



CRIMINAL SENTENCING COMMISSION

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

AGENDA

December 12, 2019 10:00 a.m.

- I. Call to order, roll call & approval of meeting notes from September 19, 2019
Vice-Chair Selvaggio

- II. Open Letter to the Commission
Professor Berman, All

- III. Appellate review – what now?
Judge Gallagher, All

- IV. Governor DeWine’s PRC Working Group
Sara Andrews, Cynthia Mausser, All

- V. Adjourn

2020 Full Commission Meeting Dates

Thursday, March 19, 2020 Ohio Judicial Center

Thursday June 25, 2020 Ohio Judicial Center

Thursday September 17, 2020 Ohio Judicial Center

Thursday December 17, 2020 Ohio Judicial Center

Additional information is available on the Commission website

<http://www.supremecourt.ohio.gov/Boards/Sentencing/>



OHIO

CRIMINAL SENTENCING COMMISSION

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

Dear Ohio Sentencing Commission:

As public health and criminal justice experts, our goal is to encourage the development and use of effective, evidence-based solutions to the opioid epidemic that is devastating communities across the country. [We write because of concerns that Ohio prosecutors have been employing an ineffective and counterproductive response to the state's opioid problems.](#) We seek your help in collecting information about, and assessing the impact of, what appears to be problematic prosecutorial practices.

Overdose is now the leading cause of death for individuals [under fifty](#). No state has been untouched by the crisis, but [Ohio has been one of the hardest hit: it ranks third on the list of states with the highest rates of opioid deaths.](#)

Substance use disorder (what some refer to as addiction) is a [chronic disease](#), not a moral failing. It is a public health issue, not a criminal behavior. To end this devastation, we must embrace a public health approach to the crisis by increasing access to evidence-based treatment and reducing the stigma associated with substance misuse. Across the country and in Ohio, progress is underway through initiatives that address the opioid epidemic in this way, rather than as an issue of crime and punishment. But that progress can be undermined by punitive prosecutions of accidental overdose deaths, especially since [study after study](#) undermines the proposition that harsh criminal punishment helps deter or solve substance use disorder.

According to data collected from online news sources, Ohio pursues [more drug-induced homicide charges](#) than all but one other state in the country. These data show Ohio counties of Cuyahoga, Franklin, Summit, Clermont and Hamilton now rank among the [most active counties](#) in the United States for prosecutors charging people with homicide charges for accidental overdose deaths, and it seems quite possible that prosecutors in rural Ohio counties may also be bringing these charges, but that these cases do not get reported in online news sources. Notably, in a news report last month, Franklin County Prosecutor Ron O'Brien stated that in recent years he has brought prosecutions of [29](#) cases of involuntary manslaughter in relation to accidental overdose deaths.

Though newspaper reports sometimes suggest that these cases are brought only against "drug dealers," it is clear that often the people who are being prosecuted are individuals who struggle with substance use themselves, individuals who sold to support their own use, or individuals who were co-using with the deceased. One news account of the cases in Franklin County indicates that sentences of imprisonment in these cases have ranged from two to 15 years, raising concerns that limited state resources are going

to lengthy periods of unproductive incarceration, instead of being used for helpful and necessary drug treatment. We have never seen any evidence to support the claim that charging and sentencing persons for manslaughter for accidental drug overdoses helps in any way to curb large scale trafficking or helps reduce drug use or overdose deaths.

We are deeply concerned that, rather than using evidence-based treatment and intervention to stem the opioid crisis, critical resources are being spent on prosecuting and incarcerating people who are struggling with substance use disorder.

Not only is this policy ineffective, it makes communities less safe.

Prosecuting individuals for accidental overdose deaths discourages people from seeking the help they or their loved ones may need. Emergency responders can provide life-saving interventions, such as [naloxone](#), that can stop an opioid overdose from becoming fatal. We want people who can help save a life to make that call. That is why the General Assembly revised its Good Samaritan Law in 2016, encouraging people to call 911 in cases of overdose. It is why this past September, Franklin County received a [\\$3.9 million grant](#) from the Center for Disease Control and Prevention to better respond to overdose crises and connect survivors with treatment and recovery support. But drug-induced homicide prosecutions create an environment in which directly impacted people avoid seeking help for themselves and others because of their fear of prosecution.

