON 05/15/2007***

SB 21 Amendment Domestic Violence bill requiring court to consider certain factors for bond; mandatory jail sentences and mandatory anger management counseling

NO ACTION IN SENATE SINCE INTRODUCTION ON 02/20/2007

SB 244 Require that certain persons who engage in menacing by stalking and against whom a civil order of protection is granted be electronically monitored and to authorize courts to require that certain persons convicted of violating a protection order that requires electronic monitoring be electronically monitored. ***Introduced 10/24/2007 – No Action***

SB 252 Establishment of Community Courts
Introduced 11/08/2007 – No Action

HB 130 OMNIBUS DRC REENTRY BILL

This bill has seen little formal movement in the House Criminal Justice Committee since March 2007. DRC representatives have reported that after receiving feedback from several organizations, changes had been recommended and that we should expect an amended bill in the near future. This status is unchanged

HB 173 COURTS SECURITY FUND

Amends various sections of law to:

1. Increase the compensation of justices and judges of the courts;
2. Change the qualifications for all judges;
3. Require the Supreme Court to establish a qualification program for judicial candidates;
4. Create the Judicial Allotment Review Commission to study and review the allotment of judgeships to recommending legislation;
5. Create the Judicial Appointment Review Commission to make recommendations of persons to fill judicial vacancies:
6. Specify that a portion of certain court costs currently deposited to VOC fund be deposited in the court security fund, and to make appropriations for court-related purposes. (Supreme Court Security Fund – Estimated 4 million dollars)

Introduced in the *House Judicial Committee in April 2007* - Little Action The Daily Reporter noted on Monday January 28, 2008 that the bill was stalled due to Ohio's bleak economic forecast that shows a possible two billion dollar debt. Governor Strickland was also reported to have stated that judicial pay raises, which are part of the bill, are not appropriate at this time.

HB 181 - Amended

This bill creates a new \$10.00 add-on court costs. The money has to be collected as part of the offender's bond. Individuals not convicted would be entitled to their money back. The money is earmarked as follows:

Indigent Defense Support Fund 50% Used to defray cost of public defender programs – Funds controlled by State Public Defender

Drug Law Enforcement Fund 30% Priority to existing drug task forces, then to new programs – Funds dispersed by Criminal Justice Services

Indigent Driver's Alcohol Treatment Fund 20% - Money controlled by General Assembly and earmarked to the various IDATF. Each Court will have to establish such a fund.

THIS BILL PASSED HOUSE ON 09/11/2007 AND SENATE COMMITTEE ON 12/11/2007.

HB 279 To amend sections 4510.13, 4510.43, 4511.19, and 4511.191 and to enact sections 4510.45 and 4510.46 of the Revised Code to require certain OVI offenders who are granted limited driving privileges to operate only motor vehicles that are equipped with ignition interlock devices and to make other changes relative to such devices. ***Introduced 06/26/2007 - No Action***

HB 296 To amend sections 2929.14, 2929.19, and 2953.08 and to enact section 2941.1421 of the Revised Code to establish a presumption that a court should impose on a repeat offender the longest prison term authorized for an offense and to specify longer prison terms that a court may impose on felony offenders with two or more previous felony violations. ***Introduced 08/14/2007 – No Action***

HB 351 Permit the transfer of county jail inmates to contiguous counties in adjoining states. ***Introduced 10/16/2007 – No Action***

HB 365

To amend section 103.14 and to enact section 101.16 of the Revised Code to specify that if a bill provides for a new or increased jail term, prison term, or delinquent child commitment the General Assembly may not pass it unless the bill designates one or more funding sources from which the cost of the term or commitment will be paid, to require fiscal analyses prepared by the Legislative Service Commission to include an estimate for each such bill of the cost of the term or commitment. Also requires a task force to establish a state policy to limit future increases in the number of criminal offenders and delinquent children in correctional facilities and Department of Youth Services facilities and provide planning for modifying, expanding, and constructing those facilities necessary to satisfy the projected increased need for them. ***Introduced 10/25/2007 – No Action***

CASE LAW

2006-2154 State v. Johnson

Supreme Court of Ohio – 12th Dist, Butler Co

FACTS

Johnson was convicted of four counts of rape. The Court imposed four consecutive life sentences upon *its determination* that 2929.13(F) required the mandatory prison terms for certain serious offense, including rape. The 12th District Court of Appeals upheld the trial court. The decision was contra a decision from the Third District Court of Appeals in Lima that held that the Court was not required to, but could impose consecutive sentences for offenses enumerated in 2929.13(F). Johnson appealed the Court's notion that the consecutive sentences were required under 2929.13(F)

HOLDING AND INTERPRETATION

2929.13(F) requires a sentencing court to impose a prison term for certain serious offenses and limits that court's discretion to reduce that term pursuant to R.C. 2929.20 (judicial release), R.C. 2967.193 (deduction for participation in certain prison programs) or any other provision of Chapter 2967 or 5120 (pardon, parole, probation), except in certain enumerated circumstances.

2929.13(F) does not *require* a sentencing court to impose *consecutive* sentences for offenses listed therein. The Court looked to the plain language of the statute. The plain language required the Court to impose a sentence for certain offenses and limits a court's discretion to reduce that term. However, when the General Assembly determines that sentences should be imposed consecutively, it explicitly states so.

Since the trial court imposed the sentences under the mistaken belief that consecutive sentences were mandatory, the Court reversed the judgment, vacated the sentence and remanded the cause to the trial court for re-sentencing. Upon resentencing, the Court may exercise its discretion to determine whether or not the facts and circumstances warrant the imposition of consecutive prison terms.

This was a unanimous decision – 7-0.

Opinion: <http://www.supremecourtsohio.gov/rod/newpdf/0/2008/2008-Ohio-69.pdf>

Respectfully Submitted;

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