

**OHIO CHIEF PROBATION OFFICER'S ASSOCIATION
LEGISLATIVE COMMITTEE
LEGISLATIVE AND JUDICIAL AFFAIRS UPDATE
(As of 08/22/2008)**

-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

Amended HB 181

This bill would have added a new \$10.00 court cost, to be collected as part of the offender's bond. The money would have been earmarked for the Indigent Defense Support Fund; Drug Law Enforcement Fund; and Indigent Driver's Alcohol Treatment Fund

The Conference Committee recommended following the House version as introduced that made no provisions for the add on court costs.

HB 181 is ***effective 09/12/2008*** and amends sections with respect to law enforcement cooperation and schools' record keeping duties in missing children investigations.

THE ADD-ON COURT COSTS WERE NOT INCLUDED IN THE PASSED BILL

HB-142

To amend sections 2917.31 and 3313.482 of the Revised Code to increase the penalty for inducing panic to a felony of the second degree when a school or an institution of higher education is involved... ***Effective 03/24/2008***

SB-03

To amend various sections to provide that the privilege of holding a position of honor, trust, or profit that is forfeited by reason of conviction of certain felonies is not restored on completion of a prison term, period of community control sanctions or pardon or release by the Adult Parole Authority;

to impose as part of the sentence of a person convicted of certain felonies committed while serving in such a position the forfeiture of the portion of any public retirement benefit that is based on employer contributions;

to require that a person subject to a forfeiture order who is eligible to retire obtain spousal consent for a refund of employee contributions;

to provide for the notification of the appropriate public retirement system if a member is charged with one of the felonies that could result in such a forfeiture;

and to impose a lifetime ban against serving as, the termination of any current registration of, a legislative agent, retirement system lobbyist, or executive agency lobbyist upon a person convicted of certain felonies; to authorize the Inspector General to conduct an investigation of alleged misconduct in the Office of the Attorney General; to make an appropriation of money; and to declare an emergency.

Effective 05/13/2008

**SB 17 OVI: SCRAM UNIT APPLICATION – IGNITION INTERLOCK
EFFECTIVE 09/30/2008**

It appears that pre-trial SCRAM provisions were altered at some point. the key to pre-trial SCRAM application appears to be whether or not the Court grants limited driving privileges during pre-trial.

The Court appears to have discretion to impose SCRAM pretrial if you are dealing with a first time felony OVI (3 within 6). (sentencing under 4511.19(G)(1)(C) or (D).

If the Court grants limited driving privileges pre-trial on a second or subsequent felony OVI, then SCRAM appears required. Indications of the presence of alcohol are grounds to revoke the driving privileges, not necessarily the bond. Those sentenced under 451.19(G)(1)(e)

The offender is still responsible for paying for the units.

Note on Constitutional Challenge:

The Daily Reporter noted on Friday June 20, 2008 that the ACLU is claiming that certain provisions of SB-17 are unconstitutional. Specifically, the ACLU is concerned with provisions that allow law enforcement officers to forcibly obtain a blood sample from an OVI suspect who has two or more previous convictions. ACLU argues that this sidesteps a constitutional mandate that a warrant is required if a person does not consent to a breath, blood or urine sample.

Bill Proponents cited a recent U.S. Supreme Court case that legalized a similar provision in California. In the California case, the high Court rejected the Defendant's claims of denial of due process; privilege against self incrimination, right to counsel; right not to be subjected to unreasonable searches and seizures.

The bill as enacted can be viewed in its entirety at:
<http://www.legislature.state.oh.us/bills.cfm?ID=127> SB 17

SB-10 UPDATE ADAM WALSH

Doe v Dann (Federal Class Action)

08/21/2008 The U.S. District Court for the Northern District of Ohio dismissed the federal class action.

Sewell v. Ohio Hamilton County Common Pleas Court

05/28/2008 The Court found SB 10 constitutional

In Re GES Ninth District Court of Appeals-Summit County

08/13/2008 This is a juvenile court case, not pertaining to a re-classification, but rather a post January 01 classification post-January 1.

Sigler v. Ohio Wayne County Common Pleas Court

08/11/2008 The Court found SB-10 Unconstitutional

http://opd.ohio.gov/Adam_Walsh/Attorney_Forms/AWA_RichlandCo_Sigler_decision%20.pdf

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

As of August 19, 2008, 609 bills had been introduced in the Ohio House and 357 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 570 To amend sections 2923.24, 2925.12, 2925.14, and 3719.172 of the Revised Code to provide an affirmative defense to certain offenses involving a hypodermic or syringe that the person is 18 years of age or older and possesses or otherwise obtains the hypodermic or syringe for the purpose of having a clean needle to avoid HIV exposure and to permit an authorized person to sell or furnish a hypodermic without a prescription to a person who is 18 years of age or older and who wishes to obtain it for that purpose.

HB 574 To amend sections 145.297, 145.298, and 145.38 of the Revised Code to require an analysis of each proposed retirement incentive plan for state retirement system members and to prohibit a person who participates in such a retirement incentive plan from being re-employed by the same employer.

