



OFFICE OF THE OHIO PUBLIC DEFENDER

# Case Law and Legislative Update

May 10, 2018





# Supreme Court of Ohio Decisions

## Mandatory Sentences for Juveniles

- *State v. Rickym Anderson*, 2017-Ohio-5656

## Reverse Waiver

- *State v. D.B.*, 2017-Ohio-6952

## Interlocutory Appeals – Juvenile Transfer

- *In re D.H.*, 2018-Ohio-17

## Notice – Juvenile Transfer

- *Turner v. Hooks*, 2018-Ohio-556

## Guardians Ad Litem in Delinquency Cases

- *State v. Raymond Morgan*, 2017-Ohio-7565

## Constitutionality of GSI Statutes as applied to a child under 13

- *In re D.S.*, 2017-Ohio-8289





# State v. Rickym Anderson, 2017-Ohio-5656

## Issues:

- (1) Whether a sentencing disparity between codefendants was the result of an impermissible trial tax.
- (2) Whether mandatory sentencing with respect to juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment.

## Analysis:

- *Graham* Test:
  - (1) Whether there is a national consensus against the sentencing practice at issue.
    - SCO: No national consensus against mandatory sentencing for juveniles.
  - (2) Whether the punishment in question violates the Constitution.
    - SCO: Mandatory sentencing serves a legitimate penological goal.

## Held:

- No trial tax where one codefendant pleads to fewer felonies and there is no inference of impropriety.
- Mandatory minimums for juveniles in adult court do not violate the Eighth Amendment's prohibition against cruel and unusual punishment.





# State v. D.B., 2017-Ohio-6952

R.C. 2152.121(B): If, after mandatory transfer, a child pleads to offenses that would have been discretionary transfer offenses, the common pleas court must remand the case to the juvenile court for an amenability determination.

## Supreme Court of Ohio's Interpretation:

- The trial court must determine what the juvenile court would have been required to do with the case if the juvenile had been charged with only those offenses for which convictions were obtained.

Held: Reverse waiver only applies when an entire case (all charges) would have been subject to discretionary transfer.





# In re D.H., 2018-Ohio-17

## Issue:

- Is a juvenile court order relinquishing jurisdiction to the adult court is a final appealable order.

## Held:

- No, a transfer order is not a final appealable order and the juvenile must wait until the conclusion of his criminal proceedings to appeal the transfer order.

## Rationale:

- D.H. may obtain an effective remedy through appeal of the final judgment.
- The passage of time and speculation about its effect are do not demonstrate that a child would be deprived of a meaningful or effective remedy.





# Turner v. Hooks, 2018-Ohio-556

R.C. 2152.12(G): “The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's *parents, guardian, or other custodian* and to the child's counsel at least three days prior to the hearing.”

## Issue:

- Whether notice requirement of R.C. 2152.12(G) is satisfied by notifying a child’s biological, but non-custodial parent.

## Held:

- Because R.C. 2152.12(G) requires notice to “the child’s parents, guardian, or custodian,” the statutory notice requirement was satisfied by service upon a biological parent whose parental rights had not been fully terminated.





# State v. Raymond Morgan, 2017-Ohio-7565

## Issues:

- (1) Whether a juvenile is required to request a GAL in the absence of a parent, guardian, or custodian.
- (2) Whether a juvenile needs to show prejudice to support a reversal when the juvenile court fails to appoint a GAL.

## Held:

- (1) A juvenile is not required to ask for the appointment of a guardian ad litem when he has no parent;
- (2) A GAL must be appointed as mandated by R.C. 2152.281(A)(1) and Juv.R. 4(B)(1);
- (3) Failure to appoint a GAL is subject to criminal plain error review;
- (4) Because Raymond failed to prove that the error affected the outcome of the proceeding – that he would not have been transferred.





# In re D.S., 2017-Ohio-8289

## *In re D.B., 2011-Ohio-2671*

- Statutory rape statute is unconstitutional as applied to a child under the age of 13 who engages in sexual conduct with another child under 13.

### Issues:

- (1) Whether gross sexual imposition statute is unconstitutional as applied to children under the age of 13, who allegedly engaged in sexual contact with another child under 13.
- (2) Whether a juvenile court may dismiss a complaint pursuant to Juv.R. 9(A) before the record has been developed.

