



# OHIO

## CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

### Juvenile Justice Committee

July 13, 2017

#### Agenda

**I. Call to Order**

**II. Approval of Meeting Notes of April 20, 2017 meeting**

**III. Juvenile Probation**

**A. OYAS Demonstration**

*Ryan Gies, ODYS, will provide a demonstration of the Ohio Youth Assessment System and its capabilities in risk assessment for juvenile probation.*

**B. Miscellaneous**

*The committee will discuss bringing in the RFK Center for Juvenile Justice to work with the Commission on juvenile probation. In addition, the committee will discuss recommendations covered at the last meeting that could be pursued immediately.*

**IV. Juvenile Justice Data Project**

*Lisa Hickman, Research Specialist, will discuss some preliminary findings with the committee. The committee will determine how to proceed on the project.*

**V. Updates**

**A. Sexting Legislation – Rep. Rezabek**

**B. Criminal Recodification Committee - Jill Beeler**

**VI. Adjourn**

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### Upcoming Meetings

**Juvenile Justice Committee**

**August 17, 2017**

**Ohio Criminal Sentencing Commission**

**September 21, 2017**



Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

### **Juvenile Justice Committee**

**April 20, 2017**

### **Meeting Notes**

**Members Present:** Chair Dobson, Vice-Chair Beeler, Burkitt, Burton, DeLamatre, Fragale, Hamm, Lampl, Montz, Peters, Petty, Reed, Rezabek, Shafer, Stanek, Walburn, D. Williams, M. Williams

**Guests:** Belinda Davis (BCI), Lucy Chandler (SCO), Ashley Gilbert (SCO), Stephanie Nelson (SCO), Shawn Welch (OJC), Marta Mudri (OJC)

**Staff Present:** Sara Andrews, Jo Ellen Cline, Lisa Hickman, Greg Borgert (intern), Katie Plumer (intern)

- I. **Call to Order.** Chair Dobson called the meeting to order at 10 a.m.
- II. **Introductions.** Because several new people were in attendance, committee members introduced themselves.
- III. **Approval of Meeting Notes of February 16, 2017 meeting.** Upon motion and second the meeting notes were approved unanimously.
- IV. **Juvenile Probation - Committee Members**
  1. The committee began its discussion focusing on utilization of a risk based tool for putting juveniles on probation and basing probation/disposition on risk. The committee discussed the current use of OYAS for these purposes. OYAS is a group of different risk assessment tools so any recommendation would have to be specific about which OYAS tool would be used. Allowing use of an override of the tool, ultimately it is the decision of the judge, would be imperative. Need to ensure that use of tool is only one thing that the judge/court should consider. Consistency in the assessments is important as well. Inter-rater reliability has been a concern but the tool is designed to be objective and the inter-rater problem is one of training and frequency of use. DYS offered to have staff demonstrate OYAS at the committee's next meeting. Develop a recommendation to use risk assessment broadly in disposition planning (2152.01) and more narrowly in only probation (2152.19(A)) for possible consideration. DYS will also gather information regarding how many users OYAS currently has (84 of 88 counties has at least one registered user) and what, if any, risk assessment tool those that are not using OYAS are using.
  2. The committee next discussed determinate v. indeterminate time on probation. Practice varies from county to county. Many places use "open-ended" probation – child has no idea when they will be done and ends up deeper in the system on technical violations. The question was presented of how to handle a juvenile who is still receiving treatment but their definite probation term ends. The committee also discussed that many juveniles are left on probation because of financial obligations (restitution or court fees). Some committee members would like to find some way to limit length of probation. The suggestion was made that "monitored time" could be used for financial sanctions that remain pending when other probation terms are completed. The committee discussed using a hybrid

approach that has a definite time period of probation but allows for that time period to change if probation terms are not being met or programs are not yet complete.

3. The committee then discussed ensuring probation terms are very clear so the juvenile will know what constitutes a violation.
4. It was suggested that the committee recommend changing use of term “community control” in the statutes to “probation”. The Criminal Justice Recodification committee is putting a similar suggestion forward in the adult arena.
5. The committee very briefly discussed the statutory language regarding driver’s license suspension. The statute could be interpreted to be mandatory. The statute may need to be clarified.
6. The committee also briefly discussed the suggestion that it be prohibited to put youth in locked facilities for violating probation/parole. Because Ms. Davies, who initially suggested this concept was unable to attend the meeting, the committee decided to hold off further discussion of this idea and allow Ms. Davies to address it at the next meeting.
7. A small subcommittee was formed develop the concepts discussed into recommendations or discussion points for the committee’s July meeting. Members of the subcommittee include Jill Beeler, Paul Dobson, Kathy Hamm, Judge DeLamatre, Judge Fragale, Eric Shafer, Ryan Gies (DYS), and Marta Mudri.