Based on news reports, we are deeply concerned that prosecutors' use of this dangerous policy has grown and is continuing to expand in Ohio. We are concerned that prosecutors are doing so without any statewide discussions among prosecutors and courts about this use of Ohio homicide provisions and without systematic examination of its likely ineffectiveness in reducing drug use and overdose deaths, or its possible adverse impact on public safety and the community as a whole. **To end Ohio's opioid crisis, we need humane data-driven solutions. We ask that the Ohio Criminal Sentencing Commission begin a public examination of the use of homicide charges in accidental overdose cases throughout the state and their impact on public safety and the opioid crisis.** We ask that the Commission use the information and data it collects to propose evidence-based recommendations that can guide stakeholders and protect the community against the harms of this policy.

Sincerely,

Valena Beety

Professor of Law,
Deputy Director of Academy for Justice
Arizona State University
Sandra Day O'Connor College of Law

Leo Beletsky

Professor of Law and Health Sciences,
Faculty Director,
Health in Justice Action Lab
Northeastern University School of Law
University of California at
San Diego School of Medicine

Douglas Berman

Professor of Law, Director,
Drug Enforcement and Policy Center
The Ohio State University Moritz College of Law

Jeremiah Goulka

Senior Fellow - Health in Justice Action Lab
Northeastern University School of Law

Alex Kreit

Associate Professor of Law,
Co-Director Center for Criminal Law & Policy
Thomas Jefferson School of Law

December 10, 2019

Sara Andrews, Executive Director
Ohio Criminal Sentencing Commission
65 South Front Street, 5th Floor
Columbus, Ohio 43215

Re: Brief Response to Louis Tobin's December 9, 2019 Letter

Dear Director Andrews,

Thank you for providing time at the upcoming Ohio Criminal Sentencing Commission meeting to discuss the letter sent last month to the Commission by public health and criminal justice experts. As you will recall, in that letter we asked that "the Ohio Criminal Sentencing Commission begin a public examination of the use of homicide charges in accidental overdose cases throughout the state and their impact on public safety and the opioid crisis." The discussion at this week's meeting should serve as a useful start of such a public examination.

We write again after receiving a copy of the letter dated December 9, 2019 sent to you by Louis Tobin, Executive Director of the Ohio Prosecuting Attorneys Association (the Tobin letter). Through this brief response, we wish to dispel some apparent misunderstandings and to highlight how the Tobin letter itself shows why a body like the Ohio Criminal Sentencing Commission should be gathering information and data about the use of homicide charges in accidental overdose cases throughout Ohio.

To begin, our letter neither calls for, nor even suggests, that Ohio prosecutors or judges should be prohibited from bringing lawful charges or imposing lawful sentences. Rather, at this stage, we are eager just to have more reliable and detailed information on charges being brought and sentences being imposed throughout Ohio. Tellingly, the Tobin letter seems to complain about reliance on news reports, but that highlights the very reason we have written to the Commission seeking the collection of better state-wide data. Though the experience may be different for government officials, we find these data are very hard to collect other than from news reports. (Tellingly, the chart for Hamilton County provided in the Tobin letter reveals that even major counties are not tracking these data with any regularity.)

Also inaccurate is the notion that we seek to "absolve people from accountability," rather we are eager to ensure accountability is proportionate to culpability. Absent better data and analyses, it is unclear whether homicide prosecutions target only large-scale drug traffickers or if friends and family of overdose victims who struggle with substance use themselves are sometimes subject to these charges. Interestingly, the Tobin letter asserts that the OPAA has "offered several trainings" on this topic and that prosecutors are using "best practices." We are hopeful the OPAA will make its training materials publicly available and will provide a lot more information on their "best practices." We are eager to hear from prosecutors from around the state about when and why they are bringing these charges and what evidence might support the contention that these prosecutions are effective in reduce drug use or overdose deaths.

