

OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Full Commission Meeting Minutes
September 21, 2017

MEMBERS PRESENT

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Chrystal Alexander, Victim Representative
Lara Baker-Morrish, Columbus City Attorney's Office
Paula Brown, Attorney
Robert DeLamatre, Juvenile Court Judge
Gary Dumm, Municipal Court Judge
John Eklund, State Senator
W. Scott Gwin, Appellate Court Judge
Thomas Marcelain, Common Pleas Court Judge
Stephen McIntosh, Common Pleas Court Judge
Kevin Miller, State Highway Patrol
Aaron Montz, Mayor
Terri Jamison, Juvenile Court Judge
Gary Mohr, Department of Rehabilitation and Correction
Harvey Reed, Department of Youth Services
Jeffrey Rezabek, State Representative
Kenneth Spanagel, Municipal Court Judge
Cecil Thomas, State Senator
Tim Young, State Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Jill Beeler, Ohio Public Defender's Office
Doug Berman, The Ohio State University, Professor of Law
Lori Criss, The Ohio Council
Paul Dobson, County Prosecutor
Steve Gray, Chief Legal Counsel – DRC
James Lawrence, Ohio Community Corrections Association
Brian Martin, Research Chief – DRC
Jason McGowan, Ohio Chief Probation Officer's Association – Municipal Court
Michelle Miller, Regional Director – DRC
Kyle Petty, Department of Youth Services
Paul Pfeifer, Executive Director – Ohio Judicial Conference
Keith Spaeth, OJACC – Common Pleas Court Judge

CALL TO ORDER

The September 21, 2017 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order by Vice-Chair Selvaggio. Vice-Chair Selvaggio then proceeded with roll call of members and advisory committee.

APPROVAL OF MINUTES FROM JUNE 15, 2017

The minutes of the June 15, 2017 meeting of the full Commission were unanimously approved.

INNOVATIVE JUSTICE REFORM: COURT & COMMUNITY CORRECTIONS PARTNERSHIP AND THE IMPACT ON SENTENCING

Judge Gene Zmuda, Lucas County Court of Common Pleas and Bud Hite, Director, Lucas County Correctional Treatment Facility discussed several initiatives underway in Lucas County and shared a powerpoint presentation with the group.

Points of discussion from the members included:

- * Funding for the Deflection Program – foundation funding (i.e. McArthur), grants and subsidies
- * Clarification that the Deflection Program is not utilized for domestic violence offenses
- * Poverty and evidence of systemic racism? Judge Zmuda said that evidence supports that once individuals are in the system, the clearing and disposition of cases is race neutral. He further said the Public Safety Assessment (PSA) tool confirms that and indicates the same for gender.

Director Mohr commented that Lucas County is a local problem solving example and suggested that Crisis Intervention Training is a necessary component. He also said that despite the local Community Based Correctional Facility (CBCF) physical plant limitations, CBCFs should be multi-use facilities for treatment and programming purposes.

Senator Thomas asked if a standard risk assessment tool should/could be applied everywhere in the state to provide a framework for incarceration decisions. Judge Zmuda suggested instead of legislating a mandate and to preserve fundamental inter-branch government jurisdictions should use the PSA risk tool because it allows judicial discretion and guidance through the practical, political realities through nine questions and recommendations. The tool also allows a 15% variance for following recommendations.

Tim Young said he believes it is less about when release, but mandating the use of tool. He further suggested cash bonds should be eliminated and that if everyone is using tool, we can identify variances, share information and standardize data.

Sheriff Sims stated that we need to evaluate how we manage people in our system, for instance the work release program is the largest source of contraband.

Judge Zmuda closed his remarks by challenging the Commission to consider ways to improve the recently passed legislation regarding the Targeted Community Alternatives to Prison (TCAP) grant program implemented by the Department of Rehabilitation and Correction. He suggested the program should be accessible for all counties and evaluating it, recommending improvements is clearly the charge and statutory obligation of the Commission and he will work with the Commission on the subject.

COMMITTEE REPORTS

JUVENILE JUSTICE:

Paul Dobson reported that the Committee is considering a partnership with the Robert F. Kennedy Center to review juvenile probation in Ohio. The RFK center is already working with Summit County and the Committee will finalize its recommendations on the topic in the near future.

The Committee is also recommending a revision to RC 2152.19 to clarify that at the time of sentencing, the suspension of a driver's license is discretionary. Specifically, subsection (A)4 change the language to "may include, but not limited to". Judge Spanagel moved to approve the revision and Director Mohr seconded the motion. Discussion on the matter included a question on whether or not to consider language regarding a suspension with limited privileges. Additionally, Representative Rezabek noted he has the language drafted, but hasn't yet identified a bill for it. The Commission unanimously favorably voted to advance the recommendation of revision.