SCO reasoned: this is “precisely the kind of proceeding that Juv.R. 9(A) empowers a juvenile court to avoid—a review of the details of a sexual interaction between children under the age of 13.”

SCO declined to determine GSI is unconstitutional as applied to two children under 13.







# Pending Cases in the Supreme Court of Ohio

## Safe Harbor Statute

- *State v. Alexis Martin*, 2016-1891, argued 1/23/18
  - Whether a juvenile court is required to appoint a GAL, consider a child's trafficking status, and determine whether the complaint is related to the child's victimization prior to transfer.
  - Whether a juvenile waives issues related to a legally defective bind-over by pleading guilty in the Common Pleas Court.

## Application of *Hand* to Weapons Under Disability

- *State v. Carnes*, 2017-0087, argued 2/27/18
  - Can disability for WUD arise from juvenile adjudication?

## 5<sup>th</sup> Amendment Protection When Interviewed by Private Citizen

- *In re L.G.*, 2017-0877, State's Appeal, in Briefing
  - Whether 5<sup>th</sup> Amendment protections apply when a child is questioned by retired police detective after a bomb threat was made at a school where retired officer was acting in conjunction with law enforcement officers, juvenile was in custody of law enforcement.

## Review of Sex Offender Classification

- *State v. Amos*, 2017-1778, State's Appeal, accepted 4/25/18
  - Does a juvenile court have permanent vested jurisdiction to review classifications in accordance with R.C. 2152.84 and R.C. 2152.85?





# District Courts of Appeal – Application of *Hand*

## *State v. Hand*, 2016-Ohio-5504

- A prior juvenile adjudication cannot be treated as a prior conviction to enhance the degree of or sentence for a subsequent offense committed as an adult.
- Juvenile adjudications cannot be used to increase a sentence beyond the statutory minimum or maximum.

## Does a prior juvenile adjudication qualify as a disability for weapon under disability?

- *State v. Carnes*, 2017-0087, argued 2/27/18
  - Currently pending in the Supreme Court of Ohio
- Most appellate districts say no – *Hand* does not apply to WUD:
  - *State v. Barfield*, 2017-Ohio-8044 (1<sup>st</sup> District)
  - *State v. Carney*, 2017-Ohio-8585 (1<sup>st</sup> District)
  - *State v. St. Jules*, 2017-Ohio-7941 (2<sup>nd</sup> District)
  - *State v. Herron*, 2017-Ohio-8908 (2<sup>nd</sup> District)
  - *State v. Gause*, 2018-Ohio-313 (2<sup>nd</sup> District)
  - *State v. Ortiz*, 2017-Ohio-9157 (8<sup>th</sup> District)





# District Courts of Appeal – Application of *Hand*

## Mandatory Prison Terms

- A prior juvenile adjudication cannot be used as a “conviction” for purposes of enhancing a non-mandatory prison term to a mandatory prison term.
  - *State v. Wilson*, 2017-Ohio-7223 (2<sup>nd</sup> District)
  - *State v. McComb*, 2018-Ohio-674 (2<sup>nd</sup> District)

## Consideration for Felony Sentencing

- A criminal court may *consider* prior juvenile adjudications when weighing seriousness and recidivism factors under R.C. 2929.12.
  - *State v. Villarreal*, 2018-Ohio-888 (6<sup>th</sup> District)

## Failure to Register

- Prior juvenile adjudications are not used as penalty enhancements, but rather an element of the offense of failing to register.
  - *State v. Buttery*, 2017-Ohio-9113 (1<sup>st</sup> District)





# District Courts of Appeal – Confinement Credit

## *In re A.M.*, 2017-Ohio-7624 (1<sup>st</sup> District)

- The juvenile court erred by denying the juvenile defendant's motions to include as confinement credit under R.C. 2152.18(B) time served at the Abraxas Ohio Residential Treatment Center without taking any evidence or making any findings regarding the nature of the Abraxas facility or the juvenile's time at Abraxas.

## *In re J.A.*, 2018-Ohio-1609 (5<sup>th</sup> District)

- Finding that “the probation violation alleged as a violation of a prior court order \* \* \* **is sufficiently linked to the adjudication of the original charges that credit relates back to the complaint of delinquency \* \* \*** so that credit is mandated by the statutory language of R.C.2152.18 (B).”





# District Courts of Appeal - Classification

## *In re R.J.*, 2018-Ohio-1658 (6<sup>th</sup> District)

- Juvenile court erred when it denied R.J.'s motion to vacate his void classification because the court erroneously classified the child pursuant to R.C. 2152.82 and R.C. 2152.86.