Notably, the Tobin letter suggests that homicide prosecutions in accidental overdose cases are essential to public safety and even asserts that Ohio's new "Good Samaritan statute itself often leads to overdose deaths." Though these assertions are not supported by any cited data or other evidence, they serve to highlight yet again that arguments for or against any of these policies are hampered by limited or incomplete data. Our letter does not in any way seek to "place arbitrary limits on the discretion of our elected officials"; we are advocating for more and better data to be collected so that this discretion can be exercised by elected officials in an informed manner and so that all stakeholders and other interested parties can have in-depth and informed discussions about our aims and how to best achieve them.

As we look forward to continuing this discussion in the days and weeks ahead, we will close this letter by noting that the Tobin letter tellingly omitted two recent amendments to the "Purposes of felony sentencing" set forth in Ohio law. Through new laws passed in 2011 and 2018, the Ohio General Assembly made very clear that it does not want prosecutors and courts to focus only on deterrence and retributive punishment. Now, Section 2929.11 of the Ohio Revised Code states:

The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others, to punish the offender, and ***to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.***

It truly is in the spirit of vindicating these revised instructions from the Ohio General Assembly that we request that the Ohio Criminal Sentencing Commission examine the use of homicide charges in accidental overdose cases throughout the state. Our academic work and considerable research suggest that homicide charges in accidental overdose cases do not generally promote effective rehabilitation, nor do these charges appear to deploy the minimum punitive sanctions necessary to accomplish valid punishment purposes. But we come to this discussion with an eagerness to learn more about how prosecutors use these charges, what sentences are resulting, and what evidence-based recommendations might result from a thorough review of these important issues.

Valena Beety

Professor of Law
Deputy Director of Academy for Justice
Arizona State University
Sandra Day O'Connor College of Law

Leo Beletsky

Professor of Law and Health Sciences, Director,
Health in Justice Action Lab
Northeastern University School of Law
University of California
at San Diego School of Medicine

Douglas Berman

Professor of Law
Director, Drug Enforcement & Policy Center
The Ohio State University Moritz College of Law

Jeremiah Goulka

Senior Fellow - Health in Justice Action Lab
Northeastern University School of Law

Alex Kreit

Associate Professor of Law
Co-Director Center for Criminal Law & Policy
Thomas Jefferson School of Law



OHIO PROSECUTING ATTORNEYS ASSOCIATION

196 EAST STATE STREET • SUITE 200 • COLUMBUS, OHIO 43215 • TELEPHONE 614/221-1266 • FAX 614/221-0753 • WWW.OHIOPA.ORG

Officers

Victor V. Viglucci
President, Portage
Juergen A. Waldick
President Elect, Allen
Daniel R. Lutz
Vice President, Wayne
Michael C. O'Malley
Treasurer, Cuyahoga
Jane M. Hanlin
Secretary, Jefferson

Past Presidents

Julia R. Bates
Lucas
Kevin J. Baxter
Erie
Paul A. Dobson
Wood
John D. Ferrero, Jr.
Stark
Mathias H. Heck, Jr.
Montgomery
Morris J. Murray
Defiance

Ronald J. O'Brien
Franklin
David W. Phillips
Union
Edwin A. Pierce
Auglaize
Sherri L. Bevan Walsh
Summit
Dennis A. Watkins
Trumbull
Dennis P. Will
Lorain

Members-at-Large

Steven D. Barnett
Carrall
Keller J. Blackburn
Athens
Joseph T. Deters
Hamilton
D. Vincent Faris
Clermont
David P. Fornshell
Warren

Michael T. Gmoser
Butler
Gwen Howe-Gebers
Henry
Charles T. McConville
Knox
Stephen J. Pronai
Madison
Ryan D. Styer
Tuscarawas

Kevin S. Talebi
Champaign
Christopher R. Tunnell
Ashtabula
Jess C. Weade
Fayette
Judy C. Wolford
Pickaway
Katherine J. Zartman
Williams

Louis Tobin
Executive Director

December 9, 2019

Ms. Sara Andrews, Executive Director
Ohio Criminal Sentencing Commission
65 South Front Street, 5th Floor
Columbus, Ohio 43215

Executive Director Andrews - *Sara* -

I write to you in response to the troubling letter that was recently sent to the Criminal Sentencing Commission regarding the use of prosecutor discretion to selectively prosecute some individuals for involuntary manslaughter for causing an overdose death.

