

Sentencing and Criminal Justice Committee Meeting August 1, 2019

Call to order and approval of May 16, 2019 minutes:

Judge Spanagel called the meeting to order and attendees introduced themselves. The minutes of the Committee's May 2019 meeting were approved as read.

Old Business

Substitute Senate Bill 3:

Judges Spanagel directed the committee's attention to a list of accepted amendments of Substitute Senate Bill 3 that were adopted at a hearing in late June. Those amendments are being drafted into a second substitute bill to be introduced at a later date. Scott Shumaker then ran through summaries of the amendments in numerical order. This language was developed after interested party meetings on the bill, and those interested parties were given an opportunity to review and give feedback on the amendments before they were introduced.

Regarding the jurisdictional provisions, Judge Spanagel had questions about how the prosecutorial charging discretion might work, and whether a complaint could be filed in common pleas court or if a rules amendment would be necessary. Lara Baker Moorish noted that the sub bill gave the charging discretion to the "appropriate prosecutorial authority" meaning the county prosecutor would work in coordination with a city attorney or law director to make the decisions.

Lara Baker Moorish raised concerns about the amendment establishing a "possession of trace amount offense" and the fact that it is punished as the same unclassified misdemeanor as the possession offenses created by the bill – there being no reason to create a new offense if it is subject to the same punishment. Members also discussed the need to address what an *attempted* violation of an unclassified misdemeanor statute would be reduced to. Niki Clum noted that without other changes, attempt as a M1 would actually be a harsher punishment due to collateral consequences like the need to report the conviction and the lack of treatment presumption, both of which are provided to the unclassified misdemeanor offense.

Sara Andrews noted that Commission staff continue to work on what sort of monitoring and reporting would be done if the bill passes. They have started with looking at how other states go about monitoring new legislation.

Members briefly discussed whether to make suggestions to the full commission on the amendments, but as the bill's sponsors will be speaking at the meeting, it was felt that would be best to let that conversation happen organically.

Drug Chapter Workgroup Update:

Scott then reviewed the consensus areas that the drug chapter workgroup had focused on at its last meeting. He noted the ILC redraft from Judge Selvaggio, expansion to record sealing

provisions, threshold amount discussions, and penalty enhancement provisions for drug offenses. Much of the record sealing topic has been covered by the introduction of HB1 and SB 160, making changes to record sealing and providing an expungement procedure for old convictions. That legislation continues to move through the legislature. Commission staff will work to develop language regarding CQE's, including limiting fees and reducing barriers to misdemeanor CQE's. Judge Spanagel asked if Commission staff planned to revisit the 2016 report on record sealing and rights restoration and Sara Andrews indicated that was project being worked on for the fall. Commission staff are open to suggestions for further focus areas for the drug chapter workgroup.

Senate Bill 201 Fixes:

With the introduction of HB215 and SB133 dealing with the post release pieces of the Reagan Tokes Law, a vehicle exists for changes to SB201. Commission staff have worked with the OJC and the bills' sponsors to address some of the implementation issues that have arisen with SB201. Included in the meeting materials was a list of areas that should be addressed which had been discussed at the May committee meeting. Scott highlighted one addition to the list dealing with competency restoration – these types of issues have been brought up numerous times at implementation trainings on the bill, and additional feedback on SB201 from members is appreciated.

Also included in the meeting materials were suggested changes to the order of sentence provisions of the bill that were created by Judge Sean Gallagher. Members were asked to review those changes and offer any ideas they may have on the subject. The Reagan Tokes bills are expected to be picked back up when the legislature returns from the summer recess.

Commission staff have also worked with OJC and would like to include the Supreme Court in developing a model sentencing entry for SB201 cases. Many judges have asked about this type of document. Scott Shumaker told the Committee that work will be happening in August and September, and may develop into a model journal entry for every case with the ability to pull in pieces from other areas as needed, much like the Ohio Jury Instructions operate in current practice.

New Business

Review of Felony Sentencing Quick Reference Guide:

Commission staff have worked to update the Felony Sentence Quick reference guide and are looking for input as to what might make the document easier to use from a practitioner standpoint. Sara Andrews told the group that ideally the staff would like to have all of the reference material updated at least annually. Members should reach out to Commission staff with any ideas they have to improve the guide.

Bail Reform Update:

Judge Spanagel discussed the report of the Supreme Court Task Force to Examine the Ohio Bail System and Scott ran through a list of their recommendations. The report frequently credits the work of the Commission's Ad Hock committee. Tasha Ruth from the Supreme Court informed

the group on the next steps – the Justices will review the suggested rule changes in the next week, and if accepted they will be circulated for the first round of public comment. Judge Spanagel suggested a model bond schedule be proposed by the court through the Rules of Superintendence if municipal courts within a county are unable to agree on a uniform schedule county-wide.

Sara then discussed the Pre-Trial Survey project being conducted by Commission staff this summer. She detailed how that process got started and introduced the summer intern staff present at the meeting. Commission intern Micah Moody discussed the number of courts they have spoken with and how excited folks have been to participate. Sara told the committee that our researchers would put the results together and the hope is to have a report done in the fall. Lisa Hickman discussed how the survey questions were developed and the research protocols in place.

Sara then thanked Lisa for all her hard work at the Commission and informed members that Lisa would be leaving for a new position.

Lisa also discussed the Pre-Trial grant progress. It is expected that an extension will be requested once the recommendations have been made – this extension will provide the opportunity to help participants implement those recommendations.

Legislative Update:

Scott then gave a brief legislation introduced in the 133rd general assembly, including discussion of HB 166 the budget bill, HB 3 Aisha’s Law, and HB136 and SB 54 aimed at outlawing capital punishment for individuals whose mental illness contributed to their defense.

Adjourn:

With no further business before the Committee, the meeting was adjourned by the chair.