



CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

**OHIO CRIMINAL SENTENCING COMMISSION– MEETING VIA ZOOM  
FULL COMMISSION MEETING NOTES  
September 16, 2021**

**MEMBERS PRESENT**

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge  
Kristin Boggs, State Representative  
Brooke Burns, Attorney, Juvenile – Office of the Public Defender  
Beth Cappelli, Municipal Court Judge  
Charles Chandler, Peace Officer  
Robert DeLamatre, Juvenile Court Judge  
Robert Fragale, Domestic Court Judge  
Sean Gallagher, Appeals Court Judge  
Ryan Gies, Department of Youth Services  
Gwen Howe-Gebbers, County Prosecutor  
Robert Krapenc, Criminal Defense Attorney  
Nathan Manning, State Senator  
Jennifer Muench-McElfresh, Common Pleas Court Judge  
Stephen McIntosh, Common Pleas Court Judge  
David Painter, County Commissioner  
Elizabeth Poprocki, Crime Victims Representative  
Kenneth Spanagel, Municipal Court Judge  
Brandon Standley, Chief of Police  
Cecil Thomas, State Senator  
Tim Young, Ohio Public Defender

**GUESTS PRESENT**

Director Lori Criss, Ohio Mental Health and Addiction Services  
Michael Donnelly, Supreme Court Justice  
Reginald Routson, Common Pleas Court Judge  
Dr. Hazem Said, University of Cincinnati  
Dr. Reggie Wilkinson  
Gene Zmuda, Appeals Court Judge

**STAFF PRESENT**

Sara Andrews, Director  
Nikole Hotchkiss, Research Specialist  
Todd Ives, Research Specialist  
Scott Shumaker, Criminal Justice Counsel



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### **CALL TO ORDER & ROLL CALL OF COMMISSION MEMBERS**

Vice-Chair Selvaggio called the meeting to order and called the roll was taken from the zoom attendee list.

### **MEETING NOTES APPROVAL**

Judge Fragale moved to accept meeting minutes from the June 24, 2021 meeting, seconded by Judge Capelli. The minutes were approved without objection.

### **OHIO MENTAL HEALTH AND ADDICTION SERVICES UPDATE**

Judge Selvaggio introduced Director Lori Criss of the Ohio Department of Mental Health and Addiction Services (OMHAS). She began by thanking the partners that OMHAS works with daily to help people with mental health and addictions issues. Director Criss then shared a slideshow of the work OMHAS has been doing, including a subsidy program for specialized dockets in partnership with the Supreme Court of Ohio. They are providing funding to over 200 courts in Ohio, with benefits shown in lower recidivism rates in those courts.

Director Criss focused on three new initiatives: expanding the crisis response system, educating stakeholders on the changes of the recently passed Senate Bill 2, and a program aimed at enhancing overall wellness for multi-system adults.

OMHAS is focusing on crisis services to act as an alternative to arrest or emergency department visits. The Crisis Services Whitepaper Report, available on the OMHAS website, explains goals and funding strategies in further detail. The Ohio Crisis Task Force Committee will be geared toward enhancing integration and collaboration between various agencies. The agency is also working on the implementation of a 988 crisis response number, transitioning from a national 10-digit suicide prevention number and local lifeline numbers.

Senate Bill 2, effective this year, gives courts two options for individuals found not competent to stand trial and have a nonviolent misdemeanor charge. Now, they may be hospitalized by civil commitment or referred to an outpatient competency restoration program. OMHAS is funding regional outpatient restoration programs so that all 88 counties have a program to refer to. OMHAS has been working with the AG's Office and the Supreme Court to provide educational opportunities on the changes made in Senate Bill 2 for courts, families, and the behavioral health system.

OMHAS is also piloting a program aimed at multi-system adults – individuals with four or more psychiatric hospitalizations and who are also involved in other systems such as criminal justice. They hope to help facilitate system collaboration at the local level. They also want to help establish strategize based on a person-centered approach – this helps the individual buy into a treatment plan and is tailored to their individual needs.

Danny Eldredge, an attendee, asked what money from the American Rescue plan could be used for these OMHAS programs and how much money is needed. Director Criss distinguished between what are one-time infrastructure costs, things that the American Rescue Plans could be used for, but also the need for continuing



funding for those programs, and workforce costs, that would require additional allocations in the state budget. OMHAS is exploring all the funding dollar opportunities and how they might be used overall.

Judge Selvaggio talked about his county's recent forensic monitor meeting, where they talked about a protocol for individuals being released into the community after being restored to competency or NGRI treatment. He asked about how many other communities are participating in such programs, and if those were local focused or statewide. Director Criss offered to send specific numbers but noted that this is a big area of focus for their organization, as NGRI and Competency Restoration are big populations in their facilities.

