



Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

Committee Meetings

May 14, 2015

Moyer Judicial Center

10:00a

Room 281 – Sentencing Committee

Room 109 – Data Collection/Sharing Committee

Room 108 – Juvenile Justice Committee

12:30p

Food for Thought*

12:30p

Room 281 – Criminal Justice Committee

*Lunch provided for those who reserved one

Committee Meeting Agenda

- I. Introductions**
- II. Select Chairperson, Vice-Chair and identify other members, if needed**
- III. Review Priorities & Time-Line**
- IV. Member Assignments/Tasks**
- V. Establish Future Meeting Dates and Logistics**

Joint Task Force to Review the Administration
Of Ohio's Death Penalty
SUMMARY OF RECOMMENDATIONS

RECOMMENDATION		VOTE COUNT	PAGE NUMBER	Implementatio n
1)	Custodial interrogations, as defined by <i>Miranda v. Arizona</i> , shall be recorded and, if not recorded, then the statements made during the interrogation should be presumed "involuntary."	13-5	3	None
2)	The Joint Task Force recommends that each coroner's office be required to become accredited by the National Association of Medical Examiners (NAME), or have at least one person on staff or under contract who is a fellow of that organization (and who performs the procedure in the case), or have in place a contract with an accredited crime lab.	18-1	3	None
3)	The Joint Task Force also recommends that, subject to the special rule specified below, if evidence of the sort customarily subject to testing in a laboratory in a death penalty case is not originally reviewed by an accredited lab, then the defendant shall have the right to have the evidence reviewed a second time by an accredited lab. More specifically, any prosecution evidence that has not been tested in an accredited lab shall be retested in an accredited lab, at the request of the defendant and at the state's expense. If such a request is made, there will be no reference at trial to the first test (in a non-accredited lab) except as may be necessary to establish chain of custody. Defense forensic experts shall also be required, by Supreme Court rule, to rely on testing by accredited labs, at the request of the prosecution, in death penalty cases.	17-2	3	None
4)	The Joint Task Force recommends that legislation be enacted to require all crime labs in Ohio be certified by a recognized agency as defined by the Ohio General Assembly.	10-6	4	None
5)	The Joint Task Force recommends that the legislature enact legislation to require prospective proportionality review in death penalty cases to include cases where the	10-7	4	None

	death penalty was charged in the indictment or information but was not imposed			
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6)	The Joint Task Force also recommends that the Supreme Court of Ohio mandate by court rule that, prospectively, all death eligible homicides be reported to a central data warehouse both at the charging stage and at the conclusion of the case at the trial level.	15-1	5	None -
7)	The Joint Task Force recommends that the Ohio Legislature amend R.C. 2929.03(F) to include the necessity for a prosecutor's rationale for a proposed plea agreement, on the record, for any indicted capital offense that results in a plea for a penalty less than death	15-1	5	None
8)	Enact legislation to consider and exclude from eligibility for the death penalty defendants who suffered from "serious mental illness," as defined by the legislature, at the time of the crime. Appropriate questions for the legislature to consider include: 1. Whether "serious mental illness" is causally related to the crime? 2. Whether the determination of "serious mental illness" should be considered before trial or at some other time as determined by the legislature? 3. Whether this issue is already adequately addressed by current law?	15-2	6	SB 162 introduced
9)	Enact legislation to exclude from eligibility for the death penalty defendants who suffer from "serious mental illness" at the time of execution.	12-7	6	None
10)	Adoption of an order, in the case of a pro se defendant who is competent to stand trial but may not be competent to represent himself or herself because of a mental health illness or developmental disability, directing either the appointment of counsel to conduct the trial or to act as "stand-by counsel" or "co-counsel" to assist the pro se defendant, or to assume or resume to proceed with trial as counsel of record, in the event the defendant changes their mind about proceeding as a pro se litigant.	11-1	7	None
11)	Adopt the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.	12-2	7	None
12)	Adopt the Supplementary Guidelines for the Mitigation Function of Defense Team in	13-4	8	None

