

**OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE**  
**Full Commission Meeting Minutes**  
**December 15, 2016**

**MEMBERS PRESENT**

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge  
Chrystal Alexander, Victim Representative (by phone)  
Lara Baker-Morrish, Columbus City Attorney's Office  
Frederick Benton, Jr., Criminal Defense Lawyer  
Paula Brown, Attorney  
Ronald Burkitt, Police Officer  
Hearcel Craig, State Representative  
John Eklund, State Senator (by phone)  
Robert DeLamatre, Juvenile Court Judge  
Derek DeVine, Seneca County Prosecutor  
Paul Dobson, Wood County Prosecutor  
Gary Dumm, Municipal Court Judge  
Robert Fragale, Juvenile Court Judge  
Kathleen Hamm, Public Defender  
Thomas Marcelain, Common Pleas Court Judge  
Stephen McIntosh, Common Pleas Court Judge  
Ed Meija, State Highway Patrol  
Gary Mohr, Department of Rehabilitation and Correction  
Harvey Reed, Department of Youth Services  
Kenneth Spanagel, Municipal Court Judge  
Larry Sims, Sheriff  
Tim Young, State Public Defender

**ADVISORY COMMITTEE MEMBERS PRESENT**

Kari Bloom, Ohio Public Defender's Office  
Douglas Berman, Professor of Law, Ohio State University  
Jim Cole, Juvenile Court Administrator (by phone)  
Lori Criss, The Ohio Council  
James Lawrence, Ohio Community Corrections Association  
Brian Martin, Department of Rehabilitation and Correction  
Michele Miller, Warden  
Kyle Petty, Department of Youth Services  
Keith Spaeth, OJACC – Common Pleas Court Judge  
Cary Williams, CORJUS  
Gary Yates, Butler County Court Administrator, Chief Probation Officer's Association

## **CALL TO ORDER**

The December 15, 2016 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.

## **APPROVAL OF MINUTES FROM SEPTEMBER 22, 2016**

The minutes of the September 22, 2016 meeting were unanimously approved.

## **MEMBERSHIP UPDATE**

Vice Chair Selvaggio and members welcomed new members Frederick Benton, Jr. and Sheriff Sims.

## **OPERATING GUIDELINES**

The draft guidelines were shared at our September meeting. Sara provided an update on changes made since our last meeting. There was discussion and clarification of several issues which led to the motion by Judge McIntosh and seconded by Paul Dobson to rework the draft and present the revised version to members at the March 2017 meeting, the motion carried.

Among the points of discussion was clarification of designees for Members. It was noted by statute, that only the agency directors and State Highway Patrol Superintendent have recognized designees that may attend and vote on their behalf.

There was further discussion regarding the Advisory Committee and whether they should vote on Commission business. Generally, the group agreed to allow the Advisory Committee to be counted in the quorum and to vote on Commission business. There was also agreement to strike the electronic voting option and to allow for reimbursement for all appointed committee members. Lastly, the members asked if participation by phone or other electronic means complies with the Open Meetings Act (RC 121.22). Vice Chair Selvaggio asked Sara and Jo Ellen to review the matter and advise accordingly.

## **RECODIFICATION COMMITTEE UPDATE – TIM YOUNG**

Mr. Young reported that the Committee needed more time to review and deliberate the 108 issues and those issues deserved vetting and, therefore, the legislature continued the Recodification Committee until June 30, 2017. The final revision should be complete over the next few months, although no definitive meetings are scheduled. There is also work being done to clarify that the Committee continue as presently composed to address the fact two members are retiring from their official capacities at the end of this calendar year. Mr. Young noted he is hopeful that by March 2017 there will be a Committee draft report and Legislative Services Commission (LSC) summary.

## **2016 YEAR END UPDATES –**

### **BAIL AND PRE-TRIAL SERVICES REFORM – JO ELLEN CLINE**

Jo Ellen advised that the draft report is circulated to the Ad Hoc Committee for their review. The Ad Hoc Committee is meeting on 01-20-17 to finalize report and vote on the final recommendations for presentation to the full Commission at the March 2017 meeting.

Mr. Benton asked if the group is considering a Pre-risk assessment? Jo Ellen reported that, yes, the committee has looked at what is trending nationally and one of the recommendations is to move toward a uniform risk assessment at pretrial.