### **V. Juvenile Record Sealing and Expungement – Committee Members**

Belinda Davis from BCI told the committee that, based upon the discussions at the last committee meeting, BCI had updated the sealing/expungement form to reflect information from juvenile courts. The form is not on the website yet but will be soon. She also noted that the form can be sent in electronically to [expungement.submissions@ohioattorneygeneral.gov](mailto:expungement.submissions@ohioattorneygeneral.gov). At the committee’s suggestion, she will have BCI add the e-mail address to the form. In addition she will discuss implementing some type of confirmation that the submission was received.

BCI is also going to explore creation of a standardized the journal entry for sealing and expungements. Finally, BCI is looking for opportunities to provide training for juvenile court clerks and judges on sealings and expungements and use/timing of the forms. There was brief discussion of the development of a checklist for clerks to utilize but that project, it was determined, would be best left to interested parties and BCI.

### **VI. Juvenile Justice Data Project**

After a brief overview of the wish list and the goals of the committee regarding data and juvenile justice, Director Andrews suggested that Lisa Hickman, Research Specialist for the Commission, work with outside researchers (e.g., Case Western) and then suggest possibilities to the Juvenile Justice Committee. Lisa will work toward having some report of what might be possible to the committee by early fall. Stephanie Nelson discussed what data is collected from the juvenile courts by the Supreme Court currently and circulated the report that the Supreme Court publishes. Judge Fragale note that there is also an annual report



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to the county commissioners submitted by juvenile courts and courts will soon be required to report annually on truancy and diversion.

**VIII. Adjourn.** There being no further business to come before the committee, the committee adjourned at 12:04 p.m.

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**Upcoming Meetings**

**Ohio Criminal Sentencing Commission**

**May 18, 2017**

**June 15, 2017**

**Juvenile Justice Committee**

**July 13, 2017**

**August 17, 2017**

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### **Probation Work Group – 5.2.2017 Telephone Conference Notes**

The work group organized its discussion around the documents previously submitted to the Juvenile Justice Committee on suggested recommendations regarding juvenile probation. The work group initially accepted by consensus the recommendations to revert to the term “probation” instead of “community corrections” in the statute and to clarify the language of RC 2152.19(A)(4) to ensure that driver’s license suspensions are not considered mandatory. On the latter recommendation, committee members discussed that suspensions are most commonly used in juvenile traffic cases but not regularly used in delinquency dispositions. Marta Mudri, Ohio Judicial Conference, offered to follow up on the question of how often license suspensions are used in delinquency dispositions. Sara Andrews suggested that these two recommendations could be implemented without going through a formal Commission review as they appear to be “technical”. She suggested that they be discussed with General Assembly members who serve on the Commission for possible introduction.

The work group considered the use of OYAS or an evidence-based risk assessment system in juvenile disposition planning, including probation. Ryan Gies, ODYS, was able to give the work group some good information on OYAS and will present a demonstration of the system to the Juvenile Justice committee in July. He stressed that a risk assessment tool should *inform* the judge’s decisions but not direct those decisions. The work group decided to hold this recommendation until after the OYAS demonstration and, in addition, to give Marta time to assess judicial reaction to utilizing risk assessment in informing disposition decisions.

The work group then discussed the idea of forming a larger ad hoc group that could bring in outside consultants to do a thorough review of juvenile probation in Ohio. Kathy Hamm discussed an article (distributed before the April Juvenile Justice committee) from the RFK National Resource Center for Juvenile Justice. The work group discussed the challenge of developing state strategies when the implementation work is done at the local level and how the Commission might be able to be a fostering body for recommendations that can be implemented locally. Jo Ellen was instructed to follow up by investigating the RFK Nation Resource Center and determining what product that organization could offer an Ad Hoc Committee. She will follow up with the work group on what she finds and, if necessary the Juvenile Justice committee will be consulted via e-mail on making a recommendation to the full Commission in May or June about formation of an Ad Hoc committee.