	Death Penalty Cases. This recommendation is not meant, however, to alter the standard adopted in <i>Strickland v. Washington</i> .			
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13)	Enact and fund a Capital Litigation Fund to pay for all costs, fees, and expenses for the prosecution and defense of capital murder cases.	19-0	8	None
14)	It is specifically recommended that increased funding be provided to the Office of the Ohio Public Defender, by statute, to allow for additional hiring and training of qualified capital case defense attorneys, who could be made available to all Ohio counties, except in circumstances where a conflict of interest occurs, at which time a separate list of prospective appointed counsel would be provided.	20-0	9	None
15)	The Ohio legislature and Supreme Court of Ohio should implement and fund a statewide public defender system for representation of indigent persons in all capital cases for trials, appeals, post-conviction, and clemency except where a conflict of interest arises. In cases of conflicts of interest, qualified Rule 20 counsel shall then be appointed.	13-3	9	None
16)	Enact legislation to provide that private defense counsel appointed to represent death eligible defendants or those sentenced to death are equally paid throughout the state regardless of the location of the offense.	16-0	9	Partial H.B. 663 Effective 3/23/15 Requires Court to adopt a uniform fee schedule for appointed counsel
17)	Enact legislation that maintains that a death sentence cannot be considered or imposed unless the state has either: 1) biological evidence or DNA evidence that links the defendant to the act of murder; 2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or 3) a video recording that conclusively links the defendant to the murder; or 4) other like factors as determined by the General Assembly.	12-6	10	None
18)	Enact legislation that does not permit a death sentence where the State relies on jailhouse informant testimony that is not independently corroborated at the guilt/innocence phase of the death penalty trial.	19-0	10	None

19)	The legislature should study how to best support families of murder/homicide victims in the short and long term.	19-0	12	H.B. 663 Effective 3/23/15
20)	Enact legislation that allows a defendant to withdraw his or her waiver of a jury trial in either the guilt or penalty phase if either phase is reversed by a reviewing court.	11-7	12	None
21)	Amend Rule 20 of the Rules of Superintendence for Ohio Courts in the manner attached to these final recommendations as Appendix B.	18-0	12	Partial Court adopted Rules for Appointment of Counsel in Capital Cases
22)	The Ohio Rules of Practice and Procedure shall be amended so that a properly presented motion must be accepted for filing for a ruling by the court in a death penalty case.	18-0	12	None
23)	Amend Sup.R. 20, adding Section (E). Section (E) would read as follows: E. Post-Conviction Counsel. Post-conviction counsel shall satisfy all of the following qualifications: 1. Be admitted to the practice of law in Ohio or admitted to practice pro hac vice; 2. Have at least three years of civil or criminal litigation or post-conviction experience in Ohio; 3. Have specialized training, as approved by the committee, on subjects that will assist counsel in the post-conviction of cases in which the death penalty was imposed in the two years prior to making the application; 4. Have experience as counsel in the post-conviction proceedings of at least three felony convictions in the seven years prior to making the application.	18-0	12	None
24)	The time frame for filing a post-conviction motion should be extended from one hundred eighty (180) days after the filing of the trial record to three hundred sixty five (365) days after the filing of the trial record.	17-0	13	H.B. 663 Effective 3/23/15
25)	The judge hearing the post-conviction proceeding must state specifically why each claim was either denied or granted in the findings of fact and conclusions of law.	19-0	13	Proposed S.B. 139
26)	The common pleas clerk shall retain a copy of the original trial file in the common pleas clerk's office even though it sends the originals to the Supreme Court of Ohio in connection with the direct appeal.	19-0	13	Proposed S.B. 139

27)	There shall be no page limits in post-conviction petitions for death penalty cases in either the petition filed with the common pleas court or on appeal from the denials of such petition.	14-3	13	Proposed S.B. 139
28)	Amend R.C. §2953.21, as attached to this final report in Appendix C, to provide for depositions and subpoenas during discovery in post-conviction relief.	13-3	13	Proposed S.B. 139

