

OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor
Chair



Sara Andrews
Director

OHIO CRIMINAL SENTENCING COMMISSION And SENTENCING ADVISORY COMMITTEE Regular Meeting Minutes March 19, 2015

MEMBERS PRESENT

Thomas Marcelain, Vice-Chair, Common Pleas Court Judge
Paula Brown, OSBA Representative
Ronald Burkitt, Police Officer
Hearcel Craig, State Representative
Derek DeVine, Prosecuting Attorney
Gary Dumm, Municipal Court Judge
Craig Jaquith, representing State Public Defender Tim Young
Ed Mejia, Staff Lt., representing State Highway Patrol Superintendent Paul Pride
Steve McIntosh, Common Pleas Court Judge
Gary Mohr, Director, Rehabilitation and Correction
Aaron Montz, Mayor, City of Tiffin
Dorothy Pelanda, State Representative
Chrystal Pounds-Alexander, Victim Representative
Harvey Reed, Director, Youth Services
Albert Rodenberg, Sheriff, Clermont County
Nick Selvaggio, Common Pleas Court Judge
Kenneth Spanagel, Municipal Court Judge
Cecil Thomas, State Senator

MEMBERS NOT PRESENT

Robert DeLamatre, Juvenile Court Judge
Paul Dobson, Prosecuting Attorney
John Eklund, State Senator
Kort Gatterdam, Defense Attorney
Kathleen Hamm, Public Defender
Fritz Hany, Municipal Court Judge
Sylvia Sieve Hendon, Appellate Court Judge
Jason Pappas, Fraternal Order of Police
Bob Proud, Clermont County Commissioner

ADVISORY COMMITTEE MEMBERS PRESENT

Lara Baker-Morrish, Columbus City Attorney
Jill Beeler-Andrews, Juvenile Division, State Public Defender's Office
Dustin Calhoun, Chief Counsel, Youth Services
Jim Cole, Montgomery County Juvenile Court
Steve Gray, Chief Counsel, Rehabilitation and Correction
David Landefeld, Ohio Justice Alliance for Community Corrections
Jim Lawrence, Ohio Justice Alliance for Community Corrections, Ohio Halfway House Association
Michele Miller, Warden, Belmont Correctional Institution
Karhlton Moore, Director, Office of Criminal Justice Services
Chris Nicastro, Mental Health and Addiction Services
David Picken, Attorney General's Office
Joanna Saul, Correctional Institution Inspection Committee
Mark Schweikert, Director, Ohio Judicial Conference
Steve Vandine, Rehabilitation and Correction
Gary Yates, Ohio Chief Probation Officers' Association

STAFF PRESENT

Sara Andrews, Director
Jo Ellen Cline, Criminal Justice Policy and Research Counsel
Cynthia Ward, Administrative Assistant

GUESTS PRESENT

Ryan Dolan, Rehabilitation and Correction
Carol Ellersohn, Office of Criminal Justice Services
Jenna Gant, Public Information, Supreme Court of Ohio
Lusanne Green, Ohio Community Corrections Association
Torri Huebner, legislative aide to Sen. Eklund
Jim Luebbers, Office of Criminal Justice Services
Scott Lundregan, Speaker Rosenberger's Office
Marta Mudri, Ohio Judicial Conference
Phi Nunes, Ohio Community Corrections Association
Nat Park, intern, Speaker Rosenberger's Office
Whitney Pesek, Correctional Institution Inspection Committee
Kyle Petty, legislative liaison, Youth Services
Kevin Stanek, Governor John Kasich's Office
Tamas Tabor, student, Moritz College of Law
Paul Teasley, Hannah News Service
Erin Waltz, Supreme Court of Ohio
Alan Wedd, Office of Criminal Justice Services
Josh Williams, Ohio Judicial Conference

CALL TO ORDER

The March 19, 2015 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was opened by Vice-Chair Thomas Marcelain, Common Pleas Court Judge at 9:35 a.m.

APPROVAL OF FEBRUARY MINUTES

Judge Nick Selvaggio pointed out a typo in the minutes from the February 19, 2015 minutes. Judge Steve McIntosh moved to approve the amended meeting minutes from February 19, 2015.

The Minutes were approved as amended.

