



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

FULL SENTENCING COMMISSION MINUTES

May 18, 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-Morrish, Municipal Association

Beth Cappelli, Judge, Municipal Court

Annette Chambers-Smith, Director, Department of Rehabilitation and Correction

Charles Chandler, Peace Officer

Robert DeLamatre, Judge, Juvenile Court

Sean Gallagher, Judge, Appellate Court

Kristen Johnson, Judge, Probate and Juvenile Court

Robert Krapenc, Attorney, Criminal Defense

Jennifer Muench-McElfresh, Judge, Common Pleas Court

Stephen McIntosh, Judge, Common Pleas Court

Helen Wallace, Judge, Juvenile Court

Bill Seitz, House of Representatives

Kenneth Spanagel, Judge, Municipal Court

Brandon Standley, Law Enforcement

Vernon Sykes, Ohio Senate

Tyrone Yates, Judge, Municipal Court

MEMBERS ATTENDING BY ZOOM

Tim Young, Ohio Public Defender

GUESTS PRESENT

In person:

Director Lori Criss, Ohio Mental Health and Addiction Services

Paul Teasley, Hannah News

Dustin Ensinger, Gongwer News

Zoom:

Natasha Ewing

Jeff Golon

Joe Gruber

Brian Skinner

STAFF

Sara Andrews, Director

Michael Crofford, Research Specialist



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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

Vice Chair Selvaggio called the meeting to order and welcomed a motion to approve the March 16, 2023 meeting minutes. Judge Spanagel motioned to approve the meeting minutes as authored. Judges Yates seconded the motion. The minutes were approved unanimously.

MEMBER SURVEY AND FUTURE MEETING SCHEDULE

Chief Justice Kennedy updated the Commission on the progress of the survey to schedule future Commission meetings. Niki Hotchkiss reviewed the summary of the survey results. The preferred day for the Commission meeting is Thursdays between 9:00 am and 12:00 pm. Quarterly meetings is the preferred option for the group. The preferred months to meet are February, May, September, and November. Vice Chair Selvaggio spoke on the importance of arranging a satisfactory meeting date for the most number of people due to having quorum for voting items. He also endorsed May and November meeting dates due to scheduling alignment with the legislative calendar.

Judge DeLamatre raised the issue of changing the rules to accept votes virtually because most scheduling conflicts are due to long travel times for some Commission members. Chief Justice Kennedy responded that Commission meetings fall under public meeting law and would need legislative authority to allow voting virtually. Representative Seitz informed the Commission that there is a bill in the House that they are working to get passed to accomplish this. For now, an in-person quorum is necessary. Representative Seitz moved to adopt the February, May, September, and November meeting calendar. Judge Johnson seconded, and the motion passed unanimously. This meeting schedule begins this year, with the next regularly scheduled Commission meeting to occur on September 21, 2023, and November 16, 2023 at 10 am. Chief Justice Kennedy noted that room 101 in the Supreme Court building will be held for future meetings.

COMMITTEES OF THE COMMISSION

Chief Justice Kennedy raised the issue of reviving the Criminal Justice Committee and the Juvenile Committee tabled from the last Commission meeting. The Chief Justice moved to revive the Criminal Justice Committee. Representative Seitz seconded the motion. The motion was approved unanimously. The Chief Justice moved to revive the Juvenile Justice Committee. Judge Yates seconded the motion. The motion was approved unanimously. The Chief Justice reiterated



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topics of interest for the committees as evaluating the use of juvenile bindovers for the Juvenile Justice Committee and pinpointing parts of the revised code that have been declared unconstitutional and providing a legislative fix for the Criminal Justice Committee.

FELONY SENTENCING ROUNDTABLE REPORT & RECOMMENDATIONS

Reggie Wilkinson was not able to be present at the meeting so Will Davies reiterated the goal of the group to seek approval to move forward on developing the recommendations and transition the Sentencing Roundtable Workgroup to the revived Criminal Justice Committee. Davies further summarized the timeline and synopsis of the recommendations. Vice Chair Selvaggio asked if there is support in the legislature to advance these recommendations. There was a discussion of strategy in working with the legislature and ensuring that the recommendations will be picked up. Judge McIntosh responded that the goal of the workgroup was to develop needed changes to the system for recommendation to the general assembly rather than ask for endorsement by the general assembly before moving forward to that point.

