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**OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
FULL COMMISSION MEETING MINUTES
SEPTEMBER 19, 2019**

MEMBERS PRESENT

ADVISORY COMMITTEE MEMBERS PRESENT

STAFF PRESENT

Todd Ives, Researcher
Scott Shumaker, Criminal Justice Counsel
Sara Andrews, Director
Nikole Hotchkiss – newly hired Research Director

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

The September 19, 2019 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order by Vice-Chair Selvaggio and he called the roll of members and advisory committee.

INTRODUCTION OF NEW STAFF AND APPROVAL OF MINUTES OF MARCH 2019 MEETING

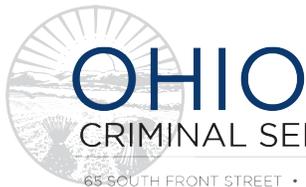
Sara Andrews introduced Nikole Hotchkiss who recently accepted an offer to fill the open Research Director position on the Commission’s Staff. Nikole is currently employed as a statistician at the Supreme Court and will begin working with the Commission on October 7th.

Judge Selvaggio then referred members to the minutes of the March 21, 2019 meeting and the minutes were approved without objection.

APPELLATE REVIEW PROPOSAL

Judge Sean Gallagher from the 8th district Court of Appeals gave a brief history of the creation of R.C. §2953.08, the appellate review of felony sentencing statute, included relevant case law surrounding the statute. The lack of clearly defined terms and standard of review has led to a number of conflicting interpretations on the topic, including several pending cases before the Supreme Court. Scott Shumaker then discussed how the process around creating the draft progressed and the areas of concern about the draft amongst workgroup members, particularly centered around the expansion of the state’s right to appeal. The Sentencing and Criminal Justice Committee felt the draft was complete enough for presentation to the full Commission, with the accompanying position statements from the Ohio Public Defender and Prosecuting Attorney’s Association representatives.

Chip McConville discussed the areas of concern from OPAA’s perspective, namely that the conflict surrounding contrary to law has centered around a small number of districts and the State’s interest in seeing that the law is follow. Jill Beeler discussed OPD’s issues surrounding the expansion of the state’s right to appeal, stating that this provision would expand a prosecutor’s power beyond what even is possible at the federal level. Judge Gallagher reiterated that whether the provision regarding the State’s expanded right to appeal stays or goes, there is a necessity for a legislative fix to the division as there is currently no uniform methodology for reviewing felony sentences in the state.



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Judge Gene Zmuda then asked if the proposal had been vetted by the OJC's executive Committee. Paul Pfeffer and Josh Williams discussed how these issues usually proceed through the OJC's consideration. Paul Dobson moved to table the proposal until the OJC could further vet it through the executive committee. The motion was seconded and was amended after further discussion to let OJC determine the best committee to vet the proposal through. The Commission voted 14-7 to table the proposal, and the Advisory committee voted 9-1 for the same. The proposal will be tabled until the December meeting.

LEGISLATIVE PANEL – SENATOR JOHN EKLUND, REPRESENTATIVE BILL SEITZ, REPRESENTATIVE KRISTEN BOGGS

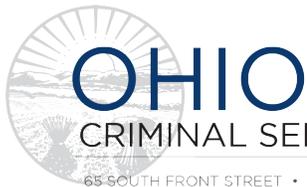
Judge Selvaggio then introduced members of the Ohio Legislature who had agreed to discuss criminal justice legislation currently being considered in the legislature. Senator Eklund spoke first, detailing the recent amendments to Substitute Senate Bill 3 centered on reforming Ohio's drug laws. He noted that there will continue to be work around the jurisdictional provisions of the bill, as well as with regard to the threshold amounts of drugs required for different felony charges, and the debate as to whether low level possession is best handled as a felony or an unclassified misdemeanor will continue to be discussed.

Senator Eklund also discussed SB54 and HB 136, companion legislation aimed at restricting use of capital punishment against individuals suffering from certain forms of serious mental illness at the time of the offense, as well as legislation aimed at enhancing penalties for assaults involving strangulation. He noted that many criminal justice bills which involve penalty enhancement continue to be a difficult subject amongst legislators.