PRESENTATION BY THE SUPREME COURT LAW LIBRARY

Sentencing Commission Director Sara Andrews praised the work of the Supreme Court Law Library staff, acknowledging their diligence in helping the Sentencing Commission staff with sorting and archiving records as well as conducting legal research. Their expertise in record retention and legal research is an asset that she felt could benefit a wider spectrum of the Sentencing Commission membership. She invited Erin Waltz, Public Services Manager for the Supreme Court of Ohio Law Library, to provide an overview of the library's research capabilities and services.

Ms. Waltz reported that their research staff is available to serve the judicial bench, the legal bar, and citizens. They are an unknown secret that answer's more than 300 questions for the public per week, even from as far away as Tunisia. When a request is submitted, the turn-around time for providing an answer is 1 to 24 hours. They also conduct long term research projects. The library offers wi-fi and free access to Lexus and Westlaw. The connections include access through LLMC to old state law books from federal law libraries. Additional offerings include bill tracking, connections with the Federal court docketing system, and access to federal publications.

When asked about when to consult the State Library or the Supreme Court Library, Ms. Waltz responded that the two libraries often work together and if one does not have the answer being sought, the other usually does. She suggested asking the Supreme Court Library first.

PRESENTATION BY THE OFFICE OF CRIMINAL JUSTICE SERVICES

Since the Sentencing Commission hopes to become more resource oriented, Director Andrews feels it is important to get better acquainted with more of the available resources and agencies that can provide valuable data. She invited Director Karhlton Moore to summarize the criminal justice policy and projects of the Office of Criminal Justice Services.

One of the key functions of the Office of Criminal Justice Services, said Director Moore, is to administer federal, state, and criminal justice grants. Determining the policy behind

a grant requires data to recognize the need and tailor a program to fit the audience. The use of evidence based practices provides the data needed along the continuum to make informed decisions and determine the program's success. Another section of OCJS audits those grants through on sight monitoring.

Some of the programs that OCJS is actively involved with include Drive Toward a Safe OH, Motorcycle Ohio, the Heroin Project, the Ohio Consortium of Crime Science (OCCS), the Governor's Task Force on Community Police Relations, and the Ohio Strategic Multi-Agency Research Team. The Heroin Project uses a concept that partners federal, state, and local resources to all the best practices and puts them in a single community. There are now three counties involved. The Ohio Consortium of Crime Science (OCCS) is a partnership between OCJS and researchers at colleges and universities who have expertise in the implementation of criminal justice sciences. The Governor's Task Force on Community Police Relations uses a lot of quantitative data gathered through two surveys to determine the community's attitude toward law enforcement and to determine the attitude of law enforcement. The surveys, said OCJS Researcher Alan Wedd, were conducted by surveying random people with phones. One of the issues involved the use of body cameras by law enforcement. The Ohio Strategic Multi-Agency Research Team (OH SMART) provides representatives from multiple agencies to help review grants and share information. This enables them to see where there are overlapping interests.

Jim Luebbers reported that the data collection program for OCJS includes the use of both the Ohio Incident Based Reporting System (OIBRS), which involves reporting to the Ohio database (which is then forwarded to the FBI), and the Ohio Uniform Crime Report Summary System (which goes directly to the FBI). The latter reporting system does not link crimes to specific incidents or incident dates. OIBRS is based off the NIBRS program of the FBI but includes state offense codes. It allows the import of information into the statewide database to be translated based on 70 different data elements. Covering 75% of Ohio's population, and with 150 law enforcement agencies reporting, it provides a wealth of information that can help to make good policy decisions.

The majority of the country's law enforcement report through the Ohio Crime Report (OCR) summary but the NIBRS program is growing significantly as more agencies are starting to report through that source as well.

Judge Selvaggio expressed concern about F5 drug offenders who are technical violators. He has found that there is missing data on drug offenders committing robbery to support their habit. He hopes there might be a way to modify motive data. He believes data is needed that addresses the motivation for the continuum of criminal conduct.

In the process of determining what data elements to collect, Director Moore does not believe that is the best time for determining motivation behind the criminal behavior.

When asked whether federal funding is tied to Crime Report statistics, Director Moore explained that crime is often one of several elements used in the formula for determining grant allocations. There is also a formula for those agencies that do not report crime statistics. He noted that Ohio law tends to prohibit some funding to agencies that do not report crime.