## *In re O.P.*, 2018-Ohio-580 (8<sup>th</sup> District)

- R.C. 2952.83(B) makes clear, when a juvenile is not committed to a secure facility, the juvenile court loses any authority to classify the juvenile after the dispositional hearing. Therefore, the court's failure to classify O.P. at disposition precludes classification upon his release from a non-secure facility.

## *In re S.J.*, 2017-Ohio-5499 (2<sup>nd</sup> District)

- When a complaint spans a period of time when the child is 13-14 years old at the time of the offense, the trial court must determine whether the child was age-eligible for registration prior to imposing registration duties.





# District Courts of Appeal – Sufficiency/Manifest Weight

## *In re D.C.*, 2018-Ohio-163 (8<sup>th</sup> District)

- Testimony that a juvenile took a victim’s hand and drove it into the victim’s “bottom,” without additional context is insufficient to establish penetration for a charge of rape, but sufficient for a finding of gross sexual imposition.

## *In re B.M.*, 2018-Ohio-1733 (1<sup>st</sup> District)

- A 14-year-old’s adjudication for felonious assault is against the manifest weight of the evidence because the evidence demonstrated that she acted in self-defense.
  - (1) She was not at fault in creating the situation;
  - (2) She had a bona fide belief that she was in imminent danger;
  - (3) She had no duty to retreat.





# District Courts of Appeal – Miscellaneous Issues

## *In re C.L.*, 2017-Ohio-7253 (8<sup>th</sup> District)

- The juvenile court was not barred from sealing records of appellee's attempted rape delinquency, because the eligibility restrictions set forth under R.C. 2151.356(A) and (C)(1) are expressly limited to adjudications for the offenses of aggravated murder, murder, or rape.

## *In re D.J.*, 2018-Ohio-569 (9<sup>th</sup> District)

- R.C. 2152.14(A) does not prohibit prosecutors from influencing the director of DYS to request invocation of the adult portion of a child's SYO disposition.
- Imposition was not an error where the child failed to complete sex offender treatment and engaged in conduct that created a substantial risk to the safety of the community.







# District Courts of Appeal – Miscellaneous Issues

## *In re L.M.*, 2017-Ohio-8067 (8<sup>th</sup> District)

- It was error to order juvenile to submit to a lie detector exam prior to his disposition since a polygraph order cannot be used to compel incriminating statements in violation of the Fifth Amendment.
- The court erred in failing to provide a sign language interpreter for L.M. when and instead relied on a relative to interpret.

## *State v. Pablo*, 2017-Ohio-8834 (10<sup>th</sup> District)

- After bindover, the trial court did not err in suppressing statements made by a juvenile during a police interrogation where:
  - No parent was present,
  - He had no prior experience with the police,
  - English was not his first language,
  - His level of intelligence was not high, and
  - He signed the rights waiver form because he thought he had to.







# OFFICE OF THE OHIO PUBLIC DEFENDER

## What's Happening in Juvenile Justice?



## Legislative Update





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB318– School Resource Officers

### Representatives Patterson (D) and LaTourette (R)

**Bill Status:** The bill passed on the House on April 11, 2018 by a vote of 89 – 1

#### **Bill Summary:**

- The bill requires SROs to complete the Ohio Peace Officer Training
- The bill requires SROs appointed after the passage of the bill to complete an additional 40-hour training specific to being a school resource officer
  - The training must include instruction on:
    - “Appropriate communication techniques which enhance interactions between the [SRO] and students;”
    - The use of developmentally appropriate interview and interrogation strategies;
    - Understanding the role of SROs regarding discipline and reducing the number of cases referred to juvenile court; etc.





