



OHIO CRIMINAL SENTENCING COMMISSION—FULL COMMISSION MEETING NOTES
OHIO JUDICIAL CENTER ROOM 101, OR ZOOM
July 21, 2022 10am

MEMBERS PRESENT

Maureen O’Connor, Chair, Chief Justice
Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Lara Baker-Morrish, Municipal Association
Kristin Boggs, State Representative
Brooke Burns-Jackson, Attorney, Juvenile – Office of the Public Defender
Beth Cappelli, Municipal Court Judge
Charles Chandler, Peace Officer
Erin Froehlich, Department of Rehabilitation and Correction
Robert Krapenc, Criminal Defense Attorney
Nathan Manning, State Senator
Chip McConville, County Prosecutor
Stephen McIntosh, Common Pleas Court Judge
Jennifer Muench-McElfresh, Common Pleas Court Judge
Liz Poprocki, Victim Representative
Rob Sellers, Staff Lieutenant, State Highway Patrol
Larry Sims, Sheriff
Kenneth Spanagel, Municipal Court Judge
Brandon Standley, Chief of Police
Cecil Thomas, State Senator
Tim Young, Ohio Public Defender

GUESTS PRESENT

Thomas Gallick
Cyndi Mausser, Department of Rehabilitation and Correction
Marta Mudri, Ohio Judicial Conference
Jaiza Page, Common Pleas Court Judge
Kyana Pierson, Supreme Court of Ohio
Dr. Hazem Said, University of Cincinnati
Justin Stanek, Department of Youth Services
Candice Williams
Josh Williams, Ohio Judicial Conference
Gene Zmuda, Appellate Court Judge

STAFF PRESENT

Sara Andrews, Director
Will Davies, Criminal Justice Counsel
Nikole Hotchkiss, Assistant Director
Todd Ives, Research Specialist



WELCOME AND INTRODUCTIONS

Sara Andrews welcomed members to the first in-person Commission meeting in more than two years and asked everyone in the room to introduce themselves.

CALL TO ORDER

Vice-Chair Selvaggio called the meeting to order and moved that introductions serve as roll call. Judge Spanagel seconded, motion passed.

MEETING NOTES APPROVAL

Vice-Chair Selvaggio asked for a motion to approve the March meeting minutes. Chip McConville moved to approve the minutes, seconded by Judge Spanagel. No changes were proposed, the minutes were passed without objection

UNIFORM SENTENCING ENTRY AND THE OHIO SENTENCING DATA PLATFORM

Sara provided Commission members with a memo written by to attorneys at the Attorney General’s office and asked members not to discuss it until the Commission voted to waive privilege. If the Commission votes to waive privilege, we can discuss it.

Vice-Chair Selvaggio recuses himself from the vote as he sees a conflict with his role on the Ohio Common Pleas Judges Association (OCPJA) Executive Committee. Commission Chair, Chief Justice Maureen O’Connor asked him to clarify the conflict. Selvaggio did not read the memo because he felt that its contents would be of interest to OCPJA and his role would compel him to disclose.

Judge Spanagel asked who should privilege be waived to? He moved that the Commission grant a limited release of privilege to the Supreme Court, the platform committee, and the commissioners responsible for the Rules of Superintendence. Tim Young added that he believes the option is to waive or not waive period; as a public body we do not have the ability to pick and choose privilege, as he sees it. Judge Spanagel withdrew motion.

Chief Standley asked if he should abstain because he is not an attorney. Sara suggested that as a member of the Commission he vote for the Commission to waive privilege or not. Judge Zmuda reminded the Commission that they authorized the formation of the platform. Chief Justice O’Connor added that the memo in question was a part of the response to questions from the Justices about proposed changes to the Rules of Superintendence.

Judge Capelli moved that the commission waive privilege of memo, Judge Spanagel seconded. A roll call vote was held and there were 17 votes in favor and three abstentions. Based on a vote of the Commission, privilege of the memo is waived.

