



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

**OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE**  
**Full Commission Meeting Notes**  
**December 13, 2018**

**MEMBERS PRESENT**

Maureen O'Connor – Chair, Chief Justice of the Supreme Court of Ohio  
Nick Selvaggio, Vice-Chair, Common Pleas Court Judge  
Lara Baker-Morrish, City of Columbus Solicitor General  
Kristin Boggs, State Representative  
Brooke Burns, Attorney, Juvenile – Office of the Public Defender  
Robert Delamatre, Juvenile Court Judge  
Carl DiFranco, Municipal Court Judge  
Gary Dumm, Municipal Court Judge  
Robert Fragale, Domestic Court Judge  
Gwen Howe-Gebers, County Prosecutor  
Scott Gwin, Appeals Court Judge  
Kathleen Hamm, Public Defender  
Thomas Marcelain, Common Pleas Court Judge  
Charles McConville, County Prosecuting Attorney  
Stephen McIntosh, Common Pleas Court Judge  
Michael Williams for Harvey Reed, Department of Youth Services  
Brandon Stanley, Chief of Police  
Kenneth Spanagel, Municipal Court Judge  
Larry Sims, Sheriff  
Niki Clum for Tim Young, State Public Defender

**ADVISORY COMMITTEE MEMBERS PRESENT**

Douglas Berman, Professor of Law, OSU  
Jim Cole, Juvenile Court Administrator  
Lori Criss, The Ohio Council  
Paul Dobson, County Prosecutor  
Jim Lawrence, OCCA  
Jason McGowan, Ohio Chief Probation Officer's Association  
Cynthia Mausser, Department of Rehabilitation and Correction  
Michele Miller, Department of Rehabilitation and Correction  
Paul Pfeifer, Ohio Judicial Conference  
Keith Spaeth, Common Pleas Court Judge representing OJACC  
Carey Williams, CORJUS

**STAFF PRESENT**

Lisa Hickman, PhD – Research Specialist  
Todd Ives, Researcher  
Scott Shumaker, Criminal Justice Counsel  
Sara Andrews, Director

## **CALL TO ORDER & ROLL CALL OF COMMISSION MEMBERS, ADVISORY COMMITTEE**

The December 13, 2018 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order by Vice-Chair Selvaggio and he called the roll of members and advisory committee.

## **APPROVAL OF MINUTES FROM SEPTEMBER 27, 2018**

The minutes of the September 27, 2018 meeting of the full Commission were unanimously approved.

## **DRUG TREND OVERVIEW**

Sara Andrews introduced presenters John Born, Director of the Ohio Department of Public Safety, and Dr. Justin Trevino, Assistant Medical Director at the Ohio Department of Mental Health and Addiction Services.

Director Born discussed efforts to disrupt the flow of drugs into Ohio, and highlighting changes trends in supply and demand as witnessed through the efforts of law enforcement. He noted that Ohio is a big center for both retail drug trade as well as distribution of controlled substances. He reviewed a handout detailing the amounts of different controlled substances seized by law enforcement since 2010, highlighting the recent decline in opiate seizures and the increase in methamphetamine and heroin arrests. This change in supply is an effort on the part of the cartels to react to changes in the market – as law enforcement cracks down on one type of drug, traffickers introduce different drugs to the marketplace to supply a product and shift demand. He emphasized cartel sophistication, noting the amount of information they have about the market, their product, and the efforts of law enforcement. Director Born also discussed the importance of the El Paso Intelligence Center, a DEA provider of tactical intelligence on the drug trade, in drug enforcement efforts both statewide and nationally.

Dr. Trevino discussed efforts to address the population of individuals seeking treatment for substance abuse disorders. He noted that a number of factors are often present in those individuals, ranging from genetic predispositions to socioeconomic triggers, and the importance of recognizing all those factors in providing effective treatment. The Ohio Substance Abuse Monitoring Network takes findings from eight Ohio regions to detail substance abuse trends throughout the state. These findings are published twice a year in detailed reports distributed by the Department of Mental Health and addiction services, and provide valuable information on shifting trends throughout the state. He noted that while medically-assisted treatment coupled with psycho-social treatment represents the gold standard in treating opiate addiction, the medical community is still looking for the best and most effective medical approach to treating methamphetamine addiction. Dr. Trevino also stressed the importance of recognizing substance abuse as a public health issue, and the need for attachment and engagement with pro-social community ties in order for treatment to succeed.

Chief Justice O'Connor asked whether any medical professional can engage in medically assisted treatment with their patients. Dr. Trevino discussed efforts to work with medical schools to better train new members of the profession to deal with substance abuse issues. Judge McIntosh asked what, if any, studies had been done to see why demand for drugs continues to skyrocket. Dr. Trevino noted that only an estimated 10% of those with substance abuse problems present for treatment, making true analysis difficult. Director Born noted the importance of stopping first use and the part education and prevention have to play in that effort.

Dr. Trevino went on to detail the importance of developing a recovery mindset and engagement with both the treatment program and the community. The substance is often viewed as a reward by an individual suffering

from a disorder, so a rewarding environment that can fill the gap left by abstaining from drug use is important. Lori Criss discussed the importance of Cognitive Behavior Therapy programs in treating substance abuse disorders, as well as training and engagement at all parts of the treatment spectrum, including physicians, social workers, and all those who support the treatment programs.