Liz Poprocki stressed how exciting the efforts Director Criss shared is to the advocacy community and expressed her gratitude that this work is being done. Commissioner Painter expressed concern about the responsibility and liability that falls on counties, specifically regarding crisis intervention. He spoke of the dual concerns of law enforcement that respond to crisis situations: crisis intervention and public safety. Sometimes things go wrong and results in very expensive liable suits. He asked if there have there been any conversations about this issue and discussions about revisions to SB2 to address this. Director Criss made a note of this issue and it is something that the teams are working on and trying to take a practical approach that local communities incur with these approaches. OMHAS is working to strengthen their relationship with county commissioners. They have also been working to build out interdisciplinary teams so that a social worker accompanies a police officer during a crisis intervention.

#### **UNIFORM SENTENCING ENTRY AND THE OHIO SENTENCING DATA PLATFORM UPDATES**

Judge Selvaggio introduced Judge Zmuda and Dr. Hazem Said to discuss the Ohio Sentencing Data Platform and the Uniform Sentencing Entries. Dr. Said gave a short presentation on the OSDP System Architecture proposal discussing the three portals currently in development – a data collection portal, a public portal, and an offense code portal. Information in the public portal will display information as a profile based on demographic information rather than providing personal identities. The goal is to allow the court to tell the story of their sentences. He reviewed a diagram of how the entry generation will work and how data will be captured, along with where the OSDP will integrate with other existing systems. He outlined the rationale behind the public portal proposal, stressing the need for small, iterative steps along with a gradual approach and a strong roadmap of where the system is headed. The use of portals in the development process also allows the system to remain open to new opportunities discovered through the roadmap process. Judge Zmuda asked that Hazem return to give the commission another update at the Commission's December meeting.

Judge Zmuda then discussed the OSDP's Governance Board recent decisions to vote that the OSDP will be the data owner for the OSDP project. Judge Selvaggio raised a concern about the development of the USE and the OSDP and whether the public's access to the data can be used to accurately tell the story. He cited narratives being painted about what access will be to the data, what it might show, and how that data can be used. He would like to hear more about what the public will be able to see and how criminal justice partners can use the data. Judge Zmuda discussed the importance of the portal model – the specific details of which will be fleshed



out after further discussions including public input. Judge Selvaggio remains concerned that the existing narrative around the platform will not meet the promoted expectations. Judge Zmuda looks forward to future discussion on the matter.

## **25 YEARS OF SB2: ROUNDTABLE DISCUSSION**

Director Andrews introduced Dr. Reggie Wilkinson, former director of ODRC, to facilitate a roundtable discussion about the status of Ohio's criminal justice system after the 25-year anniversary of Senate Bill 2. The hope is that this discussion is the first step of creating a roadmap to reduce complexity of Ohio's criminal statutes, consistent with the Commission's vision and mission.

Dr. Wilkinson discussed some of the history of SB2 and the spirited discussions that led to that legislation. Many of the same issues discussed then are still at the forefront today – what effect will this have on prison and jail populations, and what costs will be involved for communities and the state, for example. He cited several questions being raised, such as if Senate Bill 2 is still true to its proposed nature, or if 25 years of tinkering have fundamentally altered the scheme. He cited discussions about complexity and the effect on population numbers as well, and the opportunity now to further address those topics. He also noted the Commission's publication on the word expansion of R.C. 2929.19 as a need for this type of discussion. Each of the panelists then took a turn outlining their largest concerns.

Judge Selvaggio discussed his experience as a county prosecutor and now as a judge with the lengthy amount of time that must be spent by the court at sentencing providing notifications to the defendant. He sees many of those advisements as being better suited to the Adult Parole Authority. Having to advise a defendant on very complex sentencing notifications at the sentencing hearing only prolongs an already stressful, fraught process where all a defendant, and the audience, want to know is what the sentence will be.

Justice Donnelly discussed the problems with a post-SB2 system as he sees it. SB2 as written, modified by the legislature and case law, combined with the lack of aggregate CJ data statewide, has left Ohio with a system designed to create disparate outcomes throughout the state. A sentence has less to do with the facts of the case than the judge to which a defendant is assigned. He believes that the public is calling out for these disparate impacts to be addressed – citing the recent cases which made the news in Cuyahoga County. This becomes a threat to public trust and confidence in the system. He believes that the current OSDP efforts are light-years ahead of the current systems. We can be national leaders and provide the citizens with the most transparent, just system possible.

Senator Manning discussed that sometimes, lawmakers work on specifics of the bill but misses the big picture of the system. He would like to see the Sentencing Commission to take a more active role at the legislative level, and believes the leadership feels the same way. Senator Manning discussed an effort to address sentencing holistically through an omnibus bill, and the importance of having as much consensus on the proposed reforms as possible.