As an initial matter, it is worth noting a few things about the authors of the letter. Only one of the authors lives and works full-time in Ohio. Two of the authors are associated with centers at their law schools that have received millions of dollars in funding from the Charles Koch Foundation. Two other authors are associated with a center at Northeastern University School of Law that lists the Open Societies Foundation as one of its primary funders and the ACLU as one of its partners. A fifth author is currently a visiting professor at Ohio State's Drug Enforcement and Policy Center, one of the centers funded by the Charles Koch Foundation. The Koch Foundation, the Open Societies Foundation, and the ACLU openly support efforts to defelonize and/or decriminalize drug possession and drug use in the United States. The fact that the letter was sent by a group of individuals who do not call Ohio home, along with a series of uninformed assertions in the letter, raises serious questions about whether the authors understand the practical experience of those in the trenches fighting drug trafficking and drug abuse. The fact that the authors of the letter are funded and supported by organizations that openly call for defelonizing and/or decriminalizing the use of drugs raises serious questions about their objectivity, impartiality, and agenda.

Substantively, the authors admit that they do not necessarily understand what is going on in these cases. Yet they make a series of conclusive, but wholly uninformed, assertions about what they view as an ineffective and dangerous use of involuntary manslaughter charges in overdose death cases. The letter is based on flawed assumptions, a flawed understanding of the purposes of felony sentencing in Ohio, and flawed logic.

Flawed Assumptions

The letter assumes that "rather than using evidence-based treatment and intervention to stem the opioid crisis, critical resources are being spent on prosecuting and incarcerating people who are struggling with substance abuse disorder."

Evidence-based treatment already exists in Ohio and is used extensively. Ohio prosecutors have been at the forefront of addressing opiate addiction and combatting drug trafficking in our state. We have been instrumental in the creation of diversion programs for drug addicted offenders, the creation and implementation of drug courts and other specialized dockets, and the use of medication assisted treatment. We have supported policies to enable intervention in lieu of conviction, record sealing, and the alleviation of collateral consequences for addicts who are in recovery. We currently support House Bill 1 that would expand intervention in lieu of conviction and record sealing even further. To pretend that our prosecutors are wasting critical resources is inaccurate and disingenuous.

What the authors really want is a one-size-fits-all law to limit prosecutorial and/or judicial discretion under the guise of “evidence based recommendations.” They would prohibit involuntary manslaughter charges and/or limit sentencing authority regardless of the individual facts of the case. They would prohibit a prosecutor from charging a drug trafficker with involuntary manslaughter when he mixed fentanyl with his heroin or meth in order to attract more buyers by offering them a better high. They would prohibit a judge from sentencing such a person to prison. They would advance such a policy in the name of public safety. Despite another baseless assertion in the letter that prosecutors have pursued these charges without any statewide discussion, Ohio prosecutors have discussed this topic in detail, our Association has offered several trainings for our own membership, and our members have trained others nationally on the topic. Best practices already exist and are in use.

The letter states that “Ohio pursues more drug-induced homicide charges than all but one other state in the Country” and that the authors “are deeply concerned that prosecutors’ use of this dangerous policy has grown and is continuing to expand in Ohio.”

This assumption appears to be based on “news reports” rather than on any serious academic research. It also belies the facts. Ohio was ground zero for the opiate crisis. We have, as the authors admit, one of the highest overdose death rates in the nation. Drug abuse and drug trafficking are extensive here. Yet the letter is intended to give the impression that Ohio prosecutors are using involuntary manslaughter charges overzealously. I urge the commission to consider the attached document that is based in fact rather than conjecture.

