



CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Regular Meeting Minutes
April 23, 2015

MEMBERS PRESENT

Chief Justice Maureen O'Connor, Chair
Thomas Marcelain, Vice-Chair, Common Pleas Court Judge
Paula Brown, OSBA Representative
Hearcel Craig, State Representative
Robert DeLamatre, Juvenile Court Judge
Derek DeVine, Prosecuting Attorney
Gary Dumm, Municipal Court Judge
John Eklund, State Senator
Kort Gatterdam, Defense Attorney
Kathleen Hamm, Public Defender
Ed Mejia, Staff Lt., representing State Highway Patrol Superintendent Paul Pride
Steve McIntosh, Common Pleas Court Judge
Elizabeth Miller, representing Timothy Young, Ohio Public Defender
Gary Mohr, Director, Rehabilitation and Correction
Aaron Montz, Mayor, City of Tiffin
Dorothy Pelanda, State Representative
Kyle Petty, representing Director Harvey Reed
Chrystal Pounds-Alexander, Victim Representative
Albert Rodenberg, Sheriff, Clermont County – via phone
Nick Selvaggio, Common Pleas Court Judge
Kenneth Spanagel, Municipal Court Judge
Cecil Thomas, State Senator

MEMBERS NOT PRESENT

Ronald Burkitt, Police Officer
Paul Dobson, Prosecuting Attorney
Fritz Hany, Municipal Court Judge
Sylvia Sieve Hendon, Appellate Court Judge
Jason Pappas, Fraternal Order of Police
Bob Proud, Clermont County Commissioner

ADVISORY COMMITTEE MEMBERS PRESENT

Lara Baker-Morrish, Columbus City Attorney
Professor Douglas Berman, OSU
Dustin Calhoun, Chief Counsel, Youth Services
Lori Criss, Ohio Council
Steve Gray, Chief Counsel, Rehabilitation and Correction
Cynthia Mausser, Rehabilitation and Correction
Michele Miller, Warden, Belmont Correctional Institution
Chris Nicastro, Mental Health and Addiction Services
David Picken, Attorney General's Office
Whitney Pesek, representing Joanna Saul, Correctional Institution Inspection Committee
Mark Schweikert, Director, Ohio Judicial Conference
Steve Vandine, Rehabilitation and Correction
Gary Yates, Ohio Chief Probation Officers' Association

STAFF PRESENT

Sara Andrews, Director
Jo Ellen Cline, Criminal Justice Policy and Research Counsel

GUESTS PRESENT

Ryan Dolan, Rehabilitation and Correction
Marta Mudri, Ohio Judicial Conference
Josh Williams, Ohio Judicial Conference
Kari Underwood, Ohio Public Defender

CALL TO ORDER

The April 23, 2015 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order at 9:35a and Vice Chair Marcelain proceeded with the roll call of members.

APPROVAL OF THE MARCH 19, 2015 MINUTES

Judge Spanagel moved to approve the March 19, 2015 meeting minutes, seconded by Chrystal Alexander. Minutes of the March 19, 2015 were approved.

REMARKS FROM CHIEF JUSTICE O'CONNOR

Chief Justice O'Connor discussed the Criminal Recodification Committee noting the judicial representation on the group includes Judge Pepple, Judge Rudduck, Judge Stewart and Justice Lanzinger. She noted, that after a work product is generated from the group, the OCSC has a role in review of the recommendations.

Chief Justice O'Connor also shared her continued support of a future criminal justice commission and thanked the members of the Commission and its Advisory Committee for their dedication and work.

APPELLATE REVIEW

Jo Ellen Cline presented the appellate review committee's fourteenth and final draft for consideration and vote by the Commission. She also noted that extended sentence review will be addressed separately and in the near future.

Appellate Judge Sean Gallagher and several attorneys from his office were present to discuss the draft and asked the Commission to consider suggestions including: a reference to all four subsections of paragraph (D); amending D(2)(b) to reference 2929.13 and 2929.14 in addition to 2929.11 and 2929.12 because those appeals will also impact the prima facie standard for proportionality and consistency; and language in (H)(1) to include a reference to 2929.14(C)(4) because that section address the consecutive sentence findings. Additionally, he stated the last sentence in that subsection should include the phrase... "...or impose a sentence that is otherwise not contrary to law" to address the problem of what to do when the trial court failed to make the findings and the record won't support the findings. The trial court can impose a sentence not contrary to law, such as a concurrent sentence, in the case of 2929.14(C)(4) findings.

Judge Selvaggio pointed out a typo in paragraph (G)4 and there was subsequent discussion to move language from paragraph (G)2 to (G)1.

