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FULL SENTENCING COMMISSION NOTES
March 16, 2023 10:00 a.m.
Ohio Judicial Center, Room 101 or Zoom

MEMBERS PRESENT

Sharon L. Kennedy, Chief Justice, Chair
Nick Selvaggio, Common Pleas Court Judge, Vice-Chair
Amy Ast, Director, Department of Youth Services
Lara Baker-Moorish, Municipal Association
Annette Chambers-Smith, Director, Department of Rehabilitation and Correction
Charles Chandler, Peace Officer
Robert DeLamatre, Judge, Juvenile Court
Kristen Johnson, Judge, Probate and Juvenile Court
Nathan Manning, Ohio Senate
Jennifer Muench-McElfresh, Judge, Common Pleas Court
Helen Wallace, Judge, Juvenile Court
Brandon Standley, Law Enforcement
Tim Young, Ohio Public Defender

MEMBERS ATTENDING BY ZOOM

Brooke Burns, Attorney, Juvenile—Office of the Public Defender
Beth Capelli, Judge, Municipal Court
Gwen Howe-Gebers, County Prosecutor, Juvenile
Robert Krapenc, Attorney, Criminal Defense
David Painter, County Commissioner
Teri LaJeunesse, Victim Representative
Bill Seitz, Ohio House of Representatives
Larry Sims, Sheriff
Kenneth Spanagel, Judge, Municipal Court
Vernon Sykes, Ohio Senate

GUESTS PRESENT (IN-PERSON AND ZOOM)

Cole Calloway (Zoom)
Lori Criss, Director, Ohio Mental Health and Addiction Services
Lauren Diaz, Intern (Zoom)
Dustin Ensigner (Zoom)
Nandita Gaddam, Intern
Joe Gruber (Zoom)
Alishba Hussain, Intern
Jessica Phalen, Intern



Judge Robert Nichols
Paul Pfeifer, Director, Ohio Judicial Conference (Zoom)
Reggie Wilkinson
Alex, Senator Sykes' Office
Kevin (Zoom)

STAFF

Sara Andrews, Director
Michael Crofford, Research Specialist (Zoom)
Will Davies, Criminal Justice Counsel
Niki Hotchkiss, Assistant Director
Todd Ives, Research Specialist
Alex Jones, Criminal Justice Counsel

CALL TO ORDER AND APPROVAL OF MEETING NOTES

At 10:04am, Vice-Chair Selvaggio welcomed the commission and called the meeting to order. Vice-Chair asked for a motion to approve the minutes for the last meeting of the Sentencing Commission. Judge McElfresh moved to approve the minutes from December 15, 2022, seconded by Tim Young. The minutes were approved unanimously.

Director Sara Andrews welcomed new members, Judge Wallace, Judge Johnson, Senator Sykes, and Teri LaJeuness (via Zoom).

For the benefit of new members, all those in attendance and on Zoom briefly introduced themselves.

REMARKS FROM THE CHAIR—CHIEF JUSTICE KENNEDY

Following the brief introduction, Vice-Chair Selvaggio introduced the new Chair of the Commission, Chief Justice Kennedy for remarks. The Chair distributed a packet of information to Commission members (also provided as a link via Zoom), including the statutes explaining the obligations of the Commission and a history of the budget allocations of the Commission since 2020 through the budget requests of fiscal year 2025, which is currently under consideration with the General Assembly.

The Chair reviewed the history of the Commission, and suggested that the group reconstitute two previously existing subcommittees, the criminal and juvenile subcommittees. Chair Kennedy asked that the criminal subcommittee first be tasked with tackling pieces of statute that have been ruled unconstitutional but remain in the Revised Code. The Chair suggested pinpointing these statutes that were declared unconstitutional and passing them on to the General Assembly for a legislative fix. For the Juvenile subcommittee, she asks for a consideration of juvenile bindovers, explaining that it is necessary to understand how mandatory and discretionary bindovers are being used. The Chair suggested then giving the General Assembly a working history of how bindovers have been used. The Chair is hoping to reconstitute these two committees and work on those primary topics. She thanked members for their dedication and important work.

Vice-Chair Selvaggio asked for questions for the Chair. Director Chambers-Smith asked about what specifically the Chief was interested in as far as the criminal committee. The Chief responded that there are portions of the Ohio Revised Code that have been declared unconstitutional, yet they remain in the code. This was a reoccurring theme from a series of minutes. The Chief believes this is an easy place to start. The minutes do not seem to spotlight specific sections of the code but talk more generally about them.

Regarding bindovers, the Chief seeks to understand “how bindovers are used – is it mandatory, is it discretionary? How often is it used, and what are the characteristics of the cases?” Director Chambers-Smith noted that the number of inmates serving time in DRC as the result of a juvenile bindover is limited, but that she is interested in studying these topics as well.