Twenty one states have specific statutes regarding overdose homicides. The United States Code prohibits drug trafficking with a specification for serious physical harm, the sentence for which can be up to twenty years. Ohio is hardly alone in its efforts to combat drug trafficking through the use of overdose death homicide charges. As the attached document shows, prosecutors use these charges selectively based on individual facts and circumstances. Placing arbitrary limits on the use of this tool and the discretion of our elected officials is neither wise nor necessary. It would be a step backward in the fight against drug trafficking and a detriment to public safety.

Flawed Understanding

The letter states that progress in the fight against addiction is “undermined by punitive prosecutions of accidental overdose deaths, especially since study after study undermines the proposition that harsh criminal punishment helps deter or solve substance use disorder.” It states that “limited state resources are going to lengthy periods of *unproductive* incarceration, instead of being used for helpful and necessary drug treatment.” This suggests that the only purpose of our criminal justice system is treatment and rehabilitation.

As criminal justice experts the authors of the letter know that the first two purposes of felony sentencing in Ohio are to protect the public from future crime by the offender and others and to punish the offender. Their letter would have us ignore the first two purposes and focus solely on treatment and rehabilitation. Their letter would have us pretend like there is not a deceased victim who no longer has the opportunity to seek treatment and rehabilitation due to the actions of another. They would have us believe that the only “directly impacted” person is the person being prosecuted, and ignore the directly impacted family and friends of the deceased. They would have us ignore the direct impact on the communities to which many F4/F5 drug traffickers are returned after being placed on community control as a result of other recently enacted one-size-fits-all policies. While punishment and incarceration might be distasteful to academics, there is a victim who lost his or her life, most likely family and friends who lost a loved one, and a community that deserves to prevent the offender from causing more death.

Flawed Logic

The letter states that “it is clear that often the people who are being prosecuted [for involuntary manslaughter] are individuals who struggle with substance use themselves.”

The whole purpose of the letter is to seek the Sentencing Commission's assistance in gathering data and examining this topic. Yet, based only on news reports, the authors assert that it is "clear" that "often" the people being prosecuted are struggling with substance use. Even if true, the argument rests on the logic that people with substance use disorder aren't culpable for their own actions and, because they are suffering from a disease, should not be held accountable. By extension, prosecutors should no longer be able to charge an alcoholic with aggravated vehicular homicide when he gets into a car and causes the death of another. Under the authors' logic we should no longer punish or incarcerate such a person because alcoholism is a disease that requires only treatment and rehabilitation. While this is the logical extension of the authors' argument, I doubt many would agree with such a policy or believe that it would promote public safety. Ohio prosecutors certainly do not. While substance use disorder, like alcoholism, may be a disease, it does not and should not absolve people from accountability when they put others' lives at risk. To suggest that it should is dangerous.

Finally, the letter cites Ohio's "Good Samaritan" statute as the type of effective policy that Ohio *should* be pursuing. What the authors seem not to know, perhaps because they do not live in Ohio, is that the Good Samaritan statute itself often leads to overdose deaths. Because individuals who use the Good Samaritan statute are immune from arrest, there is often nothing that an emergency responder can do for the person once they have reversed the overdose. Rather than follow through with what is required by the statute, most addicts simply return to drug use, many overdose again, and some die. Because they are not brought into a system that can connect them to treatment, monitor their treatment, and encourage progress, they are on their own to seek and obtain recovery. While arrest and possible prosecution might seem distasteful to academics, people who are brought into a system that can connect them to and monitor treatment are often, practically speaking, the lucky ones. We should be resistant to the authors' "feel good" logic. Just because something feels good doesn't mean it is the right thing to do.

Ultimately, accountability for drug dealers and others who provide or corrupt others with drugs may not be acceptable to academics but accountability is what victims' families and the public deserve, and it is what justice demands. We urge your skeptical consideration of their request to place arbitrary limits on the discretion of our elected officials.

