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OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Full Commission Meeting Notes
June