



OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Full Commission Meeting Notes
March 21, 2019

MEMBERS PRESENT

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Lara Baker-Morrish, City of Columbus Solicitor General
Kristin Boggs, State Representative
Paula Brown, Attorney – Ohio State Bar Association
Brooke Burns, Attorney, Juvenile – Office of the Public Defender
Charles Chandler, Peace Officer
Robert Fragale, Domestic Court Judge
Kathleen Hamm, Public Defender
Jennifer Muench-McElfresh, Common Pleas Court Judge
Stephen McIntosh, Common Pleas Court Judge
Kevin Miller, for Colonel Fambro – Ohio State Highway Patrol
David Painter, County Commissioner
Barry Riley on behalf of Larry Sims, Sheriff
William Seitz, State Representative
Zahid Siddigi, for Ryan Gies, Director – Ohio Department of Youth Services
Brandon Stanley, Chief of Police
Kenneth Spanagel, Municipal Court Judge
Tim Young, State Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Jill Beeler, State Public Defender's Office
Douglas Berman, Professor of Law, OSU
Jim Cole, Juvenile Court Administrator
Lori Criss, Ohio Department of Mental Health and Addiction Services
Jim Lawrence, OCCA
Jason McGowan, Ohio Chief Probation Officer's Association
Paul Pfeifer, Ohio Judicial Conference
Keith Spaeth, Common Pleas Court Judge representing OJACC
Lou Tobin, Ohio Prosecuting Attorneys Association
Carey Williams, CORJUS
Andy Wilson, Office of Governor DeWine
Gene Zmuda, Appeals Court Judge

STAFF PRESENT

Lisa Hickman, PhD – Research Specialist
Todd Ives, Researcher
Scott Shumaker, Criminal Justice Counsel
Sara Andrews, Director

CALL TO ORDER & ROLL CALL OF COMMISSION MEMBERS, ADVISORY COMMITTEE

The March 21, 2019 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order by Vice-Chair Selvaggio and he called the roll of members and advisory committee.

APPROVAL OF NEW ROSTER AND INTRODUCTION OF NEW MEMBERS

Judge Selvaggio also introduced the updated rosters and new members to the group. The roster additions were unanimously approved upon motion by Representative Seitz and a second by Commissioner Painter

JUSTICE MICHAEL DONNELLY PRESENTATION

Members of the Commission were then introduced to Justice Michael Donnelly who spoke to the commission about his vision for reform in Ohio's criminal justice system. He highlighted his extensive experience as both a prosecutor and a common pleas court judge, and noted the importance of transparency in the criminal justice system – the ability for the public to discern that the system is functioning as designed being paramount to the administration of justice.

Justice Donnelly explained that early in his first term he decided that all plea negotiations involving the judge should be on the record, as the defendant has a right to know what discussions are being had. That decision evolved into a policy of conducting all communications between the prosecutor, defense counsel, and the judge on the record in open court. He found this forced the parties to focus on the merits of their case, or the lack thereof, and ensured that the process was not coercive or misrepresentative to the defendant. Defendants should know and understand what to expect at sentencing, including the position the state intends to take and any statements made by the judge about what the sentence might be. He cautioned against the attempt statute being used as an inducement to plea where not appropriate, as it can send the wrong message to the victim and the public about how conduct is treated in the system. He also discussed the problem of what he has termed “factually baseless” pleas – results of negotiations wherein the offense being plead to does not remotely resemble the indicted offense. He noted an example of a rape charge being plead to an aggravated assault, and suggested that judges take an active role in ensuring there is a factual basis for the charge being plead to.

