

**OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE**  
**Full Commission Meeting Minutes**  
**June 23, 2016**

**MEMBERS PRESENT**

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge  
Chrystal Alexander, Victim Representative  
Kari Bloom for Tim Young, State Public Defender  
Hearcel Craig, State Representative  
Paul Dobson, Wood County Prosecutor  
Gary Dumm, Municipal Court Judge  
John Eklund, State Senator  
Robert Fragale, Family Court Judge  
Thomas Marcelain, Common Pleas Court Judge  
Steve McIntosh, Common Pleas Court Judge  
Gary Mohr, Director, Department of Rehabilitation and Correction  
Dorothy Pelanda, State Representative  
Kyle Petty for Harvey Reed, Department of Youth Services  
Larry Sims, Warren County Sheriff for Sheriff Rodenberg  
Kenneth Spanagel, Municipal Court Judge

**ADVISORY COMMITTEE MEMBERS PRESENT**

Jill Beeler, Ohio Public Defender's Office  
Douglas Berman, Professor of Law, Ohio State University  
Dustin Calhoun, Chief Counsel, Department of Youth Services  
Steve Gray, Chief Counsel, Rehabilitation and Correction  
James Lawrence, Ohio Community Corrections Association  
Cynthia Mausser, Department of Rehabilitation and Correction  
Brian Martin, Department of Rehabilitation and Correction  
David Picken, Attorney General's Office  
Keith Spaeth, Butler County Court of Common Pleas Judge, OJACC  
Gary Yates, Butler County Court Administrator, Chief Probation Officer's Association

## **CALL TO ORDER**

The June 23, 2016 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order at 10:06a by Vice-Chair Selvaggio. Vice-Chair Selvaggio then proceeded with roll call of members.

## **APPROVAL OF MINUTES FROM MARCH 17, 2016**

The minutes of the March 17, 2016 meeting were unanimously approved.

## **MEMBERSHIP UPDATE**

Vice-Chair Selvaggio advised that Sara and Jo Ellen are in the process of developing guidelines, protocols and guidance on how the Commission is intended to operate, including expectations for duties and meeting attendance. He noted that there are four Commission meetings each year and if a member misses two consecutive meetings it is likely that member will be contacted to determine if assistance is required to ensure future participation.

## **INTRODUCTION**

Sara introduced Allana Smith, an intern from the University of Dayton Civic Scholar Program under the general direction of former Governor Taft. Allana has been helpful to the Commission with the Bail and Pre-Trial Services work.

## **RIGHTS RESTORATION – RECORD SEALING**

Professor Berman advised the group that the Ad Hoc Committee expanded its membership, is gathering data and working from a draft background and analysis paper. In the meantime, the group proposes to seek clarity and reorganization to the current statutory framework while a more ambitious, robust effort is forthcoming regarding the longer term policy issues. He explained that a small subcommittee worked on redrafting current law – to improve understanding and administration of the current provisions. There is a picture of a white board that the group used to illustrate the difficulty in the current statutory framework.

Marta Mudri explained the reorganization does not substantively change the law and doesn't include things outside of record sealing such as public records, a super seal option etc. The reorganization breaks down current administration and process into four sections.

Professor Berman moved that the group to pursue the effort toward reorganization and to respond to the 'mega memo' policy objectives by providing input. Director Mohr seconded and Judge Spanagel called point of information regarding a quorum of members. Vice Chair Selvaggio noted the quorum was not established. The motion remained on the floor for discussion and Judge Marcelain noted his support, referencing it will be easier to work with and that the group should consider a blank form for pro se applicants. Vice Chair Selvaggio suggested that an agency list part of every court entry. Prosecutor Dobson voiced concern subsection 32 – timelines, priorities and reasons for sealing asking if it might create a problem for more substantive changes. The consensus of the group was that a vote in favor of the reorganization effort is a first step to bring more order to existing chaos and that the recommendations to the general assembly – sans substantive changes – gets the conversation started.

During the discussion additional members joined the meeting and it was determined certain members do have designees, establishing a quorum. Judge Spanagel called the question and the motion to pursue the reorganization was a unanimous favorable vote.

## **BAIL AND PRE-TRIAL SERVICES REFORM**

Jo Ellen advised the group that the Ad Hoc Committee is considering movement toward a risk based system and is reviewing bail consideration factors and processes and jail crowding issues such as the cost of pretrial detention and demands on local detention centers. We received technical assistance from the National Institute of Corrections with the site visit at the meeting of the Ad Hoc Committee on April 28, 2016. The Ad Hoc group has revamped its membership, organized the issues and created multiple workgroups that include a comparison of statutes, the Constitution, court rules and American Bar Association standards; developing definitions of bail and related terms, significant data collection efforts – services, availability, jail population, response to violations; evaluating workflow for the Clerk of Court processes; defendant representation and funding; collaboration with bondsmen; education, training and implementation science.