29)	Mandate through the Rule 20 Committee that all attorneys who practice capital litigation must take a certain number of CLE hours on the issue of racial bias. Mandate mandatory CLE for prosecutors who prosecute death penalty cases to educate them on how to protect against racial bias in the arrest, charging and prosecution of death penalty cases. Mandate that Judges assigned to death penalty cases must also attend specialized training regarding racial bias in death cases and how to protect against it.	12-2	13	None
30)	Mandate that any judge who reasonably believes that any state actor has acted on the basis of race in a capital case be reported to the Office of Disciplinary Counsel or, if not an attorney, to the appropriate supervisory authority.	12-2	14	None
31)	Mandate through the Rule 20 Committee that all Rule 20 approved trainings must include at least one hour of training regarding the development of discrimination claims in death penalty cases and how to preserve Batson issues for appellate review.	13-1	14	None
32)	Mandate that an attorney must seek the recusal of any judge where “a reasonable basis for concluding that the judge’s decision making could be affected by racially discriminatory factors” and should the judge not recuse, if the attorney still believes there is a reasonable basis for concluding that the judge’s decision making could be affected by racially discriminatory factors, then the attorney shall file an affidavit of bias with the Chief Justice of the Supreme Court of Ohio.	8-5	14	None
33)	Based upon data showing that prosecutors and juries overwhelmingly do not find felony murder to be the worst of the worst murders, further finding that such specifications result in death verdicts 7% of the time or less when charged as a death penalty case, and further finding that removal of these specifications will reduce the race disparity of the death penalty, it should be recommended to the legislature that the following specifications be removed from the statutes: Kidnapping, Rape, Aggravated Arson, Aggravated Robbery, and Aggravated Burglary.	12-2	14	None

34)	To address cross jurisdictional racial disparity, it is recommended that Ohio create a death penalty charging committee at the Ohio Attorney General's Office. It is recommended that the committee be made up of former county prosecutors, appointed by the Governor, and members of the Ohio Attorney General's staff. County prosecutors would submit cases they want to charge with death as a potential punishment. The Attorney General's office would approve or disapprove of the charges paying particular attention to the race of the victim(s) and defendant(s).	8-6	14	None
35)	Enact legislation allowing for racial disparity claims to be raised and developed in state court through a Racial Justice Act with such a claim being independent of whether the client has any other basis for filing in that court.	13-1	15	None
36)	To ensure a more representative jury pool, enact legislation that requires every jurisdiction to create jury pools from the lists of all registered voters and all licensed drivers, who are U.S. citizens, rather than only the voter registration list.	12-2	15	None
37)	Enact a court rule that allows prosecutors and defendant's attorneys in death penalty cases full and complete access to all documents, statements, writings, photographs, recordings, evidence, reports or any other file material in possession of the state, any agent or agency of the state, or any police agency involved in the case, or in the possession of the defendant's attorneys which is known to exist or which, with due diligence, can be determined to exist and to allow the attorneys to inspect, test, examine, photograph or copy the same. This shall not be construed to require the disclosure of attorney work product or privileged matters, nor to the disclosure of inculpatory information possessed by the defendant's attorneys described in Crim.R. 16 (H) (3), nor to materials protected by Crim.R. 16.	17-0	15	None
38)	Enact legislation to require a prosecutor to present to the Grand Jury available exculpatory evidence of which the prosecutor is aware.	10-9	16	None

