

OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Full Commission Meeting Minutes
March 17, 2016

MEMBERS PRESENT

Nick Selvaggio, Common Pleas Court Judge
Ronald Burkitt, Hilliard Police Officer
John Eklund, State Senator
Fritz Hany, Municipal Court Judge
Thomas Marcelain, Common Pleas Court Judge
Ed Mejia, Ohio State Highway Patrol
Gary Mohr, Director, Department of Rehabilitation and Correction
Aaron Montz, Mayor
Steve McIntosh, Common Pleas Court Judge
Paul Dobson, Wood County Prosecutor
Gary Dumm, Municipal Court Judge
Dorothy Pelanda, State Representative
Harvey Reed, Director, Department of Youth Services
Albert Rodenberg, Sheriff, Clermont County
Kenneth Spanagel, Municipal Court Judge
Cecil Thomas, State Senator
Tim Young, State Public Defender's Office

ADVISORY COMMITTEE MEMBERS PRESENT

Jill Beeler, Ohio Public Defender's Office
Kari Bloom, Ohio Public Defender's Office
Douglas Berman, Professor of Law, Ohio State University
Dustin Calhoun, Chief Counsel, Department of Youth Services
James Cole, Montgomery County Juvenile Court
Lori Criss, Ohio Council
Lara Baker-Morrish, Columbus City Attorney's Office
Kyle Petty, Department of Youth Services
Steve Gray, Chief Counsel, Rehabilitation and Correction
James Lawrence, Ohio Community Corrections Association
John Leutz, Ohio County Commissioner's Association
Michele Miller, Warden, Belmont Correctional Institution
Chris Nicastro, Ohio Department of Mental Health & Addiction Services
David Picken, Attorney General's Office
Joanna Saul, CIIC
Keith Spaeth, Butler County Court of Common Pleas Judge, OJACC
Mark Schweikert, Executive Director, OJC
Gary Yates, Butler County Court Administrator, Chief Probation Officer's Association

CALL TO ORDER

The March 17, 2016 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order at 10:04a and Vice Chair Selvaggio proceeded with the roll call of members.

APPROVAL OF THE NOVEMBER 19, 2015 MINUTES

The minutes of the November 19, 2015 meeting were unanimously approved with the correction to add Member Kathleen Hamm in the list of members present.

ADULT EXTENDED SENTENCE REVIEW

Jo Ellen summarized the Ad Hoc Committee on Extended Sentences draft language regarding review of extended sentences for adults. The proposed language only applies to nonviolent F3, and F4 and F5 offenses. The language allows a review of the offender's sentence after a specified time period and specifies the process for that review. Paul Dobson suggested language to clarify subsection 3 by striking 'requiring a sentence that' and replace with 'for which the penalty'. Senator Eklund asked about import to the word 'requiring', which was explained by Mr. Dobson.

Vice Chair Selvaggio suggested the original intent for the proposal was to review sentences outside the norm, yet the proposed draft appears to take the role of the appellate court and give it to the Parole Board, opining that the proposal, in essence, is an indefinite sentence review applied to definite sentencing. Vice Chair Selvaggio also stated the proposal does not address multiple victim, serial cases. Mr. Dobson stated that the goal of the proposal is to identify those 'outlier' cases and establishes a system to catch only those cases. Mr. Schweikert said that the proposal, in practice, can be a cap on consecutive sentences explaining that the Parole Board could routinely reject the longer sentences, equating to the cap and in turn, an executive branch agency second guessing the judge. Director Mohr advised that the Ad Hoc Committee is a diverse group and made significant adjustments to the language before recommending a final proposal. He stated it is a balanced perspective and he supports it.

Vice Chair Selvaggio called for a vote and a motion was made to amend the language as noted by Mr. Dobson, the vote to accept the amended language was unanimous. The motion to accept proposed language as amended was made by Judge Spanagel, seconded by Director Mohr. The motion carried by a vote of 14-1 in favor, Vice Chair Selvaggio opposed.

JUVENILE – RESTITUTION

Paul Dobson noted the restitution language is intended to supplement the costs and fine language already approved by the Commission at the meeting on November 19, 2015. He explained the Juvenile Justice committee recommends language making changes to 2152.20 regarding restitution. Specifically, the committee recommends pulling restitution out of 2152.20 and making a separate section dealing solely with restitution. In addition, the committee recommends insertion of language regarding ability to pay and reducing a restitution order to a civil judgment.

Representative Pelanda moved to accept the proposed language and Judge Spanagel seconded the motion. Discussion followed to include Mr. Young stating the language creates a new civil status against a child and that it is troubling that court can create an order that exceeds its jurisdiction. Mr. Dobson countered that the language is intended to address the real damage to the victim and is meant to hold the juvenile accountable to victim.

Ms. Davies said that section is the most controversial and that in all other parts of the proposed language there is agreement. She said there will be and is significant opposition to it. Senator Thomas asked about current processes and does it rest with parent when the juvenile turns 21? Mr. Dobson clarified that the victim can initiate a civil action up to \$10,000.00 defaulting to the legal guardian of the juvenile, otherwise the restitution order terminates.