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB318– School Resource Officers Representatives Patterson (D) and LaTourette (R)

### Bill Summary Continued:

- The latest version of the bill *removes* the requirement that a SRO arrest and detain, until a warrant can be obtained, a person found violating the law
- The latest version of the bill specifies that the school district has the final decision-making authority on discipline issues
- All schools must enter into a memorandum of understanding (MOU) with the law enforcement agency providing the SRO that clarifies the purpose of the SRO and the expectations of each entity





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB318- School Resource Officers

### Representatives Patterson (D) and LaTourette (R)

#### Bill Summary Continued:

- If the school is already using a SRO, the school and law enforcement agency must enter into a MOU within a year of the bill's passage
  - The MOU must address:
    - The necessary training for the SRO;
    - A protocol for addressing suspected criminal activity;
    - The role of all the parties; etc.
- The bill requires the Ohio Facilities Construction Commission to conduct a study of school safety measures and gather information regarding:
  - Current school security and possibility for upgrades;
  - An analysis of the most-effective ways to add security;





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB318- School Resource Officers Representatives Patterson (D) and LaTourette (R)

### Bill Summary Continued:

- School Safety Study Continued:
  - That number of school buildings that use SROs;
  - The number of schools that share SROs with other buildings; and
  - The estimated cost to put a SRO in every building
- The bill includes a \$10 million grant, administered by the Attorney General's Office, for schools to use for SRO certification training, active shooter training, training to identify students with mental health issues, and any training relevant to school safety





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## HB360 – Anti-Bullying and Hazing Representative Greenspan (R)

**Bill Status:** The bill passed the House on April 11, 2018 by a vote of 69-27

### Bill Summary:

- The bill has two components, bullying (a non-criminal offense) and hazing (a criminal offense)

### *Bullying*

- Bullying is defined as an intentional written, verbal, electronic, or physical act by a student or facility member that occurs more than once towards a student or facility member that:
  - Causes mental or physical harm and
  - Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening or abusive educational environment







# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB360 – Anti-Bullying and Hazing Representative Greenspan (R)

### Bill Summary Continued:

- During an academic year - bullying must be punished in the following manner: for the first offense of bullying, 1-10 day in-school suspension, out-of-school suspension, or expulsion; for the second offense 1-30 day in-school suspension, out-of-school suspension, or expulsion; and for the third offense 1-182 day out-of-school suspension or expulsion
  - This portion of the bill does not apply to students in kindergarten – 3<sup>rd</sup> grade
- The school must allow the student to complete missed school work and take any state required assessments
  - The student cannot return until they have completed all of their required school work or the school administration determines the student has made “sufficient progress”





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB360 – Anti-Bullying and Hazing Representative Greenspan (R)

### Bill Summary Continued:

- The school board, by a majority vote, can approve an alternative form of discipline other than a suspension pursuant to the recommendation of the school administrator because of extenuating circumstances
- Schools may require suspended students to do community service based on a plan adopted by the school
- The school may offer counseling services to suspended students and victims
- Prior to any disciplinary action, the school must provide written notice to the student's parent or guardian and provide them with an opportunity to challenge the suspension or expulsion







# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB360 – Anti-Bullying and Hazing Representative Greenspan (R)

### Bill Summary Continued:

- Students have the right to be represented at the hearing
- The hearing outcome can be appealed to the school board

### *Hazing*

- Hazing is when a student or facility member does any act or coerces another to do any act of initiation or any act to continue membership with a student or organization that causes or creates a substantial risk of mental or physical harm to any person
- The bill increases the offense from a M4 to a M2, and F4 if the hazing was done knowingly and causes serious physical harm





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB355 – Sexting

### Representatives Hill (R) and Rezabek (R)

**Bill Status:** The bill had its third hearing in the House Criminal Justice Committee on April 10, 2018

#### **Bill Summary:**

- The bill creates a new offense of Possession of Sexually Explicit Digital Material, aka sexting
  - The defendant must be 19 years old or younger;
  - The individual depicted in the material must be 13 years old or older; and
  - The individual depicted may not be more than 4 years younger than the defendant
- If an individual creates or possesses an image of herself or himself, it is not prohibited under this bill if the individual does not distribute the image





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB355 - Sexting Representatives Hill (R) and Rezabek (R)

### Bill Summary Continued:

- The bill requires municipal and juvenile courts to establish sexting diversion programs, use another court's program, or use another established program
- If the individual does not complete the diversion program, the offense is a M1, and the court must order 8 hours of community service unless the court finds a different sentence is required
- The bill allows for an affirmative defense if the individual did not solicit or share the material with another and deleted or destroyed the material upon receiving it
- The bill explicitly allows prosecutors to continue to charge more severe offenses, but the individual can only be convicted of one offense for the same conduct