The Justice discussed the need for robust appellate review of felony sentences with a requirement that judges be specific as to the factors they considered in sentencing, including why they may have chosen not to follow a joint recommendation from the parties, or why might have chosen to impose a longer sentence than that recommended by the prosecutor. He noted that a statewide database that could track cases and decisions would help inform stakeholders and policy makers about the prevalence of these issues in the system. Finally, Justice Donnelly called upon the legislature to revisit arbitrary timelines for judicial release eligibility in non-mandatory cases, and for the Common Pleas Judge's Association to educate judges on the theories behind our sentencing procedures and the strictures of R.C. 2929.11's purposes of felony sentencing.

Members expressed their thanks for Justice Donnelly's presentation and look forward to further discussion of the reforms he discussed.

APPROVAL OF MINUTES FROM DECEMBER 13, 2018

The minutes of the December 13, 2018 meeting of the full Commission and Advisory Committee were unanimously approved upon motion by Representative Seitz and a second by Commissioner Painter.

ANDY WILSON PRESENTATION ON EXECUTIVE BRANCH CRIMINAL JUSTICE PRIORITIES

Andy Wilson, the senior advisor for criminal justice policy to Governor DeWine, then discussed the administration's goals for criminal justice policy. The Governor recognizes that none of his other initiatives can thrive without safe communities, and Mr. Wilson noted that the administration's budget demonstrates substantial commitment to programs like Recovery Ohio, to specialized dockets, to indigent defense, and to provide more resources to law enforcement. He noted the broad agreement on the basic principles of criminal justice reform – namely that we should be diverting low level offenders away from prison and into treatment and programming that can help transition them back into the community with as few collateral sanctions as possible.

Mr. Wilson then discussed the number of F4 and F5 offenders currently serving time in prison. He worked with DRC and discovered that of the 7000-8000 inmates currently in prison for F4 and F5 offenses, there were around 1100 violent offenders and 2600 probation violators who had the opportunity at community control. He noted that the numbers for agreed sentences and individuals who had been to prison multiple times is not readily available, but that his estimation was approximately 1600 inmates with non-violent convictions and no aggravating factors were currently serving a sentence. Finally, he discussed the need for more robust data collection, stating that it is absurd the state hasn't improved the collection of data at the statewide level.

Mr. Wilson was appointed to the advisory committee under the approved roster changes, and will continue to be a contributor to the Commission.

DISCUSSION OF SUBSTITUTE SENATE BILL 3 DRUG PROPOSALS

Members then discussed the provisions of Substitute Senate Bill 3, aimed at reforming Ohio's drug laws. Discussion was framed around the following central provisions of the legislation:

1. Jurisdictional Provisions
2. Threshold amount changes
3. Possession/Trafficking distinction elimination
4. Unclassified Misdemeanor low-level possession
5. Prosecutions in Abeyance procedures
6. Technical violation definitions
7. Civil Commitment procedure changes

For in-depth look at the discussion and votes surrounding these provisions, please see the March 21, 2019 SB3 Vote Summary available [here](#) (also attached).

SENATE BILL 201 IMPLEMENTATION UPDATE

Scott Shumaker then updated Commission members on the work that Commission staff have done to help train stakeholders on the implementation of Senate Bill 201 "The Reagan Tokes Law." The staff are preparing for a webinar presentation put on by the Judicial College for judges statewide, and will continue to make themselves available for trainings in any interested jurisdictions.

SCHOOL SAFETY FUNDING DRAFT STATEMENT

Erin Davies then briefed Commission members on a proposed policy statement on school safety initiative funding approved by the Juvenile Justice Committee. Members engaged in discussion of the role of School

Resource Officers and the need for a holistic approach to school safety issues. Judge Fragale made a motion to accept the statement, seconded by Judge Spanagel. The Commission voted in favor of the statement as advisory since a quorum was not present.

A motion was then made to adjourn the meeting and it was seconded. Vice Chair Selvaggio then adjourned the meeting.

TO: Those Concerned
FROM: Sara Andrews, Director
RE: Full Commission Meeting Sub. S.B. 3 discussion and vote summary
DATE: March 21, 2019

For purposes of discussion and vote, the Commission and Advisory Committee considered Sub. S.B. 3 provisions as separate and distinct. Represented below are the topics, the vote record and notes.