39)	Adoption of an order requiring implementation of mandatory on the record pre-trial conferences. Further, the Joint Task Force recommends appropriate Judicial College education to emphasize the necessity for conducting such conferences, all of which must be on the record, to begin at the earliest stages of the case and to address issues pertaining to discovery, Brady disclosures, and appointment of experts. The pre-trial conference shall be ex parte upon the request of defense counsel and upon good cause shown as to matters related to defense experts but shall be on the record. After inquiry by Court as to status of discovery, counsel for state and defendant shall be ordered to declare their compliance with all discovery obligations and the State shall affirmatively assert disclosure of all exculpatory matters pursuant to Brady.	10-5	16	None
40)	The Ohio statute providing for attorney-client privilege should be amended to provide that a claim of ineffective assistance waives the privilege in order to allow full litigation of ineffectiveness claims. The waiver will be limited to the issue raised.	18-0	16	H.B. 663 Effective 3/23/15
41)	The Task Force voted to urge all parties involved to work on procedures to remove any impediments to a fair and timely resolution of death penalty cases in the Ohio courts.	12-6	16	None
42)	There should be a codification of the right to have counsel present at the clemency hearing.	15-0	17	None
43)	Enact legislation or administrative regulation to provide that death penalty clemency proceedings in Ohio include: A. The parole board hearing must be recorded by audio, video or court stenographer and be a public record. B. The interview of the condemned inmate must be recorded by audio, video or court stenographer and be a public record. C. The inmate's counsel must be allowed to counsel the client in the interview; D. The parole board must reveal to counsel for the defendant and the state all documents, witnesses and information it will consider in reaching its decision; E. The inmate's "master file" must be released to his/her counsel at least 6 months before the parole board hearing; F. Counsel for the inmate and the State must	17-1 16-2 11-8 18-1 18-0 18-0	17	None

	<p>disclose and exchange all information to be relied upon at the parole hearing at least 30 days before the hearing with attorney certification and a continuing duty to disclose.</p> <p>G. Identify a funding mechanism, such as a capital litigation fund, for inmate’s mental health expert or state expert so that an expert can be hired in a timely manner for the parole board hearing.</p> <p>H. The legislature should ensure adequate funding, such as a capital litigation fund, for private counsel who prepare for and represent a condemned inmate at a Parole board hearing;</p> <p>I. Require annual mandatory training of all Parole Board members for a minimum of six hours by mental health and forensic science experts and by other experts relevant to death penalty issues.</p>	<p>12-2</p> <p>11-1</p> <p>18-0</p>		
44)	The Ohio Judicial Conference shall, on an annual basis, work with attorneys and judges to review and revise, as necessary, the jury instructions in death penalty cases to ensure that jurors understand applicable law. In particular, the Conference shall request, on an annual basis, input from the Ohio Prosecuting Attorney’s Association, the Ohio Association of Criminal Defense Lawyers, Ohio Public Defender, and the members of the Ohio Judicial Conference.	16-0	19	None
45)	The Ohio Judicial Conference shall review and revise as necessary the Ohio Jury Instructions to institute the use of “plain English” and “plain English” shall be used throughout capital trials.	14-1	20	None
46)	In capital cases, jurors shall receive written copies of “court instructions” (the judge’s entire oral charge) to consult while the court is instructing them and while conducting deliberations.	16-0	20	H.B. 663 Effective 3/23/15
47)	The Ohio Judicial Conference shall study the Ohio Jury Instructions to make clear that a jury must always be given the option of extending mercy that arises from the evidence as cited in Justice Scalia’s dissent in Morgan v. Illinois, 504 U.S. 719, 751 citing to Woodson v. North Carolina, 428 U.S. 303-305.	10-8	20	None
48)	The Ohio Judicial Conference shall ensure the Ohio Jury Instructions make clear the weighing process for considering aggravating	13-4	20	None

