

OHIO

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
March 18, 2021**

MEMBERS PRESENT

Maureen O’Connor, Chair, Chief Justice
Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Lara Baker-Morrish, City of Columbus
Paula Brown, Ohio State Bar Association
Brooke Burns, Attorney, Juvenile – Office of the Public Defender
Beth Cappelli, Municipal Court Judge
Charles Chandler (Brian Stewart), Peace Officer
Robert DeLamatre, Juvenile Court Judge
Robert Fragale, Domestic Court Judge
Sean Gallagher, Appeals Court Judge
Gwen Howe-Gebers, County Prosecuting Attorney
Terri Jamison, Juvenile Court Judge
Kevin Miller, Ohio State Highway Patrol
Jennifer Muench-McElfresh, Common Pleas Court Judge
Stephen McIntosh, Common Pleas Court Judge
David Painter, County Commissioner
Kenneth Spanagel, Municipal Court Judge
Brandon Stanley, Chief of Police
Cecil Thomas, State Senator
Tyrone Yates, Municipal Court Judge
Tim Young, Ohio Public Defender

GUEST PRESENTERS PRESENT

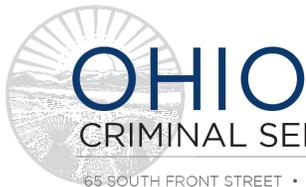
Jeffrey Reed, Common Pleas Court Judge
Gene Zmuda, Appeals Court Judge
Hazem Said, University of Cincinnati

STAFF PRESENT

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

CALL TO ORDER & ROLL CALL OF COMMISSION MEMBERS

Vice-Chair Selvaggio called the meeting to order. The roll call of attendees was taken from the webinar participant list.



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POINT OF PRIVILEGE

After calling the meeting to order, Judge Selvaggio thanked Mary Oakley and Brigid Slaton staff of the Ohio Department of Rehabilitation and Correction for their recent assistance interpreting an issue that arose in his court with the post-release control statute. He told the group that he hopes the Commission can have a role in simplifying the post-release control statutes.

MEETING NOTES APPROVAL

Judge Selvaggio then referred members to the December 17, 2020 meeting notes, which were approved without objection after a motion by Judge Spanagel, seconded by Judge Fragale.

COMMENTS OF THE CHAIR

Judge Selvaggio opened the floor to Chief Justice O'Connor for opening remarks. The Chief Justice sympathized with Judge Selvaggio's observations as to the unnecessary complex sentencing scheme in the state, noting the challenge it presents for trial judges.

SENTENCING DATA PLATFORM PROJECT UPDATE AND DEMO

Judge Zmuda, chair of the Ad Hoc Committee for the Uniform Sentencing Entry gave an update on the Sentencing Data Platform. He noted that much of the effort of the Ad Hoc Committee centered around creating entries that would help judges navigate through the complex sentencing scheme that the Chief Justice and Judge Selvaggio mentioned. He then directed members to the meeting materials regarding the Sentencing Data Platform for further background on the effort. He asked Judge Jeffrey Reed, Allen County Common Pleas Court Judge, who is serving as the pilot court for the Sentencing Data Platform, to speak about his experience.

Judge Reed said that he believes that the Uniform Sentencing Entries will help point out all the necessary sentencing issues to judges, serving almost as a treatise on criminal law. He has been using the forms since September 2020. He was asked to serve as the pilot county for the Data Platform, and feels that Allen County is an excellent place for the project to start, given the size of the county and the caseload of the court. While adopting the form into existing workflow took time, he has come to see how the forms will help collect necessary data on the court's criminal caseload, and stressed the value of that data to judges. The University of Cincinnati representatives who are building the platform came to visit his court in December and have another visit scheduled in early April, and he was impressed with how thorough Dr. Said and his team were – it illustrated how important it is to them to understand what the court needs and to produce programs to fill those needs.

Judge Zmuda then told the group that the process has grown organically, from development of the entries to their adoption, and that the goals of development of the Data Platform have centered around making a product that works with existing processes. He then introduced Dr. Hazem Said of the University of Cincinnati who shared a PowerPoint laying out the discovery phase and roadmap of the Data Platform development. He and his team immediately recognize the complexity of the project due to the diversity of criminal justice stakeholders in the state, and the desire for the process not to be disruptive. The court visit with Judge Reed helped the team to develop a six-step process to integrate the Data Platform with local court case management systems. With that process in place, the effort then shifted to seeing if the platform could be rolled out to more courts more quickly. They've visited Lawrence County Common Pleas, and having additional court visits in the near future, including another trip back to Allen County. They hope to have the platform expanded to other



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courts in June. After the initial discovery phase of around one year, they expect a two to five-year expansion and iteration on the platform as development progresses.

Dr. Said then gave the group a demo of the Data Platform application, which uses an excel spreadsheet extracted from the court's existing case management system and enters that data into the Data Platform. The Platform has a front-facing dashboard that will be customized with additional functionalities as development continues through the incremental approach being taken for the project. The team recognizes the need for the application to be user-friendly and customizable, as it is important to the reliability of the data that the folks using the system are comfortable with it. Dr. Said showed how courts will submit data into the platform by uploading the excel spreadsheet, and the immediate availability of that information in the platform to produce a Uniform Sentencing Entry. Users can then update case information as needed or proceed immediately to drafting the entry, using buttons and drop-down menus based on the language and instruction of the Uniform Sentencing Entry. Many fields prepopulate data from the case management upload. The application saves automatically for ease of use, and can be easily changed as needed – this allows for different types of user approaches, whether the entry is prepared ahead of sentencing, during, or after. Once the entry is finalized in the application, the entry can be extracted into a word document in Uniform Sentencing Entry format, with the ability for Courts to supplement the language of the entry as needed. They expect the rollout of the application to lead to additional language being added, with the potential for custom form generation potentially in the future. The application is primarily a sentencing entry development application, with the data being a secondary benefit.