Judge Selvaggio asked what will be done with the memo now that privilege is waived. Sara Andrews explained that the memo will be sent out to the Ohio Sentencing Data Platform Governance Board in advance of their special meeting on Friday, July 22, 2022 to discuss the public comments, so that the memo can be incorporated into the responses. The complete collection of public comments received were contained in the meeting materials. Sara encouraged members of the Commission to share the memo with their organizations,

particularly those with concerns addressed in the memo. The memo will also be shared with the Justices of the Supreme Court.

Sara then outlined the timeline for proposed changes to the Rules of Superintendence. After the meeting tomorrow to discuss the comments, the Governance Board will share their responses with the Commission and the Supreme Court's Commission on the Rules of Superintendence. The next meeting of the Commission on Rules of Superintendence is August 16, 2022 and it is the goal to get them this information in preparation for that meeting. Following this, it is not clear how long it will be before it is back in front of the Justices of the Supreme Court. After the responses to public comment are collected, the Commission will see them first.

Sara introduced Todd Ives, Research Specialist, to discuss the Public Portal focus groups.

PUBLIC PORTAL FOCUS GROUPS

Todd gave a background to the project and shared that these focus groups are part of a project funded by a Justice Assistance Grant awarded in 2021. There are six focus group sessions taking place across the state to get as much information as possible. Invitations were sent to 60+ organizations that may be interested in discussing how this sentencing data might be useful for them. The emphasis on these sessions was engaging those that are outside of the courts. As of now, focus groups in Columbus and Cleveland have been held and gone well. Akron was canceled due to low interest. Overall, there was great response, with 64 people registered for sessions representing more than 50 different organizations. The last in-person focus group is scheduled for September 9 in Lancaster and virtual presentation of the findings from the various sessions will be held in October.

Sara Andrews invited anyone from the Commission that was interested may attend any of the focus group meetings. Sara reintroduced Will Davies, Criminal Justice Counsel with the Sentencing Commission staff. The staff is in the process of hiring an additional Criminal Justice Counsel as a replacement for Scott Shumaker, who took a job in Vermont in April 2022.

COMPETENCY WORKGROUP

Will Davies reviewed the competency workgroup, which has been meeting about every month. Their current project is to create competency quick reference guide. Right now, the adult version is near completion. It is a challenge, as the guide needs to be minimal, yet comprehensive. It was clear at an earlier meeting that the guide needed to be broken up into adult and juvenile. The group will then review and revise currently drafted versions of competency entries to mimic the uniform entry templates in the Ohio Sentencing Data Platform. Will highlighted that the diversity in membership of the group including judges and mental health professionals has been helpful in highlighting and solving a variety of issues.

Judge Selvaggio asked if the group's guide includes a diagram of the process and, if it does not, respectfully suggested they consider adding one. Will responded that it does not at the moment, but they will consider adding more visual elements to the guide.

25 YEARS OF SB2: SENTENCING ROUNDTABLE WORKGROUP

Reggie Wilkinson, Ed.D. who is facilitating the Sentencing Roundtable Workgroup, was unable to be at the meeting. Will Davies updated the Commission on the work of the group and its goal of making proposals to restructure sentencing in Ohio.

In recent months, the group has entertained several presentations surrounding revision of sentencing laws post-SB2 including recodification, simplifying the criminal code, parole board operation, indeterminate sentencing, and results of different sentencing models. The group also has seen multiple presentations of data from Dr. Brian Martin with the Department of Rehabilitation and Correction (DRC) focusing on Targeted Community Alternatives to Prison (T-CAP), judicial release, transitional control, and the impact of SB201. These presentations typically prompt robust and thorough discussions.

Lessons learned so far include resource availability impacts sentencing and the Ohio Sentencing Data Platform will be useful to provide more data to supplement what DRC is currently able to analyze since DRC is limited to data about incarcerated offenders. Other policy issues include a need to identify ways to incentivize good behavior in prison, the burden created by the increasing complexity of the statutes and finding ways to improve resources and program availability statewide. This all makes formulating policy difficult, but the group is committed to suggesting “profound changes.” The group will begin drafting report for Commission with recommendations and suggestions.