	circumstances and mitigating factors should not be conducted by determining whether there are a greater number of aggravating circumstances than mitigating factors.			
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49)	Implementation of enhanced mandatory, educational and minimum experience and/or certification requirements for all participating legal counsel (appointed and retained) and all Ohio judges (including Common Pleas, Appellate, and Supreme Court) to allow for their participation in a capital case. The Ohio Judicial College could be utilized as the vehicle to implement the mandatory educational requirements for judges. Certain minimum standards for the appointment and performance of legal counsel (appointed and retained) in capital cases should be set forth in the rules and could, in exceptional circumstances, be waived, with the consent of the Supreme Court of Ohio, if it is determined that the attorney's ability or the judge's qualification otherwise exceeds the standards required by the rule. The adoption of this rule would require some amendment or modification to Sup.R. 20.	21-0	21	Partial Court adopted Rules for Appointment of Counsel in Capital Cases
50)	The Joint Task Force recommends implementation of educational guidance for presiding judges as to when and how to intervene in situations of potential ineffective lawyering. Additional guidance should also be emphasized to assure effective utilization of the recusal process by participating legal counsel, when incurring issues of preconceived opinions or otherwise prejudicial positions of trial judges. For clarification, the education guidance would highlight procedures for recognizing these issues in such a way that the trial court would not damage or undermine the client's confidence in his or her legal counsel; however, the Joint Task Force also recognizes that if ineffective assistance of counsel is found, the court has a duty to step in and address the issue.	17-4	21	None
51)	Adoption of a rule directing that a presiding trial judge, or the Administrative Judge, in conformity with Sup.R. 20, is the appropriate authority to appoint legal counsel in a capital case.	14-5	21	None
52)	Adoption of a rule directing that the trial judge is the appropriate authority for the appointment of experts for indigent defendants. The rule should further provide that the decision pertaining to the appointment of experts shall be made, on the record, at one of the prescribed Pre-Trial	13-5	21	None

	<p>Conferences.</p> <p>If defense counsel requests, the demand for appointment of the expert shall be made in-camera ex parte, and the order concerning the appointment shall be under seal.</p> <p>Upon establishing counsels' respective compliance with discovery obligations, the question of the appointment of experts (including determination of projected expert fees based upon analysis of expert's time to be applied to the case as well as consideration of incremental payment of expert fees as case progresses) would be decided by the court, which decision would be subject to immediate appeal, under seal, to the appropriate Court of Appeals. The trial court judge shall make written findings as to the basis for any denial. Although concerns have been raised as to the ability of the Appellate Court to provide the anticipated, necessary expedited hearing within a reasonable time-frame, the Joint Task Force suggests that this issue be elevated to the status of a final appealable order and that the necessary expedited appellate process be spelled out in the statute.</p>			
53)	<p>The Supreme Court should take the lead to adopt a uniform process for the selection of indigent counsel in capital cases, including the establishment of a uniform fee and expense schedule, all of which would be included in the proposed Criminal Rule for Capital Cases (discussed below).</p>	20-0	22	<p>Partial H.B. 663 Effective 3/23/15</p> <p>Requires Court to adopt a uniform fee schedule for appointed counsel</p>
54)	<p>Should the present process of appointment of indigent counsel by the judiciary continue, the main objective should always be to assure the best educationally experienced and qualified candidate, who is available (within the county or outside the county), and who is otherwise willing to take on the responsibilities associated with the case for an appropriate fee and accompanying expenses, is appointed. A uniform fee schedule for such services across the State of Ohio must be a necessary consideration to assure the equal protection and due process for the accused in a capital case.</p>	21-0	22	<p>Partial H.B. 663 Effective 3/23/15</p> <p>Requires Court to adopt a uniform fee schedule for appointed counsel</p>

55)	Adoption of reporting standards to provide complete transparency of record, including requirements to ensure better record keeping by the trial judge and the provision of additional, detailed resource information necessary to assure strict compliance with due process, which information shall be submitted to the Supreme Court upon completion of the case. Such resource information may include unique Constitutional issues, unique evidentiary issues, significant motions, plea rationale, pre-sentence investigation, and any additional information required by the Rule 20 Committee or the Supreme Court of Ohio. Additional types of resource information could be developed as part of the mandated educational process conducted by the Ohio Judicial College.	16-0	22	None
56)	The Joint Task Force believes that some of the recommendations above could be accomplished by the adoption of a separate Criminal Rule for Capital Cases. The Joint Task Force recommends that such a rule be adopted and provide for the mandatory training of attorneys and judges (Recommendation 49), the selection and appointment of indigent counsel in capital cases (Recommendation 51), and the enforcement of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and the Supplementary Guidelines for the Mitigation Function of Defense Teams (Recommendations 11 and 12).	16-0	22	Partial Court adopted Rules for Appointment of Counsel in Capital Cases