## **DISCUSSION OF DRUG CHAPTER PROPOSALS**

Discussion of the proposals aimed at revising Ohio’s drug laws began with Columbus Solicitor General Lara Baker-Morrish detailing the “Klein-O’Brien” proposal. The main thrusts of the proposal are a reduction of current felony four and five possession offenses to misdemeanors of the first degree, a removal of mandatory prison terms for possession offenses, retroactive provisions for reclassification of prior drug possession convictions, and a proposed definition of technical violation for individuals on probation for drug offenses. She noted that the “Klein-O’Brien” plan came about in light of issue 1, and was shaped by concerns that collateral consequences of a felony conviction can hamper recovery efforts, such as creating a barrier to finding stable housing. Ms. Baker-Morrish noted that this proposal was aimed at starting a conversation, and that it was not put forth as a be-all and end-all drug proposal.

Scott Shumaker from Sentencing Commission staff detailed a proposal based upon the work of the Ohio Criminal Justice Recodification Committee. The Commission proposal reduced low level possession offenses to misdemeanors, eliminated the distinction between possession and trafficking offenses at higher levels, and altered low level trafficking offenses to allow for conviction for “possession with intent,” bringing that statute in line with similar statutes in nearly every state. The Commission proposal also included the remaining changes to the drug chapter suggested by the Criminal Justice Recodification Committee. Director Andrews noted that the Sentencing and Criminal Justice Committee voted to share this proposal with the legislature at their November meeting, due to a sense of urgency regarding drug policy changes following the election. Mr. Shumaker continues to fine-tune the proposal based on feedback from interested parties.

Judge Spaeth then discussed the distinction between drug offenses as a public health issue versus a criminal issue. He felt that judges need the “hammer” of a potential felony conviction to drive people into treatment. Discussion ensued regarding the availability of CBCF or other residential treatment for misdemeanants. Kathleen Hamm noted that some CBCF programs are aimed at repeat offenders and may not be the best treatment program for low level drug offenders. She suggested that the criminal justice system needs the assistance of the treatment community in determining what treatment works best for varying populations. Lori Criss discussed the need for individualized responses rather than one-size-fits-all approaches to treatment modalities. Individuals with different risk levels need different responses to have the best chance at successful outcomes. Judge Fred Pepple cited a need for data to show what is working and what isn’t.

Athens County Prosecutor Keller Blackburn then discussed his “Fresh Start” proposal. He noted that West Virginia has misdemeanor possession offenses and that they have the worst problem with addiction in the country. His plan creates unclassified felony possession offense with an expedited sealing process, changes judicial release calculations, creates an offense of interstate trafficking, and numerous other changes. He discussed programs his office has undertaken, including a prosecutor based vivitrol program and drug programs for junior high students aimed at preventing first use. The “Fresh Start” proposal is currently being drafted by LSC for consideration in the next General Assembly.

Paul Pfeiffer then spoke on behalf of the Ohio Judicial Conference, noting the hard work of defeating issue one and expressing distaste for “Issue 1-lite” proposals. He feels there is little appetite from the judicial community to reduce drug possession offenses to misdemeanors, and suggested an idea of expanding civil commitment provisions to allow individuals with substance abuse disorders to be involuntarily committed to a treatment program.

Chief Justice O’Connor then spoke, thanking everyone who helped defeat Issue 1 for their hard work on that front. The Chief then discussed potential reforms in light of two goals: 1) Getting treatment for those with substance abuse disorders and 2) Eliminating the stigma of a felony conviction for those individuals to aid in recovery. The aims of any reforms should be toward achieving those goals in the simplest way. She suggested reforms of record sealing, expanded use of intervention-in-lieu, and holding convictions in abeyance as ways to effectively support drug court programs and offender success in treatment. Paul Pfeiffer discussed recent legislation that allowed for shared jurisdiction of municipal and common pleas court currently working well in Seneca County. Expansion of that legislation statewide would allow for more drug courts to be shared between Common Pleas and Municipal courts.

Paul Dobson then spoke on behalf of the OPAA. He noted that they are still taking a look at the various proposals suggested, but that they want to be part of a conversation going forward. Both he and Lou Tobin stated that they do not support reduction of possession offenses to misdemeanors and expressed concerns about minimizing crimes of drug use and the effect that might have to normalize drug use in the eyes of juveniles.

Kathleen Hamm expressed concerns that expanded record sealing may not go far enough to alleviate collateral consequences for felony convictions. Judge Pepple noted that the Recodification Committee looked to the HOPE model in Hawaii for supervisions procedures in drug cases. Cynthia Mausser from ODRC noted that studies of the HOPE model showed mixed results. Keller Blackburn expressed a concern that a misdemeanor conviction lacks sufficient length of a probation term to supervise recovery. Judge Selvaggio weighed in on the importance of a probation culture where it is OK for offenders to self-report relapse.

Niki Clum from the Ohio Public Defender’s office then discussed studies that have shown that severity of punishment, namely the imposition of a felony conviction, is not effective in decreasing drug use or reduce crime. OPD suggests efforts aimed at treating substance abuse as a public health crisis and using community based treatment with short jail stays only when necessary.

Director Andrews then asked for volunteers to work with Commission staff in the first week of January to develop an outline of policy goals to be considered by the Sentencing and Criminal Justice Committee. A number of stakeholders volunteered.

A motion was then made to adjourn the meeting and it was seconded. Vice Chair Selvaggio then adjourned the meeting.