



CRIMINAL SENTENCING COMMISSION

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Sentencing and Criminal Justice Committee

November 15, 2018

Agenda

- I. **Call to Order & Approval of Meeting Notes of August 16, 2018 meeting**
- II. **New Business**
 - A. **Defeat of State Issue 1**
Discussions of potential impact of the ballot initiative's defeat
 - B. **O'Brien/Klein Issue 1 Alternative**
Pending legislative proposal by Columbus prosecutor's and Senate President Obhof
 - C. **Marsy's Law Implementation Draft**
Discussion of draft implementation bill
- III. **Old Business**
 - A. **Chapter 2925 recodification**
Scott Shumaker will present a potential redraft of the Drug Chapter for the committee's discussion
 - B. **Appellate Review**
Scott will update the committee on Appellate review efforts.
 - C. **Recodification Project**
The committee will be updated on joint efforts with the Ohio Judicial Conference to move forward portions of the Recodification Committee proposal.
 - D. **Legislative Update**
Update on potential legislative movement during the lame duck session
- IV. **Address January meeting date and Adjourn**

Upcoming Meetings

Ohio Criminal Sentencing Commission	December 13, 2018 Verne Riffe Center, 31 st Floor
Sentencing and Criminal Justice Committee	January 17, 2019 Ohio Judicial Center, Room 281

Sentencing and Criminal Justice Meeting August 16, 2018

Call to order and approval of July 19, 2018 minutes:

Judge Spanagel called the meeting to order and members in attendance introduced themselves. Judge Spanagel commended Director Andrews for an excellent NASC conference. The minutes were reviewed and approved on motion.

Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment:

Judge Spanagel opened discussion with the question of whether or not the Committee should take a position on the Issue. Scott Shumaker noted other groups taking positions and that DYS and ODRC were working on financial impact statements. He reviewed the handouts he had prepared summarizing the amendment and looking at potential impact and implementation issues. Judge Spanagel noted that Common Pleas and Municipal Judges associations had both opposed the Issue on the basis of it being a constitutional amendment. He then took a straw poll of the members and noted a consensus that this type of policy should not be in the constitution.

Judge Marcelain stated his belief that, if passed, Issue 1 would spell the end of drug courts in Ohio and noted that at least 20-25% of his docket consisted of felony 4 and felony 5 possession. This led to further discussion of the impact on municipal courts as well as halfway houses and CBCF's. Judge Spanagel asked if there was a way to keep the re-defined possession cases in Common Pleas and Scott noted that Common Pleas courts have jurisdiction to handle misdemeanor cases.

Professor Berman noted that the resentencing provisions would likely allow for a single count of a multiple count indictment to be reclassified and possibly resentenced. Public Defender Tim Young noted that case law only allows resentencing for one count, since Ohio sentences on a count by count basis.

Judge Spanagel discussed experiences in Oklahoma and California, who had passed similar legislation, noting that a visiting professor at OSU Law had spoken on the subject at the NASC conference. Judge Berman discussed the upcoming ballot issues panels at OSU law.

Members then discussed issues regarding detention of probation violators. Judge Spanagel noted that the lack of a threat of incarceration could be an impediment into getting people to treatment. Mike Randle noted concerns that CBCF facilities could be affected and that statutory change would need to occur to allow misdemeanor defendants to go to a CBCF.

Judge Selvaggio asked if language of the amendment could be altered at this point. It was shared that it cannot be changed or taken off the ballot at this state. The Committee discussed the procedure for ballot language that would take place the week of August 20th.

Wendy Williams noted that from her agency's perspective they are in favor of anything opens treatment up for more people, but noted a concern that Issue 1 could cause more harm than good.

Paul Dobson then moved that the Committee vote to recommend the full Commission oppose Issue 1 on the basis that a constitutional amendment is an inappropriate vehicle for these types of changes. Scott Shumaker noted that in 2002 the Commission voted to oppose a similar initiative on the same grounds, and produced a document outlining their position at the time. Judge Marcelain seconded the motion.

Lusanne Green asked for clarification regarding our enabling statute, and asked if we had gotten guidance from the Commission chair, Chief Justice O'Connor regarding our role. Director Andrews indicated that no discussion with the Chief Justice had taken place. Commission Vice-Chair Judge Selvaggio indicated his belief that commentary about this ballot initiative falls within the mission of the Criminal Sentencing Commission.

Several Committee members then weighed in as to what the recommendation to the full commission might look like. Mike Randle noted that using the word "oppose" could be problematic given many of the organizations represented by membership had not yet taken official positions. The vote then proceeded with 5 aye and 4 nays, with 7 abstentions. The vote failed. Lara Baker-Morrish noted that her abstention was due to her organization not yet having taken a position.

Judge Spanagel suggested that commission staff coordinate with Professor Berman, who was collecting position statements for the Drug Policy Center at OSU, and present those positions at the full Commission meeting in September.

Old Business:

Scott Shumaker noted that work on the drug chapter continues but the final product would be heavily dependent on the outcome of Issue 1. Lara Baker-Morrish noted that having a draft ready to go in the event Issue 1 should pass would be excellent. Carl Reynolds from the Center for State Governments asked about drug amounts being considered, and Scott described the Recodification Committee's efforts to eliminate trace amount cases, and their choice to generally raise the amount threshold for every felony level. He also noted the somewhat arbitrary choice that surrounds drug amounts. The suggestion of a sunset provision was provided as highlighted by Professor Berman at the NASC conference.

Mr. Shumaker also discussed work on the Appellate Review draft, discussing provisions and asking for member feedback.

Marta Mudri and Scott also discussed efforts to move the Recodification Committee proposal forward in smaller legislative packages, noting that they were meeting with LSC to draft the proposals on August 17th.

Carl Reynolds updated the Commission on the Justice Reinvestment Initiative. Members engaged in discussion citation in lieu of arrest procedures in Ohio.

Lara Baker-Morrish also discussed Marsy's Law implementation legislation. The task force presented a proposal to LSC in May of 2018 but it had not yet found a sponsor.

Adjourn:

With no further business before the Committee, a motion to adjourn was made and passed.