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Judge Zmuda talked about his role as the chair of the USE ad hoc committee, and how the large size of that document reflects the complexity of the current statutory code. He directed members to the Commission's webpage and the history of publications and information it has produced on the need for and problems with criminal justice reforms. It has grown increasingly difficult for common pleas judges to sentence in Ohio. SB2 was a tire on the wheel of justice that has had several flats fixed by the legislature, and those patches keep modifying the tire, and now the wheel is in danger of not spinning. We may have reached the point where the tire can no longer be patched and must discuss what new tire to use. The USE will provide the data to inform what type of structure should be put in place.

Judge Routson discussed his experiences working with new judges and advising them on the ways to take a plea and sentence. Each year it gets more and more difficult to train new judges because sentencing laws conflict and are unwieldy. The central theme of SB2 was truth in sentencing, and after 25 years things have become so complex that judges are struggling to get their sentences right, and that illustrates the need for a simpler structure. He does feel that reforms that place constraints on judges only put more power in the charging decisions made by the prosecutor, and that discussions with all parties at the table are needed to find the right balance of discretion at all levels. He also noted the need for the Commission to be restored to prominence as a voice for reforms at the legislature.

Judge Gallagher outlined four points to improve sentencing law: First, immediately repeal SB2 and save Ohio taxpayers millions of dollars. He believes that the law has created needless appeals, with judges simply having to say magic words with no meaningful change. Second, he would like to see finality in sentencing restored. While sentencing used to be conclusion of process, now it's just the beginning. Third, Judge Gallagher would like to restore simplicity to sentencing. He cited issues with problems imposing SB 201 sentences and the number of required advisements. While defendants always indicate that they understand their pleas he doubts that they do because no one—including the judges and lawyers do. Lastly, he would like to see a return to a parole based release system that gives incentives for good behavior (and vice versa), thereby removing the responsibility that the court monitor a case from cradle to grave.

Senator Thomas asked how the Commission can help the system address issues of implicit bias, be it through data capture, or through additional training on the issue. Mr. Wilkinson said this is a topic that should be part of the larger discussion.

Judge McIntosh commented that SB2 was intended to get sentences out of the hands of the parole board, based on appearances of inequitable treatment by the Board, as well as the minimum under old law not actually being a minimum. Did those issues get resolved by SB2, and if not, why? Judge Gallagher responded that the issue was the lack of a transparent model for good time reductions under old law.



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Judge DeLamatre brought up his experience with sentencing in juvenile court with serious juvenile offenders. He mentioned that he may get one case a year it's virtually impossible to do criminal sentencing due to the complexity of the code. He discussed the juvenile system that stresses a rehabilitative model, and while that may not entirely translate, it suggests it should at least be discussed. Simple, smart reforms with rehabilitative principles that are built in will increase transparency and decrease errors. He suggested that, when fashioning reforms, considering if a judge who rarely handles the issues can step in and easily understand what must be done. If a judge who doesn't have to do it often can easily do it, that could be a test of the simplicity. A judge having to have a guidebook in this does not inspire confidence.

Director Geis discussed how DYS has transformed their facilities, and the juvenile system, in the same SB2 timeframe. They've hugely decreased both their populations as well as the number of youth adjudicated as felony offenders. Transfers to adult court have decreased as well, and this has led to DYS receiving the kind of youth they should – high risk and high needs individuals. Gun specs, however, now represent a much larger portion of their population. He credited judges at the local levels crafting solutions and programming for youth as one of the reasons for these declines.

Elizabeth Poprocki stated that there is no definitive response to this from victims or victim advocates. Victims have not seen the level of transparency they would like from SB2, but they did not see it under old law. She did note that both victims and their advocates experience a loss of confidence in the system because of how complex the system has become. Even advocates don't fully understand the system, and victims even less so. The community is divided between restorative vs. rehabilitative approaches, but victims and the public both deserve better than the current system where minor errors often lead to the re-hearings of the type Judge Gallagher discussed.

Brooke Burns echoed Judge DeLamatre's concerns about SYO offenders citing the most recent sentencing changes making those decisions much more difficult. Because the juvenile code is written for youth, they see less disparity, except with issues of mandatory prison or transfer to adult court. She would also like discussions to address these sentencing disparities at the juvenile level.

Judge Capelli discussed sentencing from a municipal court viewpoint. Municipal courts tend to have more discretion in sentencing than common pleas courts, and they appreciate the discretion they have been given. They are not likely to favor any reduction to their discretion.

Judge Selvaggio asked members interested in further discussion to contact Sara Andrews by Monday or Tuesday of next week. Judge Selvaggio proposes that the group use Judge Gallagher's four points as a jumping off point to reexamine the sentencing structure. Sara Andrews suggested that interested members meet in October and she will coordinate with Dr. Wilkinson.

With no further business for the good of the order, there was a motion to adjourn by Judge Spanagel and the meeting was adjourned at 12:06pm.