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## SB246 – SAFE Act

### Senator Lehner (R) and Manning (R)

**Bill Status:** The bill had its fourth hearing in the Senate Finance Committee on April 10, 2018

#### **Bill Summary:**

- The bill requires each school district to implement Positive Behavior Intervention and Support (PBIS) frameworks so students suffering from trauma or mental health issues can be identified and their behavior can be addressed appropriately
- The bill provides for a \$2 million grant for fiscal year 2019 for schools, educating kindergarten – 5<sup>th</sup> grade, to implement PBIS frameworks, evidence or research-based social and emotional learning initiatives, or both





# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB246 – SAFE Acts

### Senator Lehner (R) and Manning (R)

#### Bill Summary Continued:

- The bill requires students studying to be pre-K – 3<sup>rd</sup> grade teachers receive PBIS instruction
- The bill requires a school district to permit suspended students to complete missed assignments and specifies that any in-school suspensions must be served in a supervised learning environment
- For a student in pre-K – 3<sup>rd</sup> grade, the school must consult a mental health professional before suspending or expelling the student





# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB246 – SAFE Acts

### Senator Lehner (R) and Manning (R)

#### Bill Summary Continued:

- The bill specifies students in pre-K - 3<sup>rd</sup> grade can only be removed for the remainder of the school day for an emergency removal unless the student committed an offense warranting suspension or expulsion
- The bill does not change the law regarding offenses that warrant an expulsion of a year, which are: (1) bringing a firearm or knife to school, (2) possessing a firearm or knife at school, (3) making a bomb threat, or (4) causing serious physical harm to persons or property
- The bill restricts expulsion of students for one year for bringing or possessing a knife *only if* that knife is capable of causing serious bodily injury







# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB246 – SAFE Acts

### Senator Lehner (R) and Manning (R)

#### Bill Summary Continued:

- The bill prohibits out-of-school suspension or expulsion of students in pre-K – 3<sup>rd</sup> grade for minor offenses but delays full implementation of the prohibition until the 2020-2021 school year
- After 2021, schools can only suspend students in pre-K – 3<sup>rd</sup> grade for offenses listed on the previous slide or when the school determines the suspension is warranted for school safety
- For all students, the bill reduces, from 3 days to 1 day, the amount of time within which a hearing must be held regarding a student's emergency removal for posing a continuing danger or for being an ongoing threat of disruption





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB394 – Juvenile Justice Omnibus Bill Representative Rezabek (R)

**Bill Status:** The bill had its second hearing in the House Criminal Justice Committee on March 20, 2018

### **Bill Summary:**

- **Mandatory Bindovers** – The bill abolishes mandatory bindovers and requires the juvenile court to have a hearing before transferring a child's case to the adult court. If a child's case is bound over, the juvenile has an immediate right of appeal
- **Confinement Credit** – The bill limits juvenile offenders' ability to receive confinement credit to any time spent in any locked and secure facility or in any community corrections facility







# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB394 – Juvenile Justice Omnibus Bill Representative Rezabek (R)

### Bill Summary Continued:

- Costs – The bill allows the juvenile court to order the child to pay the costs based on the child's ability to pay
- Restitution – The bill allows juvenile court to consider restorative justice options as opposed to traditional restitution. The bill also allows the restitution order to be reduced to a civil judgement enforceable by the victim
- Parole Eligibility – The bill eliminates the sentence of juvenile life without parole. The bill also establishes timelines for parole eligibility for individuals sentenced as children





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB394 – Juvenile Justice Omnibus Bill Representative Rezabek (R)

### Bill Summary Continued:

- Parole Eligibility under the bill is as follows:
  - After serving 18 years for non-homicide offenses
  - After serving 25 years for homicide offenses
- *Except* juvenile offenders who were convicted of an Aggravated Homicide Offense
  - An Aggravated Homicide Offense is an offense that resulted in the death of three or more individuals and where the child was the principal actor





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB394 – Juvenile Justice Omnibus Bill Representative Rezabek (R)

### Likely Changes to the Bill:

- Juveniles age sixteen or seventeen charged with aggravated murder will still be subject to mandatory bindover
- Individuals serving juvenile life without parole before the passage of the bill will not be eligible for parole
- Juvenile offenders convicted of aggravated murder, not serving life without parole, will be eligible for parole after serving 25 years
- All other juvenile offenders will be eligible for parole after serving 18 years





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB609 & SB289 – Expulsion for Threats of Violence Representative Hughes (R) Senator Kunze (R)

**Bill Status:** SB289 was referred to the Senate Education Committee on April 11, 2018. HB609 has not been referred to a committee