Judge Cappelli suggested narrowing the scope of the topics. Chief Justice Kennedy asked if it would be beneficial at this stage to decide which of the 12 recommendations to advance. Davies responded that at this stage, the workgroup wanted the greenlight to advance on fleshing out the recommendations so that it can present them at the next meeting of the Commission. Chief Justice Kennedy stated that, in reference to the first six recommendations on the topic of indeterminate sentencing, there is uncertainty until the Supreme Court resolves challenges to the Reagan Tokes legislation. Davies added that while recommendations one through six are a package, recommendations seven through 11 are separable and can be advanced regardless of rulings on indeterminate sentencing. Judge Selvaggio motioned to move forward with the development of the Sentencing Roundtable recommendations. Judge Spanagel seconded. The motion was approved, with Judge McElfresh voting nay and Chief Justice Kennedy abstaining.

Director Andrews pivoted back to the issue of the reinstated committees, and raised a question on how they should be formed. Chief Justice Kennedy advised that the Commission should ask for a volunteer chair and members, which can be accomplished via email. Director Chambers-Smith volunteered to chair the Criminal Justice Committee. Judge Wallace volunteered to chair the Juvenile Justice Committee. Judge Selvaggio reminded the Commission that non-Commission members can participate in the committees but hold a non-voting role. Chief Justice Kennedy advised the chairs to determine the number of volunteers needed and where they come from. Judge Spanagel and Representative Seitz suggested having the legal staff from both parties in the House and Senate be involved in the Criminal Justice Committee for synergy with the General Assembly. Director Andrews added that the commission will provide staff and administrative support to the committees.



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OHIO SENTENCING DATA PLATFORM GOVERNANCE (OSDP)

Sara Andrews reviewed the current governance structure of the OSDP and discussed the current operation of refining the sentencing templates and enhancing user experience. The revised governance structure streamlines operations and puts the Commission as the governance body.

Judge Gallagher discussed confusion with the update protocol group and what it does, with some thinking it is a data collection group, when its sole responsibility is updating the sentencing entry templates. Chief Justice Kennedy inquired whether a name change would help clarify what the update protocol group does. The group will consider a potential name change.

There was a discussion on the plan to collapse the governance structure of the OSDP into the Commission. Sara suggested reports on the OSDP be provided to the full Commission. After a discussion on the creation of the previous governance structure of the OSDP, it was decided that no vote was needed to realign the governance of the OSDP.

R.C. 2953.32 DEFINITION OF “EXPUNGE” AND “OFFICIAL RECORDS”

Alex Jones produced a memo on inconsistencies in the language surrounding expungement in the Ohio Revised Code. See attached memorandum. In essence, following the passage of SB288, there exists two definitions of expungement in the statute, concerning the standard of delete, destroy, and erasure of expunged records. Representative Seitz inquired why the standard of delete, destroy, and erase would not apply? Alex stated that this is the source of the question, as SB288 pulled the definition of expungement out and split it. Representative Seitz stated that this was not the intention of SB288 and called on the Commission to ask Senator Manning why this was done. The Commission discussed record sealing versus expungement and the confusion created for the clerks of court. Lori Criss asked if record sealing is statutorily defined. Jones responded that it is not, other than who has access to sealed records.

Commission members discussed confusion regarding the differences between record sealing and expungement and that this causes implementation difficulties. Vice Chair Selvaggio stated that this confusion goes back to the work of the Sentencing Roundtable Workgroup and why they are trying to streamline the revised code and that such uncertainty extends beyond just record sealing and expungement. Chief Justice Kennedy noted that the Supreme Court hosts written guides and materials on this issue and expressed the desire to ensure that the Court is not adding to the confusion. Vice Chair Selvaggiomoved that \Alex Jones approach Senator Manning to resolve the issue of defining expungement in the code. Representative Seitz seconded. The motion was approved unanimously.