25 YEARS OF SB2: SENTENCING ROUNDTABLE WORKGROUP

Vice-Chair Selvaggio welcomed back Judge Nichols and former DRC Director, Dr. Reggie Wilkinson. They have been a part of the effort to review current felony sentencing structure in Ohio. Dr. Wilkinson introduced himself and gave a brief history of the Sentencing Roundtable Workgroup and how the draft report came to be. The draft was presented to the full Commission was in December 2022. A public comment period followed and a summary of the comments, and the documents, are included in the meeting materials.

The work began as a result of the 25th anniversary of SB2 (1996). The draft report is an 80 page document, addressing several topics including the history of criminal sentencing in Ohio and twelve recommendations for modernizing and modifying current practices. Dr. Wilkinson thanked the staff in creating this document.

A public comment period began in December 2022 and officially ended on January 31, 2023; some comments were received after the comment period and those are also included in the materials. While there was some public comment, it is desirable to obtain thoughts from more stakeholders and organizations. Those comments were integrated into revisions of the report, as possible, at the pleasure of the full Sentencing Commission. Dr. Wilkinson reinforced that it is important in this process that everyone feel as though they have a voice. Dr. Wilkinson sat on the Commission when Chief Justice Moyer chaired, which ultimately created SB2 and remembered that they realized that not everyone will like the outcome but it is important that everyone feel that they have a voice.

Dr. Wilkinson introduced Retired Judge Bob Nichols as the “historian” of the project for some comments. Judge Nichols gave remarks about the history of approaches to sentencing, including rehabilitative and retributive sentencing schemes (document attached). He highlighted that one of the most common public comments was that the recommendations were not specific. However, the process is not yet at specifics and still at a philosophical level. It is important to reassess criminal sentencing in the context of best practices using evidence-based scholarship. Balance the concerns of social issues and liberties.

The work of this group did not rely on only what is current law, but relied on testimony from many involved individuals, including Director Chambers-Smith and Director Lori Criss, as well as discussing simplification of the criminal code.

At this time, Judge Nichols and Dr. Wilkinson introduced Commission criminal justice counsel Will Davies, who reviewed the revisions to the draft report. Mr. Davies thanked Dr. Wilkinson and Judge Nichols and referred to the revisions in the meeting materials. All of the red language in the document is what has been added based on the feedback. Rather than go through each of the recommendations again, he is going to go through the changes and feedback. There were mostly clarifications, not major changes. All of the public comments that were sent before this meeting were included in the feedback packet.

Representative Seitz asked how a “definite minimum term,” as recommended, is different than a “mandatory minimum?” Mr. Davies clarified that the proposed “definite” minimum would be the time that the offender serves before potential release—thereby upholding a tenant of “truth-in-sentencing”—but that that definite term would be under the discretion of the sentencing judge.

Regarding the recommendation to consider release eligibility after a certain period served on consecutive sentences—such as 15 years—Judge Wallace asked if, after 15 years, the case could go back to the judge for reconsideration? Mr. Davies answered that this was one possibility discussed, as well as the parole board. Director Criss asked for clarification from Judge Wallace and the Judge explained that there are reasons for consecutive sentencing, but that after 15 years circumstances change, so it may make sense for judicial review of the sentence by a judge (not necessarily the same judge).

On the topic of recommendation six, which pertained to the role of the Parole Board, Director Chambers-Smith discussed changes to the operation of the Parole Board to increase transparency and consistency. She also discussed that a lack of public data about the Parole Board is a problem with the perception, as typically releases from the Board have a recidivism rate roughly about 50% of those released from a determinate sentence and emphasized that accountability from data can help make decisions based on what is happening rather than anecdotes.

Regarding issues of transparency with the Parole Board, the Chair asked about the transparency of outcomes—in addition to the transparency of the hearings. Director Chambers-Smith explained that the decisions are broadly shared, but it is sometimes the opacity of deliberations that are criticized. Currently, the vote—including the number of members that voted for and against release—is shared, but not who voted which way for safety reasons. There are concerns about what documents the board reviewed, what should be reviewed, and what testimony was considered. Some of this may be shared, but others—such as testimony from victims—must be kept confidential.

Tim Young said that from the point of view of the Public Defender, the concern is with the lack of transparency in documents reviewed and the reasons for the decisions. At the OPD, they are focused on the reasons for decisions. The way the board operates now is tied back to pieces of the law that they used to make the decision. Dr. Wilkinson asked if there are best practices for parole board decision-making. Director Chambers-Smith said that they have been evaluating best practices and moved to structured decision-making based on those.