Director Moore remarked that the CrimeSolutions.gov website is particularly useful by providing evaluations of a lot of programs.

DIRECTOR'S REPORT

The role of the Sentencing Commission as it currently stands, by statute, said Director Andrews, is to evaluate, monitor, and report on practices in sentencing. As the Commission evolves, and in conjunction with the work of the legislative Recodification Committee, she asked the Commission members to review a list of recommendations regarding the direction to be taken from this point forward. Each recommendation will be voted on to determine whether it is considered as a priority for the Commission's new agenda.

VOTE ON RECOMMENDATIONS

1. Clarify what is the precise role and function of the Criminal Sentencing Commission. Senator Thomas moved to accept, Representative Pelanda seconded. **Motion passed.**
2. Consider the death penalty task force recommendations. OSBA Representative Paula Brown moved to accept, Craig Jaquith, OPD seconded. **Motion passed.**
3. Need to find an easier, cheaper, and more efficient way to make court hearing transcripts available to the parties involved in a case. State Senator Cecil Thomas moved to accept, noting that many offenders cannot afford an attorney and often have to proceed without transcripts. They deserve a fair trial and having access to transcripts is part of that process. Sheriff Rodenberg seconded the motion. After some discussion, Director Mohr called the question and Senator Thomas withdrew the recommendation. **Motion withdrawn.**
4. Increase options for nonviolent drug offenders to be placed in community based programs. No motion was offered. Judge McIntosh remarked that some of these recommendations could be combined under one category. Judge Spanagel moved to establish a category of recommendations related to nonviolent drug offenders, Attorney Brown seconded. **Motion passed.**

It was agreed that recommendation #4 would be the first recommendation placed in nonviolent drug offender category.

5. Appellate Review – Steve VanDine moved to accept, Judge Spanagel seconded. **Motion passed.**
6. Allow prosecutor and defense counsel access to presentence investigations, recommendations and ORAS scores. **The recommendation failed for lack of a motion.**
7. Reduce the length of probation terms for low level felons. Consider the length of probation term close to length of actual sentence. **The recommendation failed for lack of a motion.**
8. Review how probation violations for fines and restitution are dealt with. Consider decriminalizing nonpayment of fines and costs. Senator Thomas moved to accept, Sheriff Rodenberg seconded. **Motion passed.**
9. Remove Halfway Houses from ORC 1.05(D)(2). The only place in the ORC that defines Halfway Houses as sentencing servicing 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. Senator Thomas moved to accept, Judge Spanagel seconded. Motion failed, but was later reopened on a motion from Chrystal Pounds-Alexander and seconded by Judge Marcelain. **Motion passed.**
10. Data Driven Oversight of sentencing and corrections reform:
 - a. Require greater accountability from agencies and provide ongoing data-driven oversight of sentencing, corrections reform. **The recommendation failed for lack of a motion.**
 - b. Sentencing Commission as clearinghouse for criminal justice legislation. Steve VanDine moved to accept, Judge McIntosh seconded. Mr. Vandine believes that establishing the Sentencing Commission as a clearinghouse for criminal justice legislation could strengthen the role of the Commission. Stating the duties of the Sentencing Commission have been clearly established by statute, Judge Selvaggio opposed the motion to accept 10b. **Motion passed.**
 - c. Provide better behavioral health data among criminal justice partners. **The recommendation failed for lack of a motion.**
11. Marijuana penalty review and data collection. Senator Thomas moved to accept. Judge Marcelain seconded. **Motion passed.**
12. Review application/prosecution of ORC 2929.32 regarding pattern of corrupt activity. **The recommendation failed for lack of a motion.**