At the April 23, 2015 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee, the Commission priorities were grouped by time frame and subject matter.

1. Time frame categories:
 - a. Immediate: Three months or less
 - b. Short Term: Three to six months
 - c. Long Term: Six months to one year
 - d. Extended: More than one (1) year
2. Subject matter committees:
 - a. Criminal Justice: address future role of commission, respond and make recommendations regarding more broad areas including probation, risk assessment, release programs, specialized dockets, community corrections and improving as well as building relationships and coordinating the work of the Commission with other justice partners – both state and federal.
 - b. Sentencing: study criminal penalties and sentencing statutes and patterns in Ohio, recommend statutory change and review national developments and trends on matters of sentencing.
 - c. Data Collection and sharing: develop, coordinate and identify ways to collect and develop methods for sharing appropriate data and information with justice system partners.
 - d. Juvenile Justice: review and recommend strategies to combat juvenile delinquency and recidivism.
 - e. Executive: consider recommendations from committees of the Commission, review and make recommendations with regard to the work of the Commission, including legislative matters and publicly represent the Commission's interests, if needed.

It is recommended that each committee consist of a chair, a vice chair and individual members. The chair of each committee, the Vice Chair of the Commission and the Director will comprise the Executive Committee. The Chair of the Commission serves as an ex officio member and others may be added if recommended.

The committee chairs will be a Commission Member or an Advisory Committee member and staffed by the Criminal Sentencing Commission. Committee membership may include individuals outside of the Sentencing Commission Members and its Advisory Committee that have a vested interest in the Commission's work.

**The Committees will meet Thursday May 14, 2015 10:00 a.m.
at the Judicial Center for organizational purposes.**

Criminal Justice Committee membership

Judge Marcelain	Chrystal Alexander, Victims
Judge Spanagel	Cyndi Mausser, DRC
Director Mohr, DRC	Aaron Montz, Mayor
Elizabeth Miller, OPD	Steve Gray, DRC
Chris Nicastro, OMHAS	Gary Yates, OCPOA
Lara Baker-Morrish, City of Columbus	Michele Miller, DRC
Kathleen Hamm, Public Defender	Steve Van Dine, DRC
Jim Lawrence, OCCA	Paul Dobson, OPAA

Sentencing Committee Membership

Judge Marcelain	Kort Gatterdam, Defense Lawyers
Judge Spanagel	Judge Selvaggio
Judge McIntosh	Senator Thomas
Derek DeVine, Prosecutor	Tim Young, OPD
Lara Baker-Morrish, City of Columbus	Ryan Dolan, DRC
Lori Criss, The Ohio Council	Professor Berman, OSU
Kathleen Hamm, Public Defender	Jim Lawrence, OCCA
Steve Van Dine, DRC	

Data Collection and Sharing Committee Membership

Judge Dumm	Professor Berman, OSU
Gary Yates, OCPOA	Steve Van Dine, DRC
St/L Mejia, OSHP	Dave Picken/AG rep
Erin Waltz, Supreme Court Library	David Landefeld, OJACC
Mark Schweikert, OJC	

Juvenile Justice Committee Membership

Representative Pelanda	Senator Thomas
Representative Craig	Dustin Calhoun, DYS
Judge Delamatre	Kyle Petty, DYS
Director Reed, DYS	Jill Beeler-Andrews, OPD
Aaron Montz, Mayor	Linda Janes, DYS
Kathleen Hamm, Public Defender	Whitney Pesek, CIIC
Paul Dobson, OPAA	Jim Cole, Juv. Court Administrator