Director Mohr applauded the effort of the group and asked for a summary of what the revisions will achieve if enacted. Judge Marcelain stated the changes are necessary to define abuse of discretion and other definitions of contrary to law. In essence, the goal is to achieve standards for appellate courts to review trial court proceedings. Judge Gallagher also noted that there are competing interests in the contrary to law and abuse of discretion standards so the goal is to establish one standard of review, eliminate minutia and make a complaint clear.

Judge McIntosh moved to accept the amended version of the appellate review draft, seconded by Chrystal Alexander. There was no further discussion and the motion unanimously passed. Judge Selvaggio did note, the seriousness and recidivism factors are relevant in both 2929.19 and 2953.08.

COMMISSION PRIORITIES, TIME LINES AND COMMITTEES

The group overall agreed with the document outlining the priorities, time frames and subject matter committees. Suggested revisions included:

- A. Judge Marcelain suggested adding consecutive (extended) sentence review – to the immediate priorities.
- B. Remove the consideration of the death penalty task force recommendations, instead follow the status of the Task Force Recommendations. Chief Justice O'Connor suggested periodic updates will be sent to the Task Force Members and the Commission.

- C. Kathleen Hamm suggested the appellate review priority be moved to Sentencing Committee and all agreed.
- D. Halfway house language is a part of current budget language. Sara to draft letter that says this was a priority for OCSC and indicated our support for its passage.
- E. Data Collection/Sharing Committee – Chief Justice O’Connor suggested a primer to illustrate various sources of data repositories and information required to be reported by state criminal justice agencies, is it publicly accessible and how it is reported or shared.

It was also noted that many of the priorities have policy implications and it was agreed that the Director will, when necessary, consult the Executive Committee to determine if after the data committee collects data, the topic will advance to an appropriate committee.

Judge Marcelain and Director Andrews then asked for volunteers for the subject matter committees:

*note, preliminary membership and subject to change

Criminal Justice Committee membership

Judge Marcelain	Chrystal Alexander, Victims
Judge Spanagel	Cyndi Mausser, DRC
Director Mohr, DRC	Aaron Montz, Mayor
Elizabeth Miller, OPD	Steve Gray, DRC
Chris Nicastro, OMHAS	Gary Yates, OCPOA
Lara Baker-Morrish, City of Columbus	Michele Miller, DRC
Kathleen Hamm, Public Defender	

Sentencing Committee Membership

Judge Marcelain	Kort Gatterdam, Defense Lawyers
Judge Spanagel	Judge Selvaggio
Judge McIntosh	Senator Thomas
Derek DeVine, Prosecutor	Tim Young, OPD
Lara Baker-Morrish, City of Columbus	Ryan Dolan, DRC
Lori Criss, The Ohio Council	Professor Berman, OSU
Kathleen Hamm, Public Defender	

Data Collection and Sharing Committee Membership

Judge Dumm	Professor Berman, OSU
Gary Yates, OCPOA	Steve Van Dine, DRC
St/L Mejia, OSHP	Dave Picken/AG rep
Erin Waltz, Supreme Court Library	

Juvenile Justice Committee Membership

Representative Pelanda	Senator Thomas
Representative Craig	Dustin Calhoun, DYS
Judge Delamatre	Kyle Petty, DYS
Director Reed, DYS	Jill Andrews-Beeler, OPD
Aaron Montz, Mayor	Linda Janes, DYS
Kathleen Hamm, Public Defender	Whitney Pesek, CIIC

Executive Committee Membership

Criminal Justice Committee Chair	Chief Justice O'Connor, ex-officio
Sentencing Committee Chair	Judge Marcelain, Commission V-Chair
Data Collection & Sharing Chair	Sara Andrews
Juvenile Justice Committee Chair	Senator Eklund

DIRECTOR'S REPORT

A quarterly director's report was distributed and there were no questions. See written report on the website, meeting materials April 23, 2015.

Other discussion points included:

- a. The group discussed future meeting start time and agreed to begin meetings promptly at 10:00a. Full Commission and Advisory Committee meetings will be quarterly to allow the committees' time to work on priorities.
- b. Extended sentence review – a survey of what other states do will be conducted.
- c. Draft publications – felony sentencing chart, drug offense chart and interstate compact for municipal courts were distributed – it was noted that 8 x 14 size could be problematic and Director Andrews agreed to discuss with the print staff. Other publications coming soon – marijuana publication and “prison consumption by crime illustration”.

MEMBER UPDATES

Judge Spanagel noted municipal judges are discussing the possibility of handling felony OVI offenses.

May 14, 2015 is the next scheduled meeting date and will be used for committee organization. Thereafter the meeting schedule will be quarterly and dates announced in the near future.