### Bill Summary:

- The bill allows school districts to expel students for communicating a threat to kill or do physical harm to persons or property
  - The threat must be verbal, written, or sent electronically
  - The threat must be made against school property a person associated with a school event or the school
  - The student must take a substantial step toward the threatened act
  - The student can only be suspended if they are not mentally ill





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB609 & SB289 – Expulsion for Threats of Violence Representative Hughes (R) Senator Kunze (R)

### Bill Summary:

- If the threat is against a specific person, the school can require the student to be educated in an alternative setting
- Expulsions can be up to 60 days
- The school can require the student to have an assessment to determine if the student poses a threat before coming back to school, if the student refuses they can be suspended for up to a year
- If a school safety risk assessment shows the student is mentally ill, they can be transported to hospital





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB609 & SB289 – Expulsion for Threats of Violence Representative Hughes (R) Senator Kunze (R)

### Bill Summary:

- Mentally ill students cannot be expelled, but the school can choose to not readmit the student
- A review panel of mental health professionals, representatives of the school, and law enforcement must determine within 30 days if the mentally ill student can return to school
  - The student's ability to return must be reviewed every 30 days
- The bill expands the list of individuals who can take someone into custody who is believed to be dangerous to themselves or others and transport them to a hospital





# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB276 – Expulsion of Student Senator Hottinger (R)

**Bill Status:** The bill was referred to the Senate Education Committee on April 11, 2018

### **Bill Summary:**

- The bill permits school districts to adopt a resolution that allows the superintendent to expel a student if:
  - The superintendent determines the student poses an imminent and severe danger to the health and safety of students or school employees
- The expulsion may last up to 180 days
- The superintendent must provide the student with conditions they must meet to be readmitted to school







# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB276 – Expulsion of Student Senator Hottinger (R)

### Bill Summary Continued:

- All expelled students must have a mental health assessment to determine if they pose a threat to themselves or others
  - The assessment must be completed by a psychiatrist, psychologist, or school psychologist
- The superintendent must determine if the student has shown “sufficient rehabilitation” based on the mental health assessment and successful completion of the required conditions
- The expulsion can be extended for up to another 90 days
- The expulsion can be renewed an indefinite number of times







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## HB568 – Sophie’s Law – Accident Investigations Representative Butler (R)

**Bill Status:** The bill was referred to the House Criminal Justice Committee on April 10, 2018

### **Bill Summary:**

- The bill makes aggravated vehicular homicide a mandatory bindover offense if the juvenile is sixteen or seventeen
- The bill allows a driver to be arrested if there is probable cause that they committed a moving violation that was a contributing factor in a motor vehicle accident that caused serious physical harm or death
- The bill requires officers to determine if the driver or passengers are under the influence of drugs or alcohol





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB568 – Sophie’s Law – Accident Investigations Representative Butler (R)

### Bill Summary Continued:

- If an officer has probable cause to believe the driver was under the influence, the officer can get a search warrant for blood or urine
- The officer may transport the driver to a hospital to have a chemical test done without a warrant if it is not feasible to request a search warrant or no response has been received with regard to the request for a search warrant within one hour of the time the search warrant was requested





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB568 – Sophie’s Law – Accident Investigations Representative Butler (R)

### Bill Summary Continued:

- According to the bill, serious physical harm means:
  - (1) any physical harm that carries substantial risk of death;
  - (2) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
  - (3) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
  - (4) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain





# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB231– Violent Offender Database Senator Gardner (R)

**Bill Status:** The bill passed the Senate on April 11, 2018 by a vote of 31 – 2

### Bill Summary:

- The bill establishes a law enforcement database to track individuals who plead guilty or were convicted of aggravated murder, murder, voluntary manslaughter, kidnapping, or F2 abduction, and attempt, conspiracy, or complicity to any of those offenses
- The database is a public record, on a per county basis, accessible at each county sheriff's office
- Offenders may file a motion with the court to have their records restricted from the public because of safety concerns
- Failure to enroll annually or provide notice of a change of address is a felony of the fifth degree





# OFFICE OF THE OHIO PUBLIC DEFENDER

## SB231– Violent Offender Database Senator Gardner (R)

### Bill Summary Continued:

- There is a presumption that individuals will be removed from the database after 10 years of enrollment
  - The individual seeking release from the database must file a motion with the court
  - The court may hold a hearing where the individual has the burden of proof
  - The presumption is rebutted if the individual cannot show that they:
    - Completed all sanctions required as part of their sentence
    - Did not violate a term or condition imposed as part of their sentence
    - Did not commit another misdemeanor or felony offense of violence
- The individual can only request termination of their enrollment requirements once