Respectfully,



Louis Tobin
Executive Director

LT:dpm

Clermont

Year	Overdose Deaths	Involuntary Manslaughter
2019	41 (Through August)	8 Total adjudications since 2013
2018	68	
2017	76	

Cuyahoga

Year	Overdose Deaths	Involuntary Manslaughter ¹
2019	623 (Through Dec. 5)	7
2018	551	8
2017	727	7
2016	666	9
2015	370	10

Franklin

Year	Overdose Deaths	Involuntary Manslaughter
2019	389 (Through August)	2
2018	526	7
2017	526	12
2016	353	7
2015	325	1

Hamilton

Year	Overdose Deaths	Involuntary Manslaughter
2019	567	Hamilton County does not specifically track this. They estimate 10 cases per year.
2018	468	
2017	403	

Summit

Year	Overdose Deaths	Involuntary Manslaughter ²
2019	141	8
2018	131	9
2017	232	15
2016	299	19
2015	192	12

¹ Cases may involve more than one defendant.

² Of these 63 adjudications, Summit County estimates that 60 were the result of a plea.



MIKE DEWINE
GOVERNOR OF OHIO

FOR IMMEDIATE RELEASE:

October 28, 2019

MEDIA CONTACTS:

Dan Tierney: 614-644-0957

Jill Del Greco: 614-644-0957

Governor DeWine Orders Examination of Ohio Post-Release Control

**Updated to correct spelling of Wilkinson.*

(COLUMBUS, Ohio) – Ohio Governor Mike DeWine announced today that he has ordered an in-depth examination of the Ohio Department of Rehabilitation and Correction's (ODRC) policies and practices as they relate to post-release control supervision by the Ohio Adult Parole Authority (APA).

The APA, which is a division of ODRC, is responsible for the post-release control supervision of more than 20,500 adult felony inmates who have been released back into society after serving their full prison sentences.

"I have serious concerns that some post-release control policies aren't strong enough to adequately monitor offender reentry and also protect the public," said Governor DeWine. "It's time that Ohio takes a good look at improving the post-release control process to help offenders positively transition back into society and to swiftly hold them accountable if they commit a violation of their supervision."

Today, Governor DeWine signed an [executive order](#) creating the Governor's Working Group on Post-Release Control to review and recommend improvements to the APA's post-release control supervision practices in Ohio. Members of the working group include:

- Annette Chambers-Smith, ODRC director, co-chair
- Dr. Reginald Wilkenson, former ODRC director, co-chair
- Stuart Hudson, ODRC assistant director and former parole officer
- Dr. Edward Latessa, University of Cincinnati School of Criminal Justice
- Senator John Eklund (R-Munson Township)
- Prosecutor Kevin Talebi, Champaign County
- Elizabeth Poprocki, Ohio Victim Witness Association
- Molly Gauntner, Ohio Chief Probation Officer's Association
- Sara Andrews, Ohio Criminal Sentencing Commission

The formation of the working group follows Governor DeWine’s previous directive that ODRC conduct an internal investigation into the APA supervision of Raymond Walters. The Dayton man was arrested in August after allegedly stabbing a family member, stealing a police cruiser, and then crashing it into another vehicle, killing two 6-year-old girls and injuring others. ODRC concluded that the supervision of Walters was “appropriate and in accordance with pertinent supervision policies and administrative rules.”

“The sole person responsible for this tragedy is the person who allegedly caused the crash,” said Governor DeWine. “Although the internal review found that the APA officer followed policy in the supervision of Raymond Walters, I have the responsibility to question whether or not the current policies are the right policies, and I’m confident that members of my new working group will make actionable recommendations to improve the post-release control process.”

Governor DeWine has asked working group members to look at all APA post-release control policies, including policies related to the documentation of interactions with individuals on post-release control; the amount of time APA officers have to sanction an offender after a violation; the amount of discretion APA officers have to react to violence or concerns about mental health and substance use; and sanctions for failing to appear for a drug test.