## **JUVENILE JUSTICE COMMITTEE UPDATE – PAUL DOBSON**

Mr. Dobson reported HB521 and SB272 (Juvenile Life Without Parole bills) updates noting that in the lame duck session HB521 was active and an amendment to exclude Aggravated Murder was discussed and adopted for that bill. In the end, however, neither bill was enacted. Judge Spanagel complimented Senator Eklund for his leadership and effort regarding the bill. Senator Eklund told the group that no opponent testimony was given in the House. He also suggested that it makes a measure of sense to take another pass at it in next General Assembly.

Mr. Dobson also noted that the other pending legislative recommendations (confinement credit, costs, fines and restitution and bindover) passed by the Commission will be shared in the next General Assembly. The upcoming focus of the Committee will include probation terms, sexting and sentence (dispositional) structure – as noted in correspondence from Justice Kennedy.

Jo Ellen reminded members that their data wish list is due for the next Juvenile Justice meeting in January.

Vice Chair Selvaggio advised members that on behalf of the Commission, he replied to Justice Kennedy's letter summarizing work the work of the committee. He also spoke with her a week or so later and she expressed interest in pursuing the issues and will attend the February Juvenile Justice meeting.

## **RESEARCH & DATA ANALYSIS – SARA ANDREWS**

Sara provided the following updates as noted on the agenda:

### Monitoring Sentence Reform

The Commission awarded the contract to Case Western Reserve University to gather, compile data and identify trends regarding criminal sentence reform and other legislation impacting criminal sentencing enacted since HB86 in September 2011. The MOU with DRC is signed and work is underway. Work with DYS will begin in the near future. We will have a research advisory group to assist in the effort, comprised of research administrators from the Office of Criminal Justice Services, the Department of Mental Health and Addiction Services and the Supreme Court of Ohio.

### Justice Reinvestment

Additionally, Sara and the Principal Researcher, Fredrick Butcher and Margaret Hardy from DRC (the Ohio Team) are participating in Urban Institute and Bureau of Justice Assistance, *Justice Reinvestment Initiative Performance Measurement*, convening on October 5 and 6, 2016, in Washington, DC. The conference is cosponsored by the Bureau of Justice Assistance and The Pew Charitable Trusts and aims to improve the quality, consistency, and use of performance measures across JRI states. We are actively working on ongoing monitoring and reporting – building on the aforementioned contract.

### Data Analytics project

The Commission and the University of Cincinnati, Institute of Crime Science (ICS) data analytics pilot project in Scioto County, *Using Data to Improve Public Safety and Criminal Justice Outcomes*, is underway. The project recognizes criminal justice indicators are wide-ranging and complex. Determining if, where and to what extent, criminal justice data indicators are available, accessible and consumable and then seeking viable ways to catalog and analyze that information will provide a platform to recommend legislative and policy strategies to improve outcomes for Ohio's citizens by creating safer, fairer, and a more cost-efficient use of resources in our criminal justice system. The data analytics demonstration was June 7, 2016 and on August 1, 2016 Scioto County was selected and agreed to be our pilot county.

## Ohio Justice System Maps

We've been working, many thanks to our interns, on illustrating Ohio's Justice System(s) – we have draft visualizations for juvenile, misdemeanor and adult. Our future work on these diagrams will include additional illustrative information for specific points on the map.

In closing, she mentioned that the researchers will attend the March 2017 meeting to provide members an update on their progress to date.

## **RIGHTS RESTORATION AND RECORD SEALING – PROFESSOR BERMAN, MARTA MUDRI & SARA**

Professor Berman advised that the final report and a quick reference guide from the Ad Hoc Committee is complete. He also noted that work is being done to promote our proposed reorganization of the Ohio Revised Code specific to the record sealing statutes. Additionally, Marta mentioned that there were multiple bills introduced on this subject in this legislative session and it is a topic legislators are interested in. She expects many of those bills to be re-introduced.

## **COMMISSION STAFFING – SARA**

Sara advised details remain pending, but still hopes to have a research position for the Commission posted in January 2017.

## **WEBSITE RE-DESIGN – SARA**

Sara noted that the website content will be re-organized and additional content such as the Commission's mission and vision statement, consensus process, legislative recommendations and Ad Hoc Committee information will be added. She expects to share the updated site in the near future.