Ms. Beeler asked members to consider the population affected – children. No one disagrees if ability to pay, they should pay, but have to consider indigent families and she feels that the proposed language is the wrong direction on how we treat children, juvenile court and collateral consequences. Senator Eklund noted the language in section E states when the child turns 21 the restitution order expires and the proposed language says the restitution order may be reduced to judgment – if it has expired, what can be reduced? Judge Marcelain clarified that the intent allows the court discretion.

Judge Spanagel noted the proposed language is consistent with adult code.

Representative Pelanda advised the group that a great deal of time and effort was made by the Committee to amend what factors to consider, consider lines 127-213 which are unique to the juvenile population. She cautioned the group about tossing ‘baby with bath water’.

Director Mohr asked about what record is made if at 21 the order is continued, does the record apply to adult record? Extended restitution be a public record? Mr. Dobson opined that the underlying offense is not affected. Judge Haney asked the position of juvenile judges. It was noted the language was drafted and proposed by Judge DeLamatre.

Vice Chair Selvaggio called the vote. The motion carried by 11 affirmative votes to 4 opposition votes from Members Young, Thomas, Rodenberg and Reed.

SEX OFFENDER REGISTRATION – ANALYSIS AND RECOMMENDATIONS

Jill Beeler explained the Ad Hoc Committee expanded its membership and created a detailed analysis of the issues, data and recommendations. The consensus is moving toward a hybrid risk and offense based Tier registry. Noting that the goals of the revisions are public safety and effective use of resources. She detailed the executive summary and recommendations from the meeting materials. Ms. Beeler then moved to adopt and forward the recommendations to the Recodification Committee. Director Mohr seconded the motion. Discussion included Professor Berman noting that the courts are becoming more active in review of broad sex offender laws. Senator Eklund asked for follow up information regarding sex offenders and recidivism and information will be forwarded to him, specifically a thesis written by Judge Huffman who has participated on the Ad Hoc Committee. Mr. Schweikert noted that recommendation #15 *Failure to Register penalties: For first offense, violation of registration (2950.04, 2950.05, 2950.06) should be a F5 if the underlying offense was an F3, F4, or F5. Subsequent violations of registration offense should be an F4. Violation of registration should be a F3 if underlying offense was a F1 or F2. No violation of registration offense should include mandatory prison time* is something judges have talked about for a long time.

Vice Chair Selvaggio called the vote, members unanimously voted to adopt and forward the recommendations to the Recodification Committee.

RIGHTS RESTORATION – RECORD SEALING

Professor Berman said the Ad Hoc Committee expanded its membership, is working from a draft background and analysis paper – which ultimately suggests repeal and rewrite of the record sealing statutes and has reviewed draft legislation shared by Senator Seitz and drafted a response to the Senator. He also asked for interested members to join the group as there is an in-person meeting scheduled April 14, 2016 at 1:00p.

Professor Berman then summarized the letter to Senator Seitz and moved the Commission favorably vote to forward the letter as written. Senator Eklund seconded the motion and Judge Spanagel offered a friendly amendment to remove the phrase ‘respectfully wonder if you might be inclined’ on page 2 and revert to a prior draft version the sentence.

Vice Chair Selvaggio called the vote, members unanimously voted to adopt the motion as amended and forward the letter to Senator Seitz.

FOSTER

Jo Ellen reported at the February meeting of the Sentencing/Criminal Justice Committee, Steve Hardwick with the Ohio Public Defender’s office and Brian Martin with the Department of Rehabilitation and Correction gave a presentation regarding the legal history of *State v. Foster* and its impact on the inmate population. Director Mohr discussed impact and dramatic numbers without tangible impact. He stated it is an important piece of work and asked Judge Peple to discuss how the work may intersect with the Recodification Committee.

Judge Peple explained he is working with Tim Young, Ron O’Brien and Director Mohr on 2929 and making progress. He suggested a special meeting of the group and the Commission to discuss the 2929 package. He noted the issues are complicated but seem to have mutual work and outcomes. The Committee is making more progress than people anticipated.

Jo Ellen asked if the Commission should begin work on a foster fix or wait. Judge Peple said he thinks he will have the 2929 product/information to share by mid to late April, so that might be a good time to arrange a meeting.

BAIL REFORM

Director Andrews secured technical assistance from the National Institute of Corrections to frame and pursue objectives in the reform of bail in Ohio. Representatives from NIC will be in Ohio in late April for a meeting with the Bail Reform subcommittee. Additionally, the subcommittee has expanded membership, surveyed jail administrators and judges on pretrial services and is in the process of compiling that information. Jo Ellen stated the group will be looking at monetary bail and its application – risk based bail decisions. Senator Thomas and Judge Haney expressed interest in participating on the group.