In addition to examining APA policies, Governor DeWine has also asked the advisory group to:

- Survey the current use of GPS technology in parole and post-release control cases and recommend a state policy to address which offenders are placed on GPS monitoring, the length of monitoring, and the responses to violations;
- Review current APA caseload sizes and recommend any needed changes;
- Examine the Ohio Risk Assessment System and determine if it is the best-available risk assessment tool;
- Study “truth in sentencing” and its impact on the prison system and post prison supervision;
- Evaluate the effectiveness of halfway houses in supporting reentry and reducing recidivism.

ODRC’s internal investigation into the post-release control supervision of Raymond Walters can be found at www.governor.ohio.gov.



MIKE DEWINE
GOVERNOR
STATE OF OHIO

Executive Order 2019-25D

Governor's Working Group on Post-Release Control

WHEREAS, Ohio is a second chance State and it is vital that we make decisions based on victim rights, public safety, and offender rehabilitation; and

WHEREAS, the vast majority of people who are currently incarcerated in our State will be released back to their community at some point; and

WHEREAS, every citizen in the State benefits when a person comes out of prison as a healthy and productive member of society; and

WHEREAS, post-release control is a period of supervision of an offender by the Adult Parole Authority ("APA") following release from imprisonment that includes one or more post-release control sanctions imposed by the Parole Board;

NOW THEREFORE, I, Mike DeWine, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and laws of this State do hereby order and direct that:

1. The Governor's Working Group on Post-Release Control ("Working Group") is hereby created to review and recommend improvements to the State's post-release control services. The Working Group shall consist of at least nine (9) individuals, all of whom I will appoint and will serve at my pleasure. I will designate the Co-Chairpersons of the Working Group.

2. In studying, discussing, and making recommendations to improve the current system of post-release control in Ohio, the Governor's Working Group on Post-Release Control will:

- a. Recommend a state-wide policy that applies to the use of GPS by all supervision agencies and addresses the following:
 - i. Types of offenders,
 - ii. Length of monitoring, and
 - iii. Responses to violations;
- b. Review statutory requirements and make recommendations to align with the state-wide policy recommendations;

- c. Review current caseload sizes and make recommendations for caseload sizes per supervision type and supervision level;
- d. Review assessment of APA policies conducted by the technical assistance team provided by the National Institute of Corrections and determine findings to be incorporated into the recommendations;
- e. Determine whether the Ohio Risk Assessment System ("ORAS") is used appropriately, still valid and the best tool to use state-wide;
- f. Examine other available risk assessment tools;
- g. Review the impact of "Truth in Sentencing" on the State prison system and supervision; and
- h. Review the role and use of Halfway Houses.

3. The Working Group shall be staffed by the Department of Rehabilitation and Correction, which shall provide the support and resources necessary for the Working Group to fulfill its obligations as outlined in this Executive Order, in coordination with the Office of the Governor. This shall include space to gather and consider information necessary for developing the recommendations and report called for in this Order.

4. Members of the Working Group shall serve without compensation.

5. Upon completion of these recommendations, the Working Group shall meet no less than quarterly to access and provide guidance to carry out the recommendations.

I signed this Executive Order on October 28, 2019 in Columbus, Ohio and it will not expire unless it is rescinded.


Mike DeWine, Governor

ATTEST:

Frank LaRose, Secretary of State



OPERATION AND LEADERSHIP

Committees of diverse membership – including members outside of the Commission and its Advisory Committee – and Ad Hoc Committees meet regularly, while the full Commission meets quarterly. The next full Commission meeting is December 12, 2019. Chief Justice O’Connor chairs the Commission and the Vice-Chair is Judge Nick Selvaggio from the Champaign County Court of Common Pleas.