13. 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. Steve VanDine moved to accept, Senator Thomas seconded. **Motion passed.**
14. Consider making it mandatory for individuals with mental health issues be placed in community based programs, especially if they committed low level and non-violent offenses. How do we provide services for offenders with drug dependencies? Steve VanDine moved to add this recommendation to the category for non-violent offenders. Prosecuting Attorney Derek DeVine seconded the motion. **Motion passed to move it to non-violent offender category.**
15. Non-violent offenders – ensure fairness and certainty in sentencing; Require supervision for offenders leaving release; 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. Steve VanDine moved to add this recommendation to the category for nonviolent offenders. **Motion passed to move it to non-violent offender category.**
16. Drug penalties – possession v. trafficking – restructure controlled substance offenses. Judge Spanagel moved to add this recommendation to the new nonviolent category, the motion was seconded by Senator Thomas. **Motion passed to move it to non-violent offender category.**
17. Drug penalties - mandatory sentences
Director Andrews said this was mentioned at several meetings over the past few years, noting that drug offenders constitute from a fifth to a third of prison intake in Ohio. Eliminating the distinctions between drug and non-drug cases would not reduce the degree or penalty range of any drug offense. The same prison terms would still be available, albeit not necessarily mandated. Paula Brown moved to accept, Senator Thomas seconded. **Motion passed.**
18. Trace cocaine levels
Many low level marijuana offenses fall into misdemeanor categories, but even a microscopic amount of cocaine is prosecuted as a felony. Some people have suggested setting a misdemeanor penalty or limiting the F-4 felony sanctions for trace amounts of cocaine.

Judge Spanagel moved to add this recommendation to the nonviolent drug offender category, Senator Thomas seconded. Prosecuting Attorney Devine opposed. **Motion passed.**

19. Revise or eliminate sections of O.R.C. that provide for an operator's license suspension as a sentence for drug convictions. Judge Spanagel moved to accept, Judge Dumm seconded. **Motion passed.**
20. Address felonization of misdemeanors and increasing lengths of sentence for existing felonies since adoption of new criminal sentencing code (SB2) in 1996. Steve VanDine moved to accept, Judge Spanagel seconded. Mr. VanDine remarked that there are currently 4,000 offenders in that group due to a massive increase in F-3 offenses over the last 20 years. **Motion passed.**
21. OVI law review and simplification. Judge Spanagel moved to accept, Judge Selvaggio seconded. **Motion passed.**
22. ORC 2911.02(A)2 & 3 robbery: The definition of "force" and inclusion of the language "fleeing immediately after" turns a simple shoplifting into robbery by aggressive apprehension techniques. **The recommendation failed for lack of a motion.**
23. ORC 2903.11 felonious assault, felony 2 and ORC 2903.12(A) aggravated assault F4; problem typically arises in mutual combat (or clearly provoked but maybe not self defense) that results in the "loser of fight" with "serious physical harm" (usually facial injuries from punch). The "loser" becomes the "victim" and the "winner" becomes the defendant with felonious assault charges. No self defense for mutual combat; provocation. **The recommendation failed for lack of a motion.**
24. 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. Steve VanDine moved to accept, Crystal Pounds-Alexander seconded. **Motion passed.**
25. 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 (i.e. drugs and DUI). Craig Jaquith moved to accept, Judge Selvaggio seconded. **Motion passed.**
26. Consider revision to ORC 2950.04 and 2950.99 Failure to Register due to inequities that can result with the "strict liability" standard applied. Steve VanDine moved to amend to include all sex offense registry requirements, Judge Spanagel seconded. **Motion passed as amended.**

27. Review juvenile representation procedure/practice, especially for kids who can't afford an attorney. Better management process for the time a public defender spends with a child, avoid meeting with these kids for brief periods of time right before a hearing and ensure that private space is available for public defenders to meet with kids. Senator Thomas moved to accept, Director Reed seconded. **Motion failed.**
28. Clarify jurisdiction of the juvenile court. Mr. Vandine moved to accept. Senator Thomas seconded. Director Andrews reported that Public Defender Kathleen Hamm had said a juvenile can be held and the case postponed for years until they are an adult. After discussion, **motion withdrawn.**
29. Juvenile extended sentence review. Craig Jaquith moved to accept, Senator Thomas seconded. **Motion passed.**
30. Further reform juvenile sentencing to enhance a behavioral health treatment approach and data collection on behavioral health needs. Senator Thomas moved to accept, Representative Craig seconded. **Motion failed.**
31. Reduce use of mandatory shackling for juvenile offenders. Senator Thomas moved to accept, Chrystal Pounds-Alexander seconded. Senator Thomas claimed that most sheriffs mandate shackling although studies show that it is detrimental to the youth's psyche. Jill Beeler-Andrews, Chief Counsel from the Juvenile Division of the State Public Defender's Office, declared that there are three counties in the state of Ohio that do not shackle youth. Judge Selvaggio referenced §181.23 and §181.24 and questioned whether this is in the purview of this body. **Motion passed.**
32. Eliminate or limit mandatory bindover by giving judges the discretion to determine when a child should be transferred to adult court. Craig Jaquith moved to accept, Senator Thomas seconded. **Motion passed.**
33. Eliminate or limit mandatory sentences in the juvenile justice system. Senator Thomas moved to accept, Craig Jaquith seconded. Senator Thomas expressed concern about a scenario that might involve a group of juveniles where only one may have a gun but they all end up with a gun spec and placement in the adult system. He believes the adult court should be the last resort. He suggested a "gun court" as an alternative. **Motion passed.**
34. Address juvenile court costs. Craig Jaquith moved to accept, Senator Thomas seconded. **Motion passed.**