## **COMMITTEE STRUCTURE AND ONGOING WORK – ALL**

Judge Spanagel stated that the committee organization as detailed in the Operating Guidelines are good plan. The Sentencing and Criminal Justice committee will need to reconcile the Recodification Committee report and recommendations that the Commission has forwarded to that group.

Director Mohr said that he anticipates the next six months will be critical to our work and that DRC will release a reformative budget proposal. He stressed that they are using national data and research to drive policy, such a recently released report from the Brennan Center for Justice. He promised to share that report with Sara to forward to members.

## **2017 PREVIEW**

Senator Eklund stated the work of the Commission is valuable input to legislative process. He believes that over the course of time many of the initiatives will move forward, persistence is important.

Scott Lundergan, House Majority Deputy Legal Counsel told the group he looks forward to the next General Assembly and that criminal justice matters will be a focus for the Speaker. The House will focus on developing policies – package of bills – focused on criminal justice and prison – bail and probation reform and the RECLAIM model. He emphasized that consensus on front end it is imperative and the House will rely on Commission. He also introduced Sheila Willamowski who will be taking over his role as Deputy Legal Counsel when he transitions to Policy.

Representative Craig said the criminal justice reform is important to the Ohio Legislative Black Caucus and they want to advance common ground and common sense recommendations that promote equity and fairness.

Lara Baker-Morrish discussed the implementation and use of body cameras as it relates to public records law, sharing that through the use of cameras we are seeing things not been seen before (ie rape victims partially clothed). She suggested a review of public records law with an attempt to differentiate between privacy v. transparency. There was discussion about a recent Supreme Court of Ohio decision and the investigatory record which is determined by department (attorney work product analogy). Other examples included, a burglary investigation that isn't pursued that becomes a public record because it is no longer an investigatory record. Sheriff Sims recalled a specific case of deputy involved shooting and the distinction between a routine recording versus the investigatory work product and Lori Criss mentioned the need to be sensitive to addiction as a disease versus criminal conduct, citing the viral Facebook post of a couple that had overdosed.

Vice Chair Selvaggio opined that the discussion illustrates our expertise with competing interests and that we need to devote part of our meeting to talk through some of the issues to assist those making the policy decisions.

Lori Criss discussed that there is recent guidance from the Legal Action Center regarding Medically Assisted Treatment (MAT) and the criminal justice system. She noted that often supervision agencies – court, probation, child welfare – require people to stop MAT while under supervision. Sara will share the report with members.

Professor Berman advised the Federal Cures Act has been signed and there may be funding opportunities available should the Commission be in a position to pursue resources. He suggested there may be funding for criminal justice research.

Judge Selvaggio commended Brian Martin for a recent presentation to judges at the winter meeting of the Common Pleas Judges Association. Brian Martin told members he discussed the expansion in community corrections and transitional control but, prison population is still increasing – 3% since 2012. Also there has been 13% growth among females. There has also been a dramatic decline in crime rates, so the increase is attributed to sentencing patterns and the *Foster* effect.

Judge Fragale asked if there is data available on female offenders and substance abuse. Mr. Martin advised yes, and it shows that females are disproportionately opioid involved. A guest at the Commission meeting, Sherry Clouser, Warden at Northeast Pre-Release, a female prison, confirmed that the majority of females in her prison are drug addicted, probation violators from a rural county – some have ten prior admissions, the average age is about 30 and 60% are on the mental health caseload.

Kathleen Hamm noted the conversation turns again to the conundrum of the drug addicted population versus the criminal justice population, saying we need to fix that. Director Mohr said he believes the problem is Judges are faced with dealing with it and, if Judges are the most frequent referral to treatment, then it's too late. He wondered if parents and grandparents know what to do and said they are not engaged soon enough.

Several in the group agreed that capacity for treatment is problematic.

Final notes of business included agreement to move the December 2017 meeting from 12-21-17 to 12-14-17.

With no other business from the members, Representative Craig moved to adjourn and Judge Marcelain seconded the motion. Vice-Chair Selvaggio adjourned the meeting.

## **2017 Full Commission Meeting Dates**

**Thursday, March 16, room 101**

**Thursday, June 15, room 101**

**Thursday, September 21, room 101**

**Thursday, December 14, Location TBD**