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB365, SB201, SB202 – Reagan Tokes Act Representatives Boggs (D) and Hughes (R) Senators O’Brien (D) and Bacon (R)

**Bill Status:** HB365 is currently the House Criminal Justice Committee, SB202 is in the Senate Government Oversight and Reform Committee, and SB201 passed the Senate on April 11, 2018 by a vote of 33 - 0

### Bill Summary:

- The bill requires indefinite sentencing for felonies of the first and second degree and some third degree felonies
- The sentencing judge will determine a minimum sentence for each offense within the available range. The maximum is determined by multiplying the sum of all the minimum sentences by 150%





# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB365, SB201, SB202 – Reagan Tokes Act Representatives Boggs (D) and Hughes (R) Senators O’Brien (D) and Bacon (R)

### Bill Summary Continued:

- There is a rebuttable presumption that the individual will be released when they have served their minimum or reached their early release date
- HB365 does not require a hearing to rebut the presumption of release unless DRC is attempting to maintain incarceration because DRC believes the individual poses a threat
- If the presumption of release is rebutted, the individual remains incarcerated for a “reasonable” period, as determined by DRC, not to exceed their maximum prison sentence







# OFFICE OF THE OHIO PUBLIC DEFENDER

## HB365, SB201, SB202 – Reagan Tokes Act Representatives Boggs (D) and Hughes (R) Senators O’Brien (D) and Bacon (R)

### Bill Summary Continued:

- Prison length reductions for “exceptional conduct” can range from 5%-15% of the individual’s sentence as determined by DRC based on the percent they assign for each level of offense
- DRC must inform the trial court that it is recommending early release, which creates a rebuttable presumption of release
- HB365 allows the court to decline early release without a hearing
- SB201 requires the court to hold a hearing to determine if the presumption of early release is rebutted







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## HB365, SB201, SB202 – Reagan Tokes Act Representatives Boggs (D) and Hughes (R) Senators O’Brien (D) and Bacon (R)

### Bill Summary Continued:

- All individuals released on post-release control must be supervised for five years for felonies of the first degree and felony sex offenses, three years for second degree felonies, three years for third degree felonies
- A violation of post-release control can result in a nine-month prison sentence and the maximum cumulative prison term for all violations cannot exceed 1/2 of the Aggregate Minimum Prison Term





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## HB365, SB201, SB202 – Reagan Tokes Act Representatives Boggs (D) and Hughes (R) Senators O’Brien (D) and Bacon (R)

### Bill Summary Continued:

- Any individual placed on post-release control must be equipped with a GPS monitoring device
- The individual will have inclusionary zones, curfews, and, when appropriate, exclusionary zones
- DRC must establish a statewide GPS database that law enforcement can access without a warrant to obtain GPS monitoring information





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## Update from Last Year

- HB30/SB20: Mandatory additional six year prison sentence when a child under age 10 suffers a permanently disabling injury as the result of a felonious assault
  - SB20 passed the Senate 30 – 3 and the House Criminal Justice Committee unanimously
- HB38: Enhances the penalty for felonious assault and homicide offenses when the victim is a current or former first responder, military member, or a federal or local law enforcement officer
  - The bill passed the House 96 – 0
- HB56/SB4: If the underlying offense was the result of being a victim of human trafficking, the bill expands expungement availability to any offense but aggravated murder, murder, or rape and permits ILC for any offense
  - SB4 passed the Senate 33 – 0





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## Update from Last Year

- HB64: Allows for expungement in cases of mistaken identity
  - The bill is still in the House Community and Family Advancement Committee
- HB141: Makes involuntary manslaughter a strict liability offense for an individual who supplied the deceased with a drug that contributed to their death
  - The bill is still in the House Criminal Justice Committee
- SB33: Makes LEADS information available to a defendant in certain circumstance, and allows a defendant to continue with intervention in lieu, despite a violation
  - The bill was signed by the Governor on March 23, 2018





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## What to do?

Contact your legislators and tell them to support or oppose a bill.

<https://www.legislature.ohio.gov/legislators/legislator-directory>





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Questions  
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