HB 607 To amend sections 2950.02, 2950.034, and 2950.04 of the Revised Code to specify that the restriction against offenders convicted of a sexually oriented offense or child-victim oriented offense living near school, preschool, or child day-care premises applies regardless of when the offense was committed or the offender began living in the residence and that a registration requirement for children adjudicated delinquent for a sexually oriented offense and classified a juvenile offender registrant applies regardless of when the offense was committed.

HB 609 To amend section 742.63 of the Revised Code to provide Ohio Public Safety Officers Death Benefit Fund coverage to drug agents and to investigators and special agents of the Bureau of Criminal Identification and Investigation.

OHIO SENATE

SB 348 To amend sections 2152.17, 2152.72, 2929.14, and 5103.0319 and to enact section 2941.1421 of the Revised Code to require the imposition of a ten-year prison term upon a person who discharges a firearm while committing an offense and causes injury or death to a child.

SB 349 To amend section 2927.12 of the Revised Code to include in the offense of ethnic intimidation the commission of specified offenses by reason of disability of the victim.

CLOSER LOOKS & UPDATES- HOUSE

HB 130 OMNIBUS DRC REENTRY BILL

*Passed the House Criminal Justice Committee on April 15, 2008.
Assigned to the Senate Judiciary and Criminal Justice Committee on
April 16, 2008 – NO ACTION*

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)

Introduced in the *House Judicial Committee in April 2007* - Stalled due to Ohio's bleak economic forecast. Governor Strickland was also reported to have stated that judicial pay raises were not appropriate at this time.

Passed House on June 12, 2008; appears to have deleted judicial pay raise provision.

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 **3 Strikes Provision** ----- 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***

Passed House 05/28/2008 – Presently in Senate Judiciary / Criminal Justice committee

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

HB 521 Ohio Commission on Local Government Reform and Collaboration

Summary: House Bill 521 would create a commission to study ways to consolidate local governments. The belief is that fewer local governments will reduce taxpayer burdens and help stimulate the economy. The ideal is modeled after a similar Indiana commission that made several recommendations including transferring township government to county executives, abolishing elected county sheriffs, auditors, and treasurers and requiring school districts to have a minimum of 2000 students.

Assigned to Local and Municipal Government & Urban Revitalization Committee.

HB 538 To amend sections 2743.191, 2929.13, 2929.15, 2929.23, 2929.25, 2967.28, 2971.03, and 2971.05 and to enact section 2967.29 of the Revised Code to require the imposition at sentencing or upon release from prison of lifetime active global positioning system device monitoring for Tier III sex offenders/child-victim offenders.

Criminal Justice Committee as of 04/17/2008

CLOSER LOOKS & UPDATES- SENATE

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

No Action 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*

Senate Judiciary / Criminal Justice Committee Report 05/29/2008

-Amends 2903.214 and allows courts to impose electronic monitoring as a condition of a CPO if:

1. There is an allegation that the respondent engaged in a menacing by stalking (2903.211) against the person to be protected by the order and
2. The petitioner seeks relief in the form of electronic monitoring of the respondent. ***(Discretionary by petitioner)***

If electronic monitoring is requested, the allegation must show that at any time preceding the filing of the petition the respondent engaged in conduct that would cause a reasonable person to believe that the health, welfare, or safety of the person to be protected was at risk, a description of the nature and extent of that conduct, and an allegation that the respondent presents a continuing danger to the person to be protected;

-The Court may order EM if it finds for the petitioner by clear and convincing evidence. (*Discretionary by Court*)

-The offender is required to pay for EM. Courts can seek funds from the Reparations (VOC) fund to pay for indigent offenders.

-Amends 2919.27 and allows courts to impose electronic monitoring as a sentencing option for a TPO violation if:

1. The protection order violated was a CPO that required electronic monitoring.

The order may not exceed five years. The offender is required to pay for EM. Courts can seek funds from the Reparations (VOC) fund to pay for indigent offenders.

SB 252 Abolition of Mayor's Courts & Establishment of Community Courts

*Introduced 11/08/2007 – Assigned Judiciary / Civil Justice Committee
NO ACTION*

SB 310 To amend sections 2961.01 and 2961.02 of the Revised Code to make existing laws prohibiting a person who has been convicted of a felony from holding public office and denying such person other specified privileges applicable upon the determination of the person's guilt.

Summary: Under current law, a person who is convicted of a felony is incompetent to: be an elector, juror or to hold an office of honor, trust, or profit; circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition; a public office or position of public employment or to serve as a volunteer, if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity.

Passage of this bill would also preclude those who plead guilty to a qualifying offense the same as if the person was convicted of a qualifying felony offense.

Committee report filed 05/07/2008

LEGISLATIVE COMMITTEES AND MEMBERS

Ohio House of Representatives <http://www.legislature.state.oh.us/house.cfm>

Ohio Senate <http://www.legislature.state.oh.us/senate.cfm>

Respectfully Submitted;

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