Finally, the work group briefly discussed violations and probation contracts. Eric Shafer will provide a sample probation contract that is utilized in Montgomery County that specifies goals and expectations for probationers.

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132nd General Assembly  
Regular Session  
2017-2018

. B. No.

**A BILL**

To enact section 2907.324 of the Revised Code to 1  
generally prohibit sexting by a person under 21 2  
years of age. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2907.324 of the Revised Code be 4  
enacted to read as follows: 5

**Sec. 2907.324.** (A) (1) As used in this section: 6

(a) "Sexually explicit digital material" means any 7  
photograph, digitized image, or other visual depiction of a 8  
minor who is in any condition of nudity or is involved in any 9  
sexual activity prohibited under this chapter. 10

(b) "Telecommunications device" has the same meaning as in 11  
section 2913.01 of the Revised Code. 12

(2) The distribution of sexually explicit digital material 13  
by a person under twenty-one years of age may commonly be 14  
referred to as "sexting." 15

(B) No person under twenty-one years of age shall 16



purposely create, produce, distribute, present, transmit, post, 17  
exchange, disseminate, or possess through a telecommunications 18  
device any sexually explicit digital material. 19

(C)(1) Each municipal court, county court, juvenile court, 20  
and court of common pleas shall develop a sexting educational 21  
diversion program or another diversionary-type program that is 22  
feasible for persons charged with a violation of division (B) of 23  
this section. The program shall be operated pursuant to written 24  
standards approved by the court and entered into its journal. 25  
After a court establishes a sexting educational diversion 26  
program or another diversionary-type program under this 27  
division, the court may allow any person who is charged with a 28  
violation of division (B) of this section to enter the program, 29  
as an alternative to prosecution of the person for the 30  
violation. 31

(2) Each sexting educational diversion program or other 32  
diversionary-type program developed under division (C)(1) of 33  
this section shall address all of the following issues and 34  
topics: 35

(a) The legal consequences of and penalties for sharing 36  
sexually explicit digital materials, including a review of 37  
applicable federal and state statutes; 38

(b) The nonlegal consequences of sharing sexually explicit 39  
digital materials, including the effect on relationships, the 40  
possible loss of educational and employment opportunities, and 41  
the possibility of being barred or removed from school programs 42  
and extracurricular activities; 43

(c) How the unique characteristics of cyberspace and the 44  
internet, including searchability, replicability, and an 45

infinite audience, can produce long-term and unforeseen 46  
consequences for sharing sexually explicit digital materials; 47

(d) The connection between bullying and cyber-bullying and 48  
the sharing of sexually explicit digital materials; 49

(e) All other topics that the court that develops the 50  
program considers to be relevant. 51

(3) A person charged with a violation of division (B) of 52  
this section who enters a sexting educational diversion program 53  
or another diversionary-type program under division (C) (1) of 54  
this section shall do all of the following: 55

(a) Waive, in writing and contingent upon the person's 56  
successful completion of the program, the person's right to a 57  
speedy trial, the preliminary hearing, the time period within 58  
which the grand jury may consider an indictment against the 59  
person, and arraignment, unless the hearing, indictment, or 60  
arraignment has already occurred, or, if the person is charged 61  
in juvenile court, the comparable applicable procedures in 62  
juvenile court, unless the particular procedure has already 63  
occurred; 64

(b) Agree, in writing, to the tolling while in the program 65  
of all periods of limitation established by statutes or rules of 66  
court that are applicable to the violation of division (B) of 67  
this section and to the conditions of the program established by 68  
the court. 69

(4) If a person charged with a violation of division (B) 70  
of this section who enters a sexting educational diversion 71  
program or another diversionary-type program under division (C) 72  
(1) of this section satisfactorily completes the program, the 73  
court shall dismiss the charges against the person. If a person 74



charged with a violation of division (B) of this section is 75  
offered an opportunity to enter a sexting educational diversion 76  
program or another diversionary-type program under division (C) 77  
(1) of this section and chooses not to enter the program, or if 78  
a person charged with such a violation enters such a program and 79  
violates the conditions of the program, the person may be 80  
brought to trial or before the juvenile court, whichever is 81  
applicable, upon the charges in the manner provided by law, and, 82  
regarding a person who violates the conditions of the program, 83  
the waiver executed pursuant to division (C) (2) of this section 84  
is void on the date the person is removed from the program for 85  
the violation. 86