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EXECUTIVE SESSION

Chief Justice Kennedy moved to enter into executive session. Director Chambers-Smith seconded. The motion was approved unanimously.

At 12:04pm there was a motion to move out of executive session by Judge Wallace. Judge Spanagel seconded, the motion was approved unanimously.

Judge Cappelli moved to accept the retirement of Director Sara Andrews. Judge Yates seconded the motion. The motion was approved unanimously.

Director Chambers Smith moved to appoint Nikole Hotchkiss to the position of Interim Director of the Commission. Chief Chandler seconded the motion. The motion carried unanimously. Hotchkiss confirmed acceptance of the position.

Judge Cappelli moved to post the position description, as written, of Director of the Commission as soon as possible. Judge McElfresh seconded the motion. The motion carried unanimously. Judge Spanagel clarified whether the date of revision of the position description needed to be updated. The group decided no date change was needed as no revisions were made.

Judge Wallace moved that the Interim Director salary be set at the current directors' salary. Chief Standley seconded the motion. The motion carried.

Judge McIntosh moved to post the position for 30 days. Judge Spangel seconded the motion. The motion carried.

Chief Chandler, Judge Spanagel, Chief Justice Kennedy, and Judge Cappelli volunteered to be on a screening committee for the hiring of the new director.

The Commission proceeded to a discussion about the proposed budget and the contract with the University of Cincinnati School of Information Technology. The clarification was made that after budget testimony, the Commission's budget stands as proposed. Chief Justice Kennedy asked about where the contract with the University of Cincinnati stands and that the Commission be provided with the historic contract documents with the University. The current contract is for \$400,000. In the past the Commission budget has allocated money for the statement of work. The budget proposal is premised on a certain amount of dollars for that contract. The request for 2024 is \$800,000 each fiscal year for the contract with UC.

A question was raised about how the contract with UC is evaluated. Director Andrews clarified that there is an implementation team in the governance structure that implements the statement



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of work. Each year there are fiscal year progress reports that can be submitted to the Commission.

Director Andrews clarified that the additional budget request for the Commission includes pay and benefits for the current staff as well as money for additional staff. Representative Seitz recommended freezing the hiring of new staff until the Commission finds a new director. Chief Justice Kennedy entertained a motion to freeze hiring of the new staff until the Commission has more concrete direction. Vice Chair Selvaggio asked if the contract that is potentially going to be renewed with UC is dependent on the new staff of the Commission. Director Andrews answered affirmatively. Vice Chair Selvaggio added that if there is a responsibility under the contract to perform certain duties, there is a conflict with the Commission not having the additional required staff. Director Andrews stated that the contract with UC is not an automatic renewal, but there is a presumption of renewal.

Chief Justice Kennedy moved to freeze the hiring of new staff until the Commission establishes direction. Representative Seitz seconds the motion. Approved with Judge McIntosh and Selvaggio opposed.

Judge McElfresh moved to not enter into a contract with UC unless the Commission approves it. Vice Chair Selvaggio reminded the Commission that the current contract ends on June 30, and that requiring Commission approval for a new contract, at its next meeting date in September, would be an effective termination of the contract. Vice Chair Selvaggio advised that this action would have ramifications as so many currently rely on the OSDP. Representative Seitz recommended calling a meeting before the end of the fiscal year. Judge Spanagel suggested allowing the interim director to sign a 90 day contract with UC at the beginning of the fiscal year. An amended motion was put forth – that the interim director may pursue a 90-day extension of the contract with the University of Cincinnati as it is currently formed. The motion carried.

At the request of Chief Justice Kennedy, staff will provide the Commission with the contracts with the University of Cincinnati swiftly. A source document for a new contract with UC will be provided within three weeks' time. The Commission decided to meet on July 27, 2023 to discuss the contract with the University of Cincinnati. Staff will also will provide an internal roster of Commission members with their contact information.

Meeting adjourned at 12:50.