Judge McIntosh asked about where data entry to the application may occur. Judge Zmuda told the group that it will vary by court but the goal remains to integrate with existing systems to eliminate redundant data entry. Judge Reed said this was his first time seeing the application, and that all of the work Dr. Said described is already being done in his court – this will allow him to focus more on the sentencing decisions. He described his current process and how this application will make his courtroom more efficient. Lara Baker-Morrish asked what case management vendors have been contacted, and Judge Reed and Zmuda noted that both Allen County and Lawrence County use Courtview, but that they anticipate the ability for the platform to integrate with other vendors. Judge Zmuda noted for the group that this application eliminates the need for multiple forms for different types of cases – and that the Uniform Sentencing Entry and the Data Platform application will continue to be updated with the most current law, helping judges avoid errors in sentencing. Judge Zmuda then mention other courts that have reached out to be involved in the project including Cuyahoga, Franklin County, Champaign, Hamilton, Summit, and Wood Counties. Once the group saw proof of concept, it worked to expand the adoption of the entries and application more quickly.

Judge Selvaggio then congratulated the Commission and the Ad Hoc Committee on the initial success of the rollout. He reiterated a concern that education on the forms for new judges will be necessary, to stress that sentencing isn't just a checklist in an application, and the need for understanding of why the language is necessary and of the law itself.

OHIO SUPREME COURT JURISPRUDENCE & LEGISLATIVE CONSIDERATIONS

Scott Shumaker then discussed Supreme Court of Ohio criminal law jurisprudence since 2017 and advised a report will be published in the near future. The report summarizes the decisions, provides the relevant code sections or legal provisions addressed, and details any subsequent actions taken as a result of the bill or



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otherwise on the topic. It also provides recommendations for potential legislative action on those topics, where applicable, and references other proposals including the previous work of the Commission, the efforts of the Criminal Justice Recodification Committee, and the Justice Reinvestment 2.0 initiative. Recognizing the earlier statements by Judge Selvaggio and the Chief Justice on statutory complexity, Scott summarized those recommendations as revolving generally around three central themes: complex statutes and procedures, appellate review of sentences, and the struggle to implement and apply new or revised statutes in light of historical precedent. He noted the interplay between the three themes – complicated statutes lead to unforced errors and the need for appellate review, which creates new precedent that can make it harder for the legislature to institute changes that mesh with historical practices. He asked members to jump in with questions or comments, as the goal of the presentation was to spark discussion about potential work of the Commission moving forward. He then led the group through a brief discussion of cases that illustrate each of those themes and their interplay, culminating in a review of cases surrounding “technical violations” of community control and a new statutory definition provided in House Bill 1, taking effect April 12, 2021.

Members discussed the changes in House Bill 1, with Judge Selvaggio asking what incentive a judge would have to use the provisions returning a technical violator to community control. He doesn't see the sense in violating someone and sending them to prison only to have them brought back to community control. Judge Gallagher expressed concerns about forced on-going supervision rather than allowing them to be terminated and supervision to conclude. Tim Young said this was additional evidence of his belief that the criminal justice system is not the right avenue to address the addiction issues and that the system will continue to struggle with these debates until that larger issues is addressed.

HOUSE BILL 1 IMPLEMENTATION WORKGROUP UPDATE

Lara Baker-Morrish then updated the Commission on the workgroup formed in accordance with 133 GA House Bill 1's requirement that the Sentencing Commission study the impact of the Bill's provisions and report on them to the Governor by the end of 2021 and biannually thereafter. The goal is determining the scope of that impact analysis and looking into what data might be available and how any available data might be used to judge impact. Record sealing changes will be addressed at the March meeting the following week, and Lara touched on the sealing changes made by the bill, including expanding the cap on number of offenses effecting eligibility and changing the statutory waiting periods for eligibility. The Committee recognizes that studying these changes may be difficult due to lack of data on the actual number of eligible offenders and on the number of applications for sealing than are made.

Lara then discussed the changes to Intervention in Lieu of Conviction, which will be the subject of the workgroup's April meeting. The community control changes will be discussed at the June meeting, and the group will focus on available data on technical violations and how that data might be measure for impact related to the bill.

She also mentioned the changes to probate involuntary commitment provisions, noting a recent amendment to SB2 being currently considered that makes a change to those provisions. Dave Forman, an audience member, asked a question about when the probate provisions will be discussed and if the meetings are open to other interested parties. Lara said probate changes will be discussed in May and Sara Andrews told Mr. Forman she will add him to the distribution list as we're open to additional participants.



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CONCLUSION

The next Commission meeting is set for June 24th, 2021. Sara noted that this is not a third Thursday to avoid a conflict with the Common Pleas Judges Association meeting.

With no further business for the good of the order, the meeting was adjourned.