Executive Committee Membership

Criminal Justice Committee Chair	Chief Justice O'Connor, ex-officio
Sentencing Committee Chair	Judge Marcelain, Commission V-Chair
Data Collection & Sharing Chair	Sara Andrews
Juvenile Justice Committee Chair	Senator Eklund

Criminal Justice Committee:

Immediate Priorities (three months or less):

1. Clarify what is the precise role and function of the Criminal Sentencing Commission.
2. ~~Consider death penalty task force recommendations~~ – **removed as a priority and Commission will consider the periodic updates provided from the Supreme Court.**
3. ~~Appellate Review~~ – moved to sentencing subcommittee.
4. ~~Remove Halfway Houses from ORC 1.05 D (2). The only place in the ORC that defines Halfway Houses as sentencing serving facilities is ORC 1.05. The reference to the halfway houses in this section should be deleted, as it is in conflict with the other multiple definitions.~~ **S. Andrews will draft an interested party letter/letter of support for approval by the Commission.**

Short Term (three – six months):

1. Review expungement eligibility, filing times and general collateral consequences – consider an automatic removal of non-violent offenses after a period of time, ie. 25 years. *Note: 04-28-15 **HB172 CRIMINAL RECORDS LAW (BARNES, JR. J)** To enact the Fair and Accurate Reporting of Criminal Records Law, to require certain business entities that publish criminal record information to ensure that the information is complete and accurate, to provide a procedure by which a subject of published criminal record information may have incomplete or inaccurate information corrected or removed from the publication, and to provide remedies for the failure of a business entity to remove or correct incomplete or inaccurate information. 04-28-15 referred to Judiciary committee: **HB164 RECORD SEALING (Pelanda, D., Rogers, J.)** To allow a person who is convicted of an offense that may not be sealed to apply to have the conviction sealed if, before the person makes that application, the offense is changed so that it may be sealed.*

Long Term (six – twelve months):

1. Review how probation violations for fines and restitution are dealt with, consider decriminalizing nonpayment of fines and costs.
2. Review Transitional Control Program to determine if there are any policy or law changes needed to increase participation by inmates in the Transitional Control Program. Consider mandating Transitional Control exit for all Definite Sentence inmates; this would include a new penalty for those who fail to cooperate while on TC status. *initial work by criminal justice committee, then refer to appropriate subcommittee(s)

Criminal Justice Committee continued – Extended (more than one year):

1. Review DRC's Probation Improvement and Incentive Grant Program and the SMART program as a way to move toward a RECLAIM structure for all non-violent F3's, F4's and F5's.
2. Change the sentencing statutes so that commitments are to DRC, with DRC allowed to sort those committed to DRC among appropriate alternatives, ranging from intensive community supervision/ monitoring, CTC's, CBCF & HWH, and prisons of different sorts.
*initial work by criminal justice committee, then refer to appropriate subcommittee(s)

Sentencing Committee:

Immediate Priorities (three months or less):

1. Appellate Review – including extended and consecutive sentence review

Short Term (three to six months):

1. OVI law review & simplification
2. ORC 2951.041(F) Intervention in lieu of conviction – allow the courts discretion to continue this diversion program if the case warrants another chance. The statute seems to say otherwise.
3. Find a way to restore ORC presumption and appellate language from before the Foster decision.

Long Term (six – twelve months):

1. Increase options for non-violent drug offenders to be placed in community based programs
 - a. Consider making it mandatory for individuals with mental health issues to be placed in community based programs, especially if they committed low level and non-violent offenses. How do we provide services for individuals with drug dependencies?
 - b. Ensure fairness and certainty in sentencing; Require supervision for offenders leaving prison; Focus corrections resources on high-risk offenders; High rates of incarceration, growing correctional populations, and over-extended judicial caseloads; Offenders on parole or probation being sent back to prison for breaking rules of their release, not for committing new crimes.
 - c. Drug penalties – possession v. trafficking – restructure controlled substance offenses.