Jo Ellen further reported that since the April 28, 2016 meeting, all but two groups have had phone conferences. The workgroups are focused on what is happening in Ohio now and how to collect data. The Ad Hoc Committee will have an in person meeting July and hopes to have a final product for presentation to the Full Commission at the December 2016 meeting. Judge Marcelain asked what the problem is and was advised that monetary bail and current system often can penalize poverty – people are detained pretrial because they can't make bail. The jail population survey, as well as the other data collection efforts, will give us indication if there is indeed a problem. Judge Spanagel provided a brief update on the group and work on the topic in Cleveland. Director Mohr noted he recently attended a Clerk of Courts meeting at which there was a firestorm of inquiry and he found the intensity of comments surprising. Vice Chair Selvaggio noted that the current President of their Association is participating on the Ad Hoc Committee.

## **FINES, FEES AND COSTS**

Sara reminded the group that the Commission applied for a Bureau of Justice Assistance grant in May 2016, The Price of Justice: Rethinking the Consequences of Justice Fines and Fees. The overall goal of the project is to identify and test promising practices for coordinated and appropriate justice system responses to justice-involved individuals' inability to pay fines, fees, and related charges. We have not received notice on the status of the application.

## **DATA PROJECT**

Sara updated the group about the proposed project Using Data to Improve Public Safety and Criminal Justice Outcomes that recognizes criminal justice indicators are wide-ranging and complex. Determining if, where and to what extent, criminal justice data indicators are available, accessible and consumable in our state and then seeking viable ways to catalog and analyze that information will provide a platform to recommend legislative and policy strategies to improve outcomes for Ohio's citizens by creating safer, fairer, and a more cost-efficient use of resources in our criminal justice system. The University of Cincinnati, Institute of Crime Science (ICS) data analytics demonstration was June 7, 2016. Sara applied for funding, to include three pilot counties, through the Ohio Consortium of Crime Science administered by the Office of Criminal Justice Services, Department of Public Safety. Preliminary information is that the proposal is funded for one county and further information is forthcoming.

## **REQUEST FOR RESEARCH**

Sara has been working with the Supreme Court of Ohio to fund and release a request for research to gather, compile data and identify trends regarding criminal sentence reform and other legislation impacting criminal sentencing enacted since HB86 in September 2011. These services are to be provided to the Commission from

August 1, 2016 through March 1, 2017, with the possibility of extensions when adequately justified. The Request for Proposal is due to be released via email and on the Commission website June 24, 2016.

## **RECODIFICATION UPDATE**

Kari Bloom reported that the committee is not meeting today and the review is ongoing on the 2925 drug chapter and the 2929 sentencing chapter. The number of comments and objections resulted in the creation of a Review Committee for those chapters. Tim Young is the recorder for the group and the group has not yet met. Working group was chosen by the chairman and is small. Timeline is getting short and a lot to get accomplished. Ask questions and vet concerns before the group completes its work – August 2016. OPD is willing to answer questions and provide updates, if necessary. Dave Picken asked who is on the Review Committee and members are Senator Eklund, Director Mohr, Tim Young, Ron O'Brien, and Representative Manning. Bipartisan members may be considered, but not on the group at this time.

Vice Chair Selvaggio opined that the struggle of the 2925 group is what is proposed with cocaine and opiates – increase 5 to 10g and opiates up to 50x bulk. Majority of cases are drug cases – why increase the level of seriousness to great number – trouble for judges to proportionately sentence trace amount cases. The majority are not Mandatory Drug Offenders and are trace amount cases. Streamlining the Ohio Revised Code and making common sense adjustments were included and now committee has task of adjusting, improving and solving how we deal with drug offenses – in a very short time for an enormous problem. He went on to note there is not enough time or resources to address the real issues of users and trace amounts. He applauds their work despite a strong concern about the proposal that allows the defense attorney and prosecutor to agree and the right to withdraw the guilty plea if the Judge doesn't concur.

Kari concluded by stating that the intention of committee is for all the work to come together but, there is some concern about only some parts moving forward v. complete package due to the dependency and correlation of agreements to what is drafted.

## **DRC SORTING OF COMMITMENTS AND IMPLEMENTATION OF 'TREATMENT TRANSFER'**

Sara reminded group the original recommendation has evolved to illustrate exits from prison.

Brian Martin introduced the presentation noting the complexity of corrections and how people enter and exit confinement. DRC hasn't studied this before – admission to exit or in other words the criminal justice funnel. Brian then referred the group to the handouts noting the commitment cohort is from FY2014 and looking at a two year period.

Some general comments on the data from Brian included:

- Admissions – new court (includes supervision violator recommission) @ 20,000; full range of violator types – Judicial Release violator, post prison technical violator, transitional control administrative return or violator
- New court admit is the focus of this data. Stable data over 5-6 years. Subset – on supervision and commit new crime – overlapping statuses. 40-42% expected stay 1 year or less.
- Risk reduction – underutilized.
- Community control – stable #
- Risk category at intake – by felony level
- Admission cohort is different than just evaluating releases
- Risk distribution across felony level – lower felony, higher risk of recidivism – chronic offenders

Judge Marcelain asked how these numbers compare to other states – how does it look to DRC and what is the impression? Brian advised that the high number of low level felony admissions is always surprising and in contrast to other jurisdictions as is the complexity of the admissions and releases. Average time served is two years is why looked at two years and Ohio is probably shorter for average stay than other jurisdictions.

