



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 & ADVISORY COMMITTEE – MEETING VIA ZOOM FULL COMMISSION MEETING NOTES December 17, 2020

MEMBERS PRESENT

Maureen O'Connor, Chair, Chief Justice
Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Lara Baker-Moorish, City of Columbus
Brooke Burns, Attorney, Juvenile – Office of the Public Defender
Beth Cappelli, Municipal Court Judge
Charles Chandler, Peace Office
Robert DeLamatre, Juvenile Court Judge
Robert Fragale, Domestic Court Judge
Sean Gallagher, Court of Appeals Judge
Gwen Howe-Gebers, County Prosecutor
Ryan Geis, Director – Department of Youth Services
Kathleen Hamm, Public Defender
Jennifer Muench-McElfresh, Common Pleas Court Judge
Stephen McIntosh, Common Pleas Court Judge
Aaron Montz, Mayor
Larry Sims, Sheriff
Ken Spanagel, Municipal Court Judge
Brandon Stanley, Chief of Police
Tyrone Yates, Municipal Court Judge
Tim Young, State Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Jill Beeler, Ohio Public Defenders Office
Douglas Berman, Professor of Law, OSU
Jim Cole, Juvenile Court Administrator
Lois Hochstetler, Ohio Department of Mental Health and Addiction Services
Keith Spaeth, Common Pleas Court Judge representing OJACC
Andy Wilson, Office of Governor DeWine
Gene Zmuda, Appeals Court Judge

STAFF PRESENT

Sara Andrews, Director
Nikole Hotchkiss, Research Specialist
Todd Ives, Researcher
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 of members.

MEETING NOTES APPROVAL

Judge Selvaggio then referred members to the September 24, 2020 meeting notes, which were approved without objection.

SENTENCING DATA PLATFORM UPDATE

Judge Zmuda, chair of the Ad Hoc Committee for the Uniform Sentencing Entry gave an update on the Sentencing Data Platform. They have created teams to break down the necessary work of creating the database. An implementation team consisting of University of Cincinnati Information and Technology (IT) subject matter experts and Commission staff.

The second group is known as the Project Team, which will examine the framework created by the Implementation team, and provide feedback on how to best tweak the framework to fit day to day practice in Ohio courts. Finally, a Governance Board will be established to oversee the policy recommendations of the Project team and present those recommendations to the Commission.

A College of Judges, many of whom worked on the Uniform Entries, will both review the entries for accuracy and work as advocates for the project moving forward with practitioners throughout the state.

The Commission received grant funding from the Ohio Department of Public Safety Office of Criminal Justice Services to help start the development of the database. Judge Zmuda thanked Director Andrews for her efforts in securing the grant. Judge Zmuda and Director Andrews have also worked with professors at the Ohio State University to try to link criminal justice risk assessments with algorithmic values. They expect to update the group more on that effort at the Spring 2021 meeting.

Judge Jeffrey Reed of Allen County has agreed to serve as a pilot county for implementation of both the uniform entries and the Ohio Sentencing Data Platform (database).

Given the nature of the uniform entries as a living document an Update Protocol Committee was created to review changes to the law and new jurisprudence to ensure that the entries are routinely updated for accuracy and clarity. Director Andrews noted that these updates were recently sent to the current Uniform Entry user group, and asked Commission member to reach out if they were interested in seeing the changes.

In addition to the data able to be gathered by implementation of the Uniform Entries, the working groups will try to identify data silos that might be able to be linked to the Sentencing Database in the future, such as prosecutorial case management system.

Judge Zmuda hopes to show substantial progress at the spring 2021 Commission meeting. A site visit to Allen County Common Pleas was just completed, and was an exciting and successful step in the process.

Judge Selvaggio congratulated the Ad Hoc Committee members for their efforts and the product they produced. He expressed a concern about how the entries might be used, namely a worry that the “check-box” nature of



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the entries could lead to a formulaic approach to the sentencing process. He stressed the long-term need for training for judges on the need for full and thorough consideration of all aspects of the criminal justice process, in order to ensure that judges understand the gravity of their duties, and to instill confidence in their decisions in the eyes of the public. Judge Zmuda replied that the entries were created to be a tool, rather than a crutch, requiring thought and direction to be applied to use of the document. Judge McIntosh also commented that he believes adoption of the Uniform Entries will improve sentencing and the attendant entries throughout the state.