35. Remove the mandatory minimum firearm 1-5 year specifications and replace them with discretionary specifications. Attorney Paula Brown moved to accept, Chrystal Alexander seconded. Judge Spanagel moved to amend, replacing “remove” with review” and combining it with #37. Steve VanDine seconded.

Attorney Brown said she understands the need for enhancement but opposes the mandatory nature, declaring that it should be discretionary. Judge Spanagel suggested examining the statutes on this. Steve VanDine said there is considerable evidence that many counties negotiate away the gun specs. **Amended motion passed.**

36. Clarify juvenile confinement credit. Senator Thomas moved to accept, Representative Craig seconded. **Motion passed.**
37. Review and revise RECLAIM public safety beds i.e.) firearm specifications. Senator Thomas moved to accept, Director Reed seconded. **Motion passed.**
38. Restore ORC presumption and appellate language from before the *Foster* decision. Steve VanDine moved to accept, Chrystal Pounds-Alexander seconded. Steve VanDine noted that the repercussions of the *Foster* decisions added an average of 9 months per inmate. **Motion passed.**
39. 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. Steve VanDine moved to accept, Craig Jaquith seconded. **Motion passed.**
40. Review all offenses made felonies or modified for much more extensive use over the past 25 years and review all felonies that have been upgrade to higher levels to see if lower penalties are more appropriate. **It was determined this this should be combined with approved recommendation #20 and include review of penalties that have been reduced.**
41. 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. **It was determined that this should be combined with approved recommendation #13.**
42. 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. Steve VanDine moved to accept, Senator Thomas seconded. Judge Selvaggio opposed. **Motion passed.**

43. Consider attorney representation for juvenile offenders. Senator Thomas moved to accept, Representative Craig seconded. Senator Thomas remarked that constituents in his county are concerned about children being taken into a separate room for an interview without a parent or attorney. Jim Cole, with Montgomery County Juvenile Court, declared that, in his jurisdiction, a parent and attorney are both present when a child is interviewed. **Motion failed.**
44. Review offenses mandating limited or no driving privileges. Judge Spanagel moved accept, Judge Dumm seconded. **Motion passed.**
45. Review expungement eligibility, filing times and general collateral consequences – consider an automatic removal of non-violent offenses after a period of time, i.e. 25 years. Attorney Paula Brown moved to accept, Steve VanDine seconded. Steve VanDine remarked that expungements are almost useless since records are now available to public access and there’s no way to prevent it. Attorney Brown expressed concern about companies who do background searches but do not do due diligence. **Motion passed.**

MEMBER UPDATES

Policy and Research Counsel Jo Ellen Cline reported that the Appellate Review Committee had a very productive conference call and plan to have a final proposal available for the April meeting.

Ohio Judicial Conference Director Mark Schweikert reported that there is money in the proposed state budget to allow judges discretion to grant judicial release for offenders with debilitating diseases.

As an item of old business, Director Andrews recommended adding Lara Baker-Morrish, Columbus City Attorney, to the Advisory Committee. Steve VanDine moved to approve the appointment, Chrystal Pounds-Alexander seconded. **Motion was unanimously approved.**

FUTURE MEETING DATES

Future meetings of the Ohio Criminal Sentencing Commission are tentatively scheduled for April 23, May 14, June 18, July 16, August 20, September 17, October 15, November 19, and December 17, 2015.

The meeting adjourned at 1:40 p.m.