SENTENCING/CRIMINAL JUSTICE:

Judge Spanagel advised that the Bail and Pre-Trial Services recommendations were highlighted at a session at the National Association of Sentencing Commissions Meeting and that the Chief Justice has been asked to consider referring the relevant Supreme Court of Ohio recommendations to the appropriate Commissions for action. Sara added that the Bail and Pre-Trial recommendations were featured at the National Association of Pre-Trial Service Agencies (NAPSA) plenary session; several members will be on a panel presentation on the topic at the Ohio Justice Alliance for Community Corrections (OJACC) and an upcoming course of the Ohio Judicial College. Draft legislation based upon the recommendations is also anticipated.

Judge Spanagel also reported that the upcoming work of the Committee will include prioritizing the recommendations of the Recodification Committee. Several topics are already under consideration such as, appellate review, offenses of violence and mens rea. The Committee will also consider the topic of TCAP.

Lori Criss suggested that because there is a steady stream of bills introduced to modify criminal sentencing on drug cases, i.e. SB1; HB296 – there ought to be a process for the Commission to evaluate the legislation and provide input. For instance, addressing the questions, is the language in the proposed bill consistent with Recodification Committee recommendations and does it allow for discretion at local level? Judge Selvaggio said that indeed that is within the purview of the Commission and we should be a clearinghouse for potential criminal justice related legislative matters. Members agreed and also affirmed willingness to comment, participate when needed.

DATA:

The data workgroup will provide content expertise and understanding of the legal landscape in Ohio to ensure that data produced by, and for, the Commission serves to enhance and inform our work. Knowledge about data analyses is not needed (but welcome).

DIRECTOR'S REPORT:

Sara reported the following:

- * National Association of Sentencing Commissions annual conference August 27-29, 2017
 - a. Two presentations –
 1. University of Cincinnati Crime Science Institute (UC-CSI) – predictive data analytics and using those tools to examine/understand trends and patterns the criminal justice continuum.
 2. Bail and Pre-Trial reform efforts – panel presentation with NM, CT
- * Ohio Judicial Conference and the Ohio State Bar Association – advocating the Commission for a role in legislative analysis.
- * Data Projects – report from Case Western Reserve University on impact since HB86 expected soon and will be discussed at the meeting of the full Commission on December 14, 2017.
- * Academic collaboration opportunities – in addition to current projects with UC-CSI and CWRU
 - a. OSU Data event - Stakeholder Engagement Event on Big Data Analytics and the Criminal Justice System
 - b. Moritz College of Law
 - c. John Glenn College of Public Affairs
- * Federal Sentencing Reporter article – Sara and Tim Young will have articles in the December issue.
- * Justice Reinvestment Initiative Ohio 2.0
 - a. Letter of application and award
 - b. Ad Hoc Committee

Sara then asked Vice-Chair Selvaggio and Members to consider a motion to create the Ohio JRI 2.0 oversight Ad Hoc Committee. Judge Marcelain moved to create the JRI Ad Hoc Committee, Director Reed seconded the motion. The Commission unanimously voted in favor of creating the JRI Ad Hoc Committee.

EXECUTIVE SESSION

Vice-Chair Selvaggio moved to go into Executive Session to consider the dismissal, discipline and/or demotion of a public employee. Representative Rezabek seconded the motion and by unanimous roll call vote (roll call vote sheet attached) the Commission went into executive session.

The Commission went back on the record and reopened the meeting to the public following executive session. Director Mohr made a motion to delegate authority to Executive Director to take appropriate action specific to the findings of fact regarding the dismissal, discipline or demotion of public employee. Judge Gwin seconded the motion and discussion followed. Judge Spanagel asked about seeking an opinion from the Attorney General before taking action and Judge McIntosh suggested clarification of seeking an opinion versus advice. Director Mohr advised he intentionally didn't include that language. It was also noted that if there was a staff termination, there should also be authority to hire replacement.

An amended motion was proposed by Tim Young to authorize the Executive Director to make personnel decisions, with the exception of those involving the Executive Director. Representative Rezabek seconded the motion. Further discussion resulted in Director Mohr amending his original motion in lieu of accepting the amendment proposed by Mr. Young. Director Mohr proposed an amended motion to delegate authority to the Executive Director to decide whether to dismiss, discipline, or demote a Commission employee with the exception of the Executive Director. Senator Eklund seconded the motion and by roll call vote (roll call vote sheet attached) the motion passed unanimously.

With no further business before the Commission, Judge Spanagel moved to adjourn the meeting, the motion was seconded and by unanimous vote the meeting was adjourned by Vice-Chair Selvaggio.

2017 Full Commission Meeting Dates

Thursday, December 14, Riffe Center – 31st Floor

Meeting materials/attachments:

- * Minutes of June 15, 2017 meeting
- * Juvenile Justice Committee RFK memo, RC 2152.19 revision
- * Innovative Justice Reform: Court & Community Corrections Partnership and The Impact on Sentencing (powerpoint)
- * Justice Reinvestment Initiative Ohio 2.0 – Letter of application and award
- * Roll Call Vote sheet #1
- * Roll Call Vote sheet #2