LEGISLATIVE UPDATE

Scott Shumaker then updated the Commission on several bills of interest being considered during the lame duck session as well as items that might be picked up again in the next General Assembly. He began with discussion of Senate Bill 3 dealing with reform of drug statutes. Commission staff worked with the OJC to ensure that if the bill passes it would have a delayed effective date of July 1, 2021 to give the criminal justice system time to educate practitioners and to implement necessary changes to case management.

Scott then discussed House Bill 1, which makes changes to the Intervention in Lieu process as well as record sealing expansion. Scott also mentioned House Bill 604, which reformed record sealing and is expected to be picked up in the next General Assembly.

House Bill 256 dealing with establishing parole eligibility dates for juveniles with extended sentences and bans use of life without parole sentences for juveniles passed the Senate. Senate Bill 331, the sunset review bill, has passed the House and is awaiting Senate concurrence. It would eliminate the Commission's advisory committee, and eliminates a juvenile committee that we've functionally not used for several years. Both of those changes are part of a larger modernization effort for the Commission that will move forward in the next General Assembly.

House Bill 215 contained several legislative fixes for the 132 GA SB 201 "Reagan Tokes" indefinite sentencing scheme. It has seeming stalled, but Commission staff will continue to work to get those necessary changes passed. Commission staff have also worked with appellate judges to create a document, hosted on the Commission's website, that tracks the appellate decision of SB 201 cases. He noted that the Supreme Court recently certified a conflict between districts and agreed to take up the issue of whether SB 201 sentences are ripe for review.

Commission staff have also worked with the Supreme Court to explore additional search functionality for the Court's "Issues Accepted for Review" page, which would allow practitioners to more easily see what issues are currently being considered by the Supreme Court.

Scott also discussed House Bill 431 creating a Sexual Exploitation Database, which has been whittled down, but now has had several bills amended into it. House Bill 136 prohibits the death penalty being imposed for individuals who suffered from one of four "serious mental illnesses" at the time they committed the capital offenses.



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Judge Selvaggio suggested two goals for the Commission in 2021. First, education materials that Commission staff have produced should be more available. Second, he cited *State v. Penwell* 2020-Ohio-6727, in which the appellate court stressed the complicated nature of Ohio's sentencing scheme and a need for "clear, precise, and uniform" criminal laws both to ease administrative burden and help the public understand the law. Judge Selvaggio hopes the Commission will make efforts to advocate for simplification of the criminal code, whether that is single-subject task forces which suggest changes or larger comprehensive efforts.

LOOKING AHEAD TO 2021 AND THE FUTURE

Director Andrews opened the floor up for member updates and conversation among the group. Judge Gallagher echoed Judge Selvaggio's suggestion about bringing clarity and simplification to the Appellate review process. He hopes those efforts will continue moving forward.

Judge Fragale asked if the Commission should recommend legislation standardizing the "new normal" of criminal practices in the time of the pandemic, to help avoid claims of due process violations. Judge Selvaggio touched on a few small changes being considered to the criminal rules on that topic. This would include Criminal Rule 43. Judges want to use Zoom as often as possible, but the need for a defendant waiver of presence can make that problematic. Sara Andrews will also check with the I-Court Task Force to see what changes they are considering on that topic.

Director Andrews noted that Gwen Howe-Gebbers and Chief Chandler have both been reappointed to the Commission. Current juvenile judge representative Terri Jamison has been elected to the court of appeals.

Chief Standley discussed problems they've found with the law adequately addressing "online" crimes, from youth being contacted by adults online and phone scams against the elderly. He's hopeful they can come up with some recommended legislative changes in the near future to help the law better address these new technological crimes. Lara Baker-Moorish suggested the group investigate changes providing a method for misdemeanor investigative subpoenas, which would often be useful in these types of "online" offenses.

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