(D) (1) Whoever violates division (B) of this section is 87  
guilty of possession of sexually explicit digital material, and 88  
shall be punished as follows: 89

(a) Except as otherwise provided in division (D) (1) (b) of 90  
this section, possession of sexually explicit material is a 91  
misdemeanor of the first degree and division (D) (2) of this 92  
section applies. 93

(b) Possession of sexually explicit material is a felony 94  
of the fifth degree if any of the following applies: 95

(i) The person who violates division (B) of this section 96  
is five or more years older than the minor who is depicted in 97  
the sexually explicit digital material; 98

(ii) The person who violates division (B) of this section, 99  
with purpose to obtain any valuable thing or valuable benefit or 100  
to induce another to do any unlawful act, distributes or 101  
threatens to distribute the sexually explicit digital material; 102

(iii) The person who violates division (B) of this section 103

previously has been convicted of, pleaded guilty to, or been 104  
adjudicated a delinquent child for committing a violation of 105  
division (B) of this section. 106

(2) When possession of sexually explicit material is a 107  
misdemeanor of the first degree under division (D)(1) of this 108  
section, except as otherwise provided in this division, the 109  
court shall sentence the offender to eight hours of community 110  
service under section 2929.17 or 2929.27 of the Revised Code or, 111  
if the court is a juvenile court, the juvenile court shall 112  
impose upon the delinquent child an order of disposition of 113  
eight hours of community service under section 2152.19 of the 114  
Revised Code. A court is not required to sentence an offender to 115  
community service or impose on a delinquent child an order of 116  
disposition of community service under this division if it 117  
determines that the interests of justice and public safety 118  
require a different sentence or order of disposition. 119

(E) Division (B) of this section does not apply to any of 120  
the following: 121

(1) The creation, production, or possession by a person 122  
under twenty-one years of age of sexually explicit digital 123  
material depicting the person's self or the person's spouse, if 124  
the person does not subsequently distribute, present, transmit, 125  
post, print, disseminate, or exchange that material; 126

(2) The creation, production, or possession by a person 127  
under twenty-one years of age of sexually explicit digital 128  
material depicting the person's child; 129

(3) The distribution, presentation, transmission, posting, 130  
exchanging, or dissemination by a person under twenty-one years 131  
of age of sexually explicit digital material depicting the 132

person's child if the material is distributed, presented, 133  
transmitted, posted, exchanged, or disseminated for a bona fide 134  
purpose of a type described in division (A)(3)(a) of section 135  
2907.323 of the Revised Code, by or to a person in any category 136  
described in that division having a proper interest in the 137  
material; 138

(4) The creation, production, distribution, presentation, 139  
transmission, posting, exchanging, or dissemination by a person 140  
under twenty-one years of age of sexually explicit digital 141  
material depicting a child other than the person's child if both 142  
of the following apply: 143

(a) The material is created, produced, distributed, 144  
presented, transmitted, posted, exchanged, or disseminated for a 145  
bona fide purpose of a type described in division (A)(3)(a) of 146  
section 2907.323 of the Revised Code, by or to a person in any 147  
category described in that division having a proper interest in 148  
the material. 149

(b) The child's parents, guardian, or custodian consent in 150  
writing to the depiction of the minor in the sexually explicit 151  
digital material, and to the specific manner in which the 152  
material is to be distributed, presented, transmitted, posted, 153  
exchanged, or disseminated. 154

(5) The possession by a person under twenty-one years of 155  
age of sexually explicit digital material depicting a child 156  
other than the person's child if either of the following 157  
applies: 158

(a) The person is in any category described in division 159  
(A)(3)(a) of section 2907.323 of the Revised Code and the person 160  
possesses the material for a bona fide purpose of a type 161

described in that division. 162

(b) The person knows that the child's parents, guardian, 163  
or custodian has consented in writing to the depiction of the 164  
minor in the sexually explicit digital material and to the 165  
manner in which the material is used. 166

(F) It is an affirmative defense to a charge of a 167  
violation of division (B) of this section that the person under 168  
twenty-one years of age charged with the violation did not 169  
solicit the sexually explicit digital material, did not 170  
subsequently distribute, present, transmit, post, print, 171  
disseminate, or exchange the sexually explicit digital material, 172  
and deleted or destroyed the sexually explicit digital material 173  
upon receipt of the material. 174