DATA PROJECT

Director Andrews proposed a data project and partnership with the University of Cincinnati, Institute of Crime Science (ICS). The goal of the project generally is to identify criminal justice indicators and overlay the various agency and local data sets in one place to evaluate what the data tells us. The ICS team will be conducting a data analytics demonstration in early June 2016. She asked the Commission to support the project. Senator Thomas made the motion to support, Judge Marcelain offered the second and members voted unanimously to approve the project.

ANNOUNCEMENT

The commission was updated on sad news that former director Terry Collins passed away this morning. Director Mohr offered comments and shared a few memories with the Commission.

SENTENCING & CRIMINAL JUSTICE COMMITTEE WORK CHART ITEM #3: TRANSITIONAL CONTROL UPDATE

Brian Martin provided the group an update on several internal projects centered on expanding involvement in Transitional Control (TC) based on independent research. Placements increased by 1000, while administrative returns declined. He also provided the group with a one page handout specific to SB143 which was effective 09-2014, noting the data is provided, not an analysis – others will have to interpret the data.

Director Mohr noted the impact appears to be more offenders are participating in TC without negative public impact. Brian noted DRC is releasing an additional 500 inmates annually. Mr. Schweikert asked if DRC is releasing more than Judges, noting the judicial veto rate is about the same before and after enactment. Brian clarified there is a difference between numbers and rate – they are not the same. Other data points mentioned included county level data, variation, recidivism rates, recidivism & relationship to ORAS scores – the group is interested in more information to identify trends. Judge Marcelain asked about the new provision nicknamed treatment transfer [Community Substance Use Disorder Treatment Program] – effective 09-2015. Director Mohr said the first females are in program – two camps – Toledo and Youngstown and 2100 inmates are eligible. The question was asked why do inmates decline to participate in TC? Michele Miller said each institution administers the explanation of the program differently and implementation of the no waiver policy has improved process and screening with more offenders getting into the program, plus there is consistency. Brian said the refusal rate was 7-8% last several years, 500-700/year and overall out of 22,000 inmates, DRC is releasing 4,000 into Halfway Houses each year.

The group agreed more data is needed and the TC committee will meet to discuss outcome data and provide an update later this year.

SENTENCING & CRIMINAL JUSTICE, CHAIR JUDGE SPANAGEL & CHAIR YATES

Judge Spanagel provided general updates on the OVI simplification recommendations, HB307/SB204 – the discretionary driver’s license suspension bills and HB388 – Annie’s Law – all of which remain pending legislative action.

JUVENILE JUSTICE, CHAIR DOBSON

Jo Ellen updated the members that SB 272 – the Juvenile Life Without Parole legislation was referred to the Government Oversight and Reform Committee, but has not been on the agenda for a hearing. She also advised the Committee decided not to pursue revisions to Juvenile SORN and that mandatory bind over is on the agenda for the next meeting.

DATA COLLECTION & SHARING, CHAIR JUDGE DUMM

Judge Dumm advised the Data Primer Repository is in draft form and requested that members review it and provide input on content. Erin asked that members contact her directly with suggestions. Judge Dumm also reminded members that the Committee is willing to gather data and research upon request from the other committees.

RECODIFICATION COMMITTEE UPDATE – JUDGE FREDRICK PEPPE & OTHER MUTUAL MEMBERS

Judge Pepple said the Committee’s work is conducted chapter by chapter – each month committee works through specific chapters for presentation to the entire group at the monthly meeting. The number of chapters voted out thus far is six and when voted out of Committee, the work is referred to the Legislative Service Commission for drafting. The goal is to prepare a full package for public comment and eventual passage. The Committee is on target to finish August 1, 2016. Of note, a special 2925 meeting is scheduled for April 28, 2016. Judge Pepple emphasized a full package, not individual pieces of legislation.

MEMBER UPDATES/NEW BUSINESS

Judge Spanagel noted that the subject of probation violations, financial sanctions, fines and collection processes is back on criminal justice committee work chart. Mark Schweikert advised that OJC has a policy statement on the issue and there was a joint task force in recent history. He opined more often than not the legislative and executive branches of government push courts to generate revenue and budget. The group agreed that the

subject needs comprehensive look – including identification of all statutory fines/costs. Other suggestions for the group include the examination of village processes, alternatives to a new Misdemeanor 4 level offense for nonpayment of fines and assisting incarcerated offenders with addressing warrants and financial sanctions prior to release. Mr. Young noted the recent Department of Justice position regarding predatory collection laws and advised it is important to follow Ohio’s bench card on the subject. Jo Ellen noted the juvenile financial sanctions bench card is complete and will be distributed in the near future.

Vice Chair Selvaggio affirmed this is Mark Schweikert’s last meeting, as he is retiring April 1, 2016 from the Ohio Judicial Conference. Vice Chair Selvaggio thanked Mark for his leadership, guidance and support for the work of the Commission and said that when the Advisory Emeritus group is established, he will be a member.

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

2016 Full Commission Meeting dates

Thursday, June 23, 2016 10:00a

Thursday, Sept. 15, 2016 10:00a

Thursday, Dec. 15, 2016 10:00a

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