The next meeting will include two additional presentations: Lori Criss, the Director of Ohio Mental Health and Addiction Services and another presentation of data by Dr. Brian Martin displaying how sentencing may (or may not) vary by county population.

INDETERMINATE SENTENCING

Judge Zmuda and Will Davies introduced their presentation on Indeterminate Sentencing in Ohio, with slides included in the meeting materials. Judge Zmuda reminded members that this Commission is required to continually study and provide guidance on sentencings in Ohio; Ohio is 25 years into SB2 sentencing structure and it does not work as well as it could. He described the growing size and complexity of the criminal code, using OVI statute as an example.

Will Davies gave a brief history of indeterminate sentencing in Ohio from before the passage of SB2 in 1996 to the present. Data from DRC illustrates that over 8,000 people are still subject to parole board discretion. A following slide showed that the largest group of offenders in prison by felony level were those convicted of F3s. There was a discussion among members about how many of the F3s were a result of community control violations as well as judicial discretion and an acceptable level of sentencing disparity between similarly situated defendants. Chief Chandler asked if the large proportion of F3s in DRC was due to a larger number of F3s charged? Judge Zmuda answered that we do not know because we do not have any information on F3s charged, convicted or how many sentenced for F3s are not incarcerated in DRC.

Vice-Chair Selvaggio added that there are some things data cannot explain. He explained that an F3 can act as a release valve when lawyers cannot resolve a case. An F3 may be a legislative acknowledgement to give practitioners way to resolve this case. Selvaggio’s concern is that presentation of such information such as the

number of DRC inmates by offense level without explanation it looks like “see when you give judges discretion, they will fill prisons with F3?” In reality, it may just be how the case was resolved. There are things that are happening in criminal justice that data cannot capture. Judge Zmuda said that he did not disagree, but Ohio has existed for too long in a system without data. Selvaggio added that this information also does not always reflect how a defendant was originally charged or how the parties came to that resolution. Chief Justice O’Connor stressed the importance of the sentencing entry in explaining what is happening at sentencing, as a supplementary data point.

Tim Young added that the Ohio Sentencing Data Platform will collect all of the additional data points and context will be provided that will be told. Judge Cappelli reinforced that it is important to see the full picture of incarceration, not just prisons, but to include jails.

Judge McIntosh asked if the group has looked at data for SB2 and drawn conclusions about truth-in-sentencing. One of the criticisms was that people were getting more time in prison. Judge Zmuda responded that Brian Martin from DRC will be looking into this topic with their data though it is limited because it does not include those not sentenced to prison. Judge McIntosh asked if the Workgroup arrived at any assumptions or conclusions relevant to formulating policy. Judge Zmuda answered that these conclusions have not been made yet, but they will be based on data; do we try and fix the current structure, or do we decide it’s not working and start over?

Judge Selvaggio added that he doesn’t know that we need data to conclude that because of SB2, our criminal justice system has created restrictions to sending people to prison and multiple ways to release people from prison. What determinate sentencing has done has made sentencing more complicated and DRC looks to the legislature to change their prison population. Tim Young added that you need data to inform policy decisions. He stated that SB2 has made the prison system more dangerous and arguably increased recidivism. We need data to understand how policy has led to the current state.

Chief Justice O’Connor added that right now we don’t have recidivism data two, three, or five years out. SB2 was a result of victims seeing perpetrators out much sooner than they thought. The legislature has had to compensate for a lot of variables because of SB2. There is a balance to be struck between all interested stakeholders. It is valid to go back and evaluate the impact of truth-in-sentencing, which requires data.

Senator Thomas asked about an offender sitting in jail for a long period pre-trial under high bond, and when they go to trial they get sentenced. However, they get released much sooner due to calculations of time served. The community and victims are not aware of how the jail credit works and this causes concern. Chief Justice O’Connor replied that Marsy’s Law will help to educate the victims about the system so that they are aware of such matters.

Judge Selvaggio advised that the Commission looks forward to the next meeting with more information from the Workgroup and moved to adjourn at 11:47am.