Sentencing Committee continued – Long Term (six – twelve months):

2. Drug penalties – mandatory sentences *note: 2011 monitoring report recommendations, October 2013 meeting discussion; November 2013 meeting discussion and memo ‘prison crowding’ dated 11-18-13.
3. Trace Cocaine Levels - time to address the misdemeanor-like "dumbing down" of our felony drug offenses *note – 2011 sentencing commission recommendation.
4. Revise or eliminate the sections in the O.R.C. that provide for an operator’s license suspension as a sentence for drug convictions.

Extended (more than one year): none

Data Collection/Sharing Committee:

Immediate Priorities (three months or less):

1. Marijuana penalty review and data collection (info collected). *publication, fact sheet – **already in progress**
2. Address felonization of misdemeanors and increasing lengths of sentence for existing felonies since adoption of new criminal sentencing code (SB2) in 1996. Review all offenses made felonies or modified for much more extensive use over the past 25 years and review all felonies that have been upgraded to higher levels to see if lower penalties are more appropriate. Review any felonies reduced in the same period. *collect data, then assign to committee(s) – **already in progress**
4. Clarify sentences for ORC 2907.02 Rape....especially under ORC 2907.02(A)1(b)....section ORC 2907.02(B) and/or perhaps sentencing commission can work on a chart as we have with other statutes (ie drugs and DUI). **Jo Ellen is working on this.**
5. Consider revision to ORC 2950.04 and 2950.99 Failure to Register due to inequities that can result with the “strict liability” standard applied and include review of all residency requirements. *collect data, then assign to committee(s)
6. Review offenses mandating limited or no driving privileges. *collect data, then assign to committee(s)
7. Data Repository Primer: identification of data sources, what information collected, how it is reported and if and how the data it is accessible. *added at April 23, 2015 meeting

Data Collection/Sharing Committee continued:

Short Term (three – six months): none

Long Term (six – twelve months): none

Extended (more than one year): none

Juvenile Justice Committee:

Immediate Priorities (three months or less): none

Short Term (three – six months):

1. Juvenile extended sentence review
2. Eliminate or limit mandatory bind-over by giving judges the discretion to determine when a child should be transferred to adult court.
3. Eliminate or limit mandatory sentences in the juvenile justice system.
4. Address Juvenile Court Costs
5. Clarify Juvenile Confinement Credit

Long Term (six – twelve months):

1. Reduce use of mandatory shackling

Extended (more than one year): none



CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

May 11, 2015

The Honorable Scott Oelslager
Finance Committee, Chair
Senate Building
1 Capitol Square, 1st Floor
Columbus, Ohio 43215

Dear Senator Oelslager:

I am writing because recently the Ohio Criminal Sentencing Commission reviewed and voted on our upcoming priorities. One of those priorities is to support the removal of Halfway Houses as a sentencing service facility in Ohio Revised Code 1.05. The Commission is in favor of deleting the reference to Halfway House in this section as it conflicts with several other definitions in the Revised Code and its inclusion in the definition of imprisonment appears to be an inadvertent error.

As you know, Halfway Houses are identified as a community control sanction, which is defined in ORC 2929.01 as a "sanction that is not a prison termthat is not a jail term" and as a "...suitable facility for the care and treatment of adult offenders." Halfway Houses are not imprisonment – time served is not credited by the court, facilities are staff secured, and residents can leave at any time, but may have consequences from the court if they do so without permission.

Thank you for your diligence and dedication to Ohio citizens and your work on the State operating budget. We appreciate the opportunity to provide input and hope to be of service to you and the other members of the General Assembly in the future.

Kind Regards,

Sara Andrews, Director

c: Senator Joe Uecker, Finance – Corrections Subcommittee Chair