Director Ast explained the considerations of release for youth in detention. In DYS historically, youth stay additional time because they’ve committed acts of violence in facilities so releasing is a public safety risk. Kids and staff decided that release is based on what you *don’t* do, as opposed to what you *have* done while in DYS—

such as passing a certain grade, getting treatment, achieving a certain GPA, etc. What are the markers of success for release?

Chief Justice Kennedy discussed a speaker at a recent conference discussed the brain not being fully developed until age 26. She asked if that is something that DRC looks at. Director Chambers Smith said that the parole board did get training on brain development and looks at that in terms of parole release for young offenders. Director Criss spoke on the markers they look at, such as brain recovery after substance abuse.

Participants via Zoom asked the speakers in the room to please identify yourselves for the members on Zoom.

Mr. Davies continued reviewing revisions, with recommendation seven involving the expanded use of the uniform entry templates within the Ohio Sentencing Data Platform. Use of templates is expanding and positive. The recommendation is to continue the expansion of templates. Currently 26 templates are available and additional templates continue to be developed based on feedback from judges.

Chief Justice Kennedy mentioned that in speaking with judges across the state, they are discouraged that they must sign a Memorandum of Agreement to access the templates. From the judge's perspective, if we are going to call it a library accessible to judges, then they should be available. Director Andrews clarified that there is no MOA required to test out the templates on the platform, though one was considered it was never implemented. Chief Justice Kennedy stated that judges should be able to see what is in the "library" before signing an agreement. Judge Wallace asked whether this could be a toolkit? Sara added that there is not a secondary site to access the templates, but it can be considered.

Vice-Chair Selvaggio stated that there is no quorum today, but he would like to seek approval from the Commission to reinstate the two committees and ask for participation at the next full commission meeting.

Chief Justice Kennedy agreed and asked those on Zoom to please plan on attending the June meeting in person, so that the Commission may vote on these matters.

Judge McElfresh asked if the Commission is going to vote on the individual recommendations before moving forward. Chief Justice Kennedy stated that the assumption is that with a quorum, the Commission would vote on these provisions.

Senator Sykes asked if the provisions would be retroactive. Chief Justice Kennedy responded that this is up to the General Assembly. Mr. Davies finished his presentation on the revisions to the 12 recommendations in the report.

Judge Cappelli stated that local jails are now housing Felony 4s and Felony 5s. She asked the Commission to consider how many people have been displaced for DRC to local jails, when looking at the numbers. Director Criss stated that local courts will be able to implement specialized dockets better if they partner regionally as opposed to be a standalone court in a jurisdiction. This has had a chilling effect in rural parts of Ohio. Mr. Davies responded that the lack of non-DRC data has been a major roadblock to evaluating policy, highlighting the importance of the Ohio Sentencing Data Platform and accessibility of aggregate sentencing information.

Representative Seitz responded that the Bail Commission is reaching out to all 88 sheriffs to get data on jails. So in a year, we will have county data on who is in jail. Judge Cappelli stated that in her experience 50-75% of the jail population is felony offenses and most pretrial bonds are for felony offenders.

Mr. Davies addressed “next steps” of the work group, including incorporating DRC data as presented by Dr. Brian Martin at various workgroup meetings.

Returning briefly to the recommendations, Mr. Davies spoke about a provision enabling the Commission or other entity to review proposed legislation for redundancies or lack of specificity, to avoid duplicitous or incongruous portions of the criminal code.

Senator Sykes asked if this would be prior to introduction of a bill or passage? Mr. Davies responded that it was intended to be prior to passage. Additionally, Chief Justice Kennedy pointed out that the General Assembly gave the Ohio Judicial Conference the authority to examine statute to give proponent or opponent testimony and allow Ohio judges to weigh in.

Operational and Legislative Updates

Alex Jones gave a brief update on staff activities. There is a written update that will be sent out to members, given that time for the meeting is running short. This includes a review of SB 288, updates of reference guides, and a legislative update.

Chief Justice Kennedy saw that Sheriff Sims is still on the Zoom. She asked if he could tell us how many Felony 4 and Felony 5 are serving sentences in his jail today.

Sheriff Sims responded that does not have exact numbers today, but agrees with Judge Cappelli, that data is critical, it is an effort to collect this information and it will be some time before we can get access to the “true” data but it is extremely valuable.

Commissioner Painter shared in the zoom chat the numbers of Felony 4s and Felony 5s serving in the Clermont County jail.

Director Andrews thanked the Chief Justice for encouraging in-person attendance.

The Chair entertained a motion to adjourn. So moved and seconded by Chief Standley. Meeting adjourned.

2023 Full Commission Meeting Dates

Thursday June 15, 2023 10:00a Ohio Judicial Center, Room 101 and remote

Thursday September 21, 2023 10:00a Ohio Judicial Center, Room 281 and remote

Thursday December 21, 2023 10:00a Ohio Judicial Center, Room 101 and remote

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



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