Provision: Jurisdiction for Drug Possession Offenses

The bill states municipal courts (Sec. 1901.20, at line 71) operating a drug court “shall hear all charges of any reclassified drug possession offense.” A parallel section exists for county courts (Sec. 1907.02, at line 124). If a municipal court or county court does not operate a drug court, the court of common pleas in that jurisdiction will hear the charges.

Question: Does the Commission support as written?

Vote: Unanimous opposition

Notes:

It was then moved that revision to Sub. S.B. 3 include all specialized dockets and the use of 132-HB354 as a model. A majority of those present voted in favor of the motion, with opposition noted by four members and one abstention. Additionally, concerns with funding and local capacity brought up. Agreement conceptually that courts should be able to share resources.

Provision: Threshold amounts

Sub. S.B. 3 generally has higher threshold amounts for subjecting a person to the penalties than those specified by current law.

Question: Does the Commission support changing the threshold amounts as written in Sub. S.B. 3?

Vote: Roll call vote (not a quorum) Commission: 8 in favor and 7 in opposition

Advisory Committee: 3 in favor; 6 in opposition; 2 abstain

Notes:

- Address the trace / personal use amounts without jeopardizing probable cause
- Concern expressed that drug trafficking penalties are weakened
- Recognition that traffickers can also be users – consider proposed Sub. S.B. 3 threshold amounts for first time offenders, but punish subsequent offenses under current threshold amounts – specify a time interval between arrests/offenses – 30-60 days?
- Consider including language to address possession of multiple drugs as indicative of trafficking behavior

Provision: Reclassification of Trafficking Offenses

Question: Does the Commission generally support trafficking statute revisions in Sub. S.B. 3 (absent threshold amounts)?

Vote: Tabled

Notes:

- Need to address “gift” situations of small drug amounts
- Difficult to discuss distinctions without considering threshold amounts

Provision: Unclassified Low Level Possession Offenses

Question: Does the Commission generally support reducing low level possession offenses to misdemeanors?

Vote: Roll call vote (not a quorum) Commission: 12 in favor and 3 in opposition

Advisory Committee: 4 in favor; 1 in opposition; 2 abstain

Notes:

- Include language or contemplate the use or expansion of Community Alternative Sentencing Centers
- Revise admission criteria for Community Based Correctional Facilities
- Address funding
- Noted enhancement of penalty after 3 convictions in 2 years – some opposition to enhancement to allow for relapse without penalty

Provision: Proceeding in Abeyance [§2925.111 p109 line 3159-3170 (H)]

Question: Does the Commission support provisions allowing courts to hold low level possession proceedings in abeyance?

Vote: Roll call vote (not a quorum) Commission: 7 in favor and 7 in opposition

Advisory Committee: 1 in favor; 4 in opposition; 2 abstain

Notes:

- Duplicative of prosecutorial diversion statute
- Concern that the Adult Parole Authority doesn’t actively supervise misdemeanants
- Treatment is a medical service – there needs to be more collaboration between treatment and criminal justice communities to determine appropriate treatment/level of care based upon medical necessity.

Provision: Definition of Technical Violation (§Sec. 2929.15, starting at line 5369)

Question: Does the Commission support the Sub. S.B. 3 definition of Technical Violation?

Vote: Roll call vote (not a quorum) Commission: 4 in favor and 10 in opposition

Advisory Committee: 4 in favor and 1 in opposition

Notes:

- There is agreement a definition is needed for clarification
- The caps to probation violations should revisited

Provision: Changes to Civil Commitment Procedure

Question: Does the Commission support increasing access to civil commitment?

Vote: Unanimous in favor

Question: Does the Commission support the funding mechanism, as written?

Vote: Unanimous opposition

Notes:

- Recognition process isn't working and adjustments need to be made
- Ability to pay should be further addressed