SENTENCING COMMISSION PROJECT UPDATES

— Bail and Pretrial Services

Grant Project: We continue our work on the grant that we were awarded in collaboration with the Office of Criminal Justice Services regarding data collection for bail and pretrial services with a variety of courts on the project. The summary description is as follows:

Under the Special Emphasis project, OCJS will collaborate with the Ohio Criminal Sentencing Commission, an affiliated office of the Supreme Court of Ohio, to move Ohio municipal and common pleas courts toward better and more comprehensive data collection on bail and pretrial services. OCJS and the Criminal Sentencing Commission will carry out the following activities:

- 1) Assess the quality of local court data and examine the extent to which these records can support analysis of bail and pretrial services;*
- 2) Make recommendations regarding data collection based on local needs and the standards identified as most critical in assessing outcome and performance measures for the bail and pretrial services field, and their related court functions; and*
- 3) To work with identified courts on early implementation of these recommendations.*

Pretrial Services Survey: This summer we also embarked on a groundbreaking survey of Ohio pretrial practices. The Commission has a team of interns, representing several universities, assigned to the project. The survey team contacted local court officials to schedule phone interviews to conduct the survey. We are now conducting qualitative and quantitative methods of analysis to capture the intricate picture of pretrial practices of the near 200 courts that participated in the survey. Following this vibrant survey process, the researchers at the Commission will compile results and produce a report for presentation.

— Uniform Sentencing Entry

The Commission established a Uniform Sentencing Entry Ad Hoc Committee in September 2019 to develop a model, uniform sentencing entry prescribing the minimum information required in a felony sentencing entry. Providing a uniform entry with the minimum standards required allows the Courts to include supplemental information to the uniform entry as necessary. The Ad Hoc Committee coincides with the Supreme Court asking its Commission on Technology and the Courts to create a workgroup to explore opportunities for standardizing and reporting sentencing information in a format that will improve the reporting and analysis of sentencing data. These two groups will coordinate efforts and seize the opportunity to develop key sentencing data elements and connect the evolution of sentencing structure with preparation of the sentencing entry.

— Reagan Tokes Law

The Commission continues to conduct implementation trainings regarding 132 GA SB201 “The Reagan Tokes Law” and recently met with the bill sponsors, the Ohio Judicial Conference, and the Legislative Service Commission to discuss necessary legislative fixes to bring clarity and simplification to indefinite sentencing process and procedure.

— Appellate Review of Felony Sentencing

Sentencing Commission members and the Ohio Judicial Conference continue to work on a legislative proposal to amend ORC 2952.08 dealing with appellate review of felony sentencing. The chapter currently contains language that has been subject to inconsistent and often conflicting interpretation throughout the state. These efforts are intended to provide a method for uniform and meaningful review of felony sentencing by appellate courts through clear drafting and concise statements of standards.

— Parole Board Project

In collaboration with the Ohio Department of Rehabilitation and Correction, the Commission is currently examining characteristics of the currently incarcerated, parole-eligible inmates to compare to similar offenders that were recently paroled from 2014 to 2018. The purpose of this analysis is to understand any potential differences in parole determinations among those sentenced pre- and post-SB2. This analysis will also focus on characteristics such as offense committed, degree of offense, and demographic characteristics for each group.

— Jail recidivism

The Commission has been working in collaboration with the Buckeye State Sheriffs' Association, the Stepping Up initiative in Ohio and the Council of State Governments on a project to, among other things, define and measure jail recidivism. We're pleased to share that [the definition of jail recidivism can be found here](#). We are also considering partnering the conversation of defining jail recidivism with an effort to identify trends and patterns of jail population over time using the historical jail data the Commission has from the early 2000s in combination with more recent data.

— Data Analysis

One of the Commission's ongoing priorities is sensible criminal justice and drug reform in Ohio. We believe constructive conversation about treatment and program resources, capacity, and outcomes is critical to getting it right, but constructive conversation is not possible without movement towards a data-informed environment. Data at the aggregate level could provide Ohio with a framework designed to reduce criminal justice involvement and move people with drug dependency and mental health needs into treatment that works.

Thus, we are working with members of the General Assembly to include language authorizing (and obligating) the Sentencing Commission to regularly monitor and report on the implementation, application, and administration of legislation enacted that impacts sentencing. Empowering the Commission to collect aggregate criminal justice data will provide an unprecedented level of information for system practitioners and policy makers that can, in turn, be used to develop and implement new law enforcement interventions and policing strategies, to refine extant criminal justice policies, and to leverage resources and programming to improve outcomes. Robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system.