Judge McIntosh asked if risk assessment is based on committing same type of crime and Brian clarified that the risk assessment is based up on a global risk of reoffending, not by specific type of offense.

Judge Marcelain asked about gender differences as the data reflects women serve less time and are admitted for less violent crimes and often are more frequently considered for judicial release. Brian noted that overall intake numbers are 15% female; 85% male.

Prosecutor Dobson pointed out that the Felony level 3 distinction is not represented – FY2012 first full year of F3 was tiered.

Vice Chair Selvaggio asked if a more detailed breakdown of time served, perhaps by months can be provided to help illustrate the perception less than one year commitment is graduated response – impact of trying everything else first. The complexity of placement in one of DRC funded programs was noted and Brian reported there are other summaries that match commitment v. funded programs. County variation – availability of resources is key element and that can be built in later.

Judge Fragale asked for the definition of recidivism which was noted as a return to incarceration and DRC doesn't track recidivism on admissions – only releases. Churning population is huge challenge. Director Mohr advised that more diversion options/resources are needed, more is given to juvenile system. He further opined that counties that receive no money from DRC incarcerate more people. It was also noted that Community Based Correctional Facilities have waiting lists often as much as two months so offenders are placed on house arrest and ordered to intensive outpatient treatment, but then drugs are delivered to their house.

Sheriff Sims noted that sentence reform intent and outcome are different – there is push back to local resources/jail. He has seen the impact and growth in jail population. Director Mohr commented that prison population is most dense in history. Rate of incarceration jail or prison has increased.

Members then engaged in a discussion around risk assessment, prison sentences and recidivism. Director Mohr suggested the fundamental policy question is should we reduce community corrections funding and build prisons/incarceration options? \$58m this budget cycle more in community – but, the prison population continues to increase. He believes we should continue to enhance community funding because it is twice as effective at one third of the cost.

Judge McIntosh cautioned the group not to look at it as one budget cycle, rather it is a long term investment, not a quick fix. Cultural change within the system takes time.

Judge Spaeth reflected that he is supportive of efforts, community corrections, evidence based sentencing and not to close our eyes because this data doesn't support what we think is right. He asked, should trace offenders be subject to prison sentences? do we keep cycling them and identify them as high risk? The data doesn't say to abandon the fight.

Dave Picken suggested the local effort has to be enhanced beyond traditional criminal justice agencies to include human services, social services and a total commitment by the community. The struggle is trying to get a prosecution oriented society to more socially sensitive.

### **SENTENCING & CRIMINAL JUSTICE COMMITTEE UPDATE**

Chair Judge Spanagel updated the group on the following:

1. OVI Redo – remains pending introduction
2. SB204 – discretionary driver's license suspension bill – The bill allows currently mandatory driving suspensions for drug charges to be discretionary and provides a procedure by which a person can petition to lift a mandatory suspension applied before the passage of the bill. The bill was enacted on May 24, 2016 and awaits the Governor's signature.
3. Adult Extended Sentence Review – The full commission voted in favor of language at the March 17, 2016 meeting that applies only to offenders whose highest offense was an F5, an F4, or a low-level (sentence 36 months or less) F3 and excludes those sentences agreed to on the record.
4. Foster – remains pending and will reconsider upon Recodification Committee work product
5. Transitional Control – subcommittee collected data and due to report to Committee on 07-21-16

### **JUVENILE JUSTICE COMMITTEE UPDATE**

Chair Prosecutor Dobson updated the group on the following:

1. JLWOP [2967.13(B)] legislative update – SB272, a bill co-sponsored by Senator Thomas and Senator Eklund, is based upon the work and recommendations of the Commission and was introduced 02-04-16. The bill was referred to the Government Oversight and Reform Committee and has had two hearings. HB521 sponsored by Representative Manning was amended in the House Judiciary Committee and passed the floor on May 25, 2016.
2. Other Commission recommended proposals that remain pending for introduction include ORC 2152.18 [confinement credit] to clarify the application of the statute and, in addition, reduce/eliminate DYS facilities confinement credit entries brought by the Office of the Ohio Public Defender and 2152.20 [court costs, fees and restitution].
3. The Committee is currently working on mandatory bindover.

### **DATA COLLECTION & SHARING COMMITTEE UPDATE**

Chair Judge Dumm updated the group on the following:

1. Data Primer Repository – The Committee continues its work on an Ohio specific data primer report identifying statewide data collection, its use and accessibility. This is still in draft form and not yet available.
2. Sex Offender Registration Ad Hoc Report – published April 2016 and delivered the Recodification Committee.

### **MEMBER UPDATES/NEW BUSINESS**

Judge Fragale updated the group on his county pay to stay in jail and the declaration of undo hardship. They have since discontinued the practice and he offered to share information with members who are interested.

With no other business from the members, Vice Chair Selvaggio adjourned the meeting.

## **2016 Full Commission Meeting Dates**

**Thursday, Sept. 15, 2016 10:00a**

**Thursday, Dec. 15, 2016 10:00a**