Judge Selvaggio asked the Senator to consider funding of community control services for those 19-20 counties who are currently slated to lose their APA provided services in the coming years. Senator Eklund recognized that proper funding will be critical to any outcome with SB3. Judge Spanagel also noted a need to address the vehicle for filing what would be unclassified misdemeanors in Common Pleas Court if SB3 passes.

Representative Seitz then spoke about several pieces of legislation being considered by the House. He noted that he has stressed that the second part of the Reagan Tokes legislation will not proceed until the provisions around 132 GA SB 201 are fixed. The House recently passed House Bill 1, a record sealing and ILC expansion suggested by Chief Justice O'Connor. He detailed several amendments to SB5 which will address problems with the CQE process across the state, as well as upcoming amendment to HB87 allowing for partial record sealing, and a bill aimed at requiring the recording of custodial interrogations except in very limited circumstances. He noted his frustration with serving on Commissions who spend much time and effort coming up with recommendations for reform only to see those recommendations stall. He also addressed Governor DeWine's 17-point gun violence plan, noting that it contains several penalty enhancements that have already been rejected by the legislature and could substantially increase prison population. He noted that the House will continue to work to find solutions to the issue of gun violence with the executive branch.

Representative Boggs then detailed several pieces of legislation being focused on by the democratic caucus. House Bill 3 regarding domestic violence lethality assessments continues to be worked on, as does a bill eliminating the statute of limitations on rape and a bill to hold chiropractors to the same standard as doctors who abuse the patient-doctor relationship. She then noted that 132 SB 201 highlights the problem with attempting to adopt the recommendations of the Recodification Committee in a piecemeal fashion, but that work on rectifying issues with that bill continue as does consideration of the second piece of Reagan Tokes legislation aimed at changes to procedures after inmates are released from prison.



SB 201 – THE REAGAN TOKES LAW IMPLEMENTATION UPDATE

Representatives from the Department of Rehabilitation and Corrections then discussed a prepared PowerPoint detailing their efforts in implementing the provisions of SB 201. They highlighted the massive amount of changes to the sentence computation process brought on by the bill, as well as numerous changes required for the administrative code and regulations. Those regulatory changes are still being processed, but procedures are in place for calculating indefinite sentences under the bill. Liann Bower, director of the Bureau of Sentence Computation, detailed the various calculations involved and the order sentences will be served. 116 individuals have been sent to ODRC for SB 201 indefinite sentences, and of those cases there have been errors in 27 of the sentencing entries (almost 1 in 4 sentences). Tyler Brown from DRC legal detailed the 3 tiers of rules infractions and how they could affect parole board decisions on extension of prison terms, and Ashley Parriman of DRC legal detailed the types of conduct that could result in a reduction of the minimum term. After further discussion of specific issues with the sentencing process, Judge Selvaggio thanked DRC for agreeing to share the information and presenting to the group.

UNIFORM SENTENCING ENTRY

Sara Andrews then noted that the 25% error rate in Reagan Tokes sentences highlights an issue that Commission Staff would like to address further, namely the creation of an Ad Hoc Committee to create a uniform sentencing entry. She noted past efforts in this area, but that the current climate should be more conducive to the creation and acceptance of a minimum-necessary model sentencing entry for courts to use in fashioning SB201 and other sentences. She also noted that this effort would dovetail with those of the Supreme Court's Court Technology Committee who are developing data point standards for OCN reporting to improve the state of criminal justice data in Ohio. Judge Zmuda has agreed to chair the Committee, and he noted that this is a golden opportunity to address a number of issues, cutting down on the number of technical sentencing appeals and improving our ability to report on criminal justice outcomes in the state. Director Andrews also noted that the Chief Justice is supportive of this effort and has an aggressive timeline for a report to be generated. Chip McConville moved that the Commission approve the creation of the Ad Hoc Committee and Gwen Howe-Gebbers seconded the motion, which was unanimously approved.

GENERAL UPDATES

Sara Andrews asked members to review the provided materials on a pretrial services survey being conducted by Commission Staff. Judge Spanagel also noted the recent report of the Supreme Court's Bail Task force.

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