### JUVENILE JUSTICE COMMITTEE WORK CHART

| <u>Category</u> | <u>Issue</u>                                   | <u>Last Action</u>   | <u>Project Status</u> | <u>Responsible Person</u> | <u>Next Action</u>  |
|-----------------|--|--|-----------------------|---------------------------|---|
|                 | <b>Probation (Length of time)</b>              | Work group formed  | In progress           |                           | Contact with RFK National Resource Center<br><br>Discuss some changes to statutes with GA members |
|                 | <b>Post-Dispositional Detention Time</b>       | Discussion   | Pending               | Kathleen Hamm             |   |
|                 | <b>Sexting</b>                                 | Discussion   | Pending               | Members                   | Wait on Ohio Criminal Justice Recodification Committee proposals                                  |
|                 | <b>Juvenile Records - sealing, expungement</b> | BCI attended April 2017 meeting and updated committee on efforts | In progress           |                           | Does the committee need to take any further action?   |
|                 | <b>Juvenile Data Collection</b>                | Members submitted data wish lists                                | In progress           |                           | Lisa working on data acquisition  |

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| <u>Category</u> | <u>Issue</u>  | <u>Last Action</u>   | <u>Project Status</u> | <u>Responsible Person</u> | <u>Next Action</u>  |
|-----------------|---|--|-----------------------|---------------------------|---|
|                 | <b>Juvenile Sentencing Structure</b>                      | J. Kennedy attended 2/16/17 meeting  | Pending               |                           |   |
|                 | <b>Raise age of majority/extend juvenile jurisdiction</b> |  | Pending               |                           |   |
|                 | <b>Decriminalizing status offenders</b>                   |  | Pending               |                           |   |
|                 | <b>Definition of Recidivism</b>                           | Part of data collection project - it was requested that Ohio develop a standard definition of recidivism for use in data collection and analysis | Pending               |                           | Research definitions commonly used in data collection and analysis.<br><a href="http://www.justiceconcepts.com/recidivism.pdf">http://www.justiceconcepts.com/recidivism.pdf</a><br><a href="https://fas.org/sgp/crs/misc/RL34287.pdf">https://fas.org/sgp/crs/misc/RL34287.pdf</a> |

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| <u>Category</u> | <u>Issue</u>  | <u>Last Action</u>  | <u>Project Status</u> | <u>Responsible Person</u>       | <u>Next Action</u> |
|-----------------|---|---|-----------------------|---------------------------------|--------------------|
| COMPLETED       | <b>Address juvenile court costs – assessment &amp; collection</b> | Restitution language approved.  | <b>COMPLETED</b>      | Jo Ellen                        |                    |
| COMPLETED       | <b>Extended sentence review (Juvenile)</b>                        | SB 272 introduced in February 2016  | <b>COMPLETED</b>      | Jo Ellen<br>Jill Beeler-Andrews |                    |
| COMPLETED       | <b>Juvenile confinement credit</b>                                | Language approved by committee  | <b>COMPLETED</b>      | Jo Ellen<br>Director Reed       |                    |
| COMPLETED       | <b>JSORN</b>  | Committee decided not to make any recommendations to Recodification Committee | <b>COMPLETED</b>      | Jo Ellen                        |                    |

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| <u>Category</u> | <u>Issue</u>                                    | <u>Last Action</u>  | <u>Project Status</u> | <u>Responsible Person</u>   | <u>Next Action</u>                                 |
|-----------------|---|---|-----------------------|-----------------------------|--|
| COMPLETED       | <b>Mandatory shackling</b>                      | Comment on proposed Sup.R. 5.01 re: juvenile restraints submitted           | <b>COMPLETED</b>      | Members                     | Sup.R. 5.01 adopted by Supreme Court (Eff. 7/1/16) |
| COMPLETED       | <b>Mandatory bindovers – eliminate or limit</b> | Language approved by Commission   | <b>COMPLETED</b>      | Jo Ellen<br>Erin Davies     |  |
| COMPLETED       | <b>Mandatory sentences</b>                      | Committee determined to not make any recommendations on mandatory sentences | <b>COMPLETED</b>      | Jo Ellen<br>Erin Davies     |  |
| COMPLETED       | <b>Truancy</b>                                  | HB 410 was enacted on December 8, 2016                                      | <b>COMPLETED</b>      | Jo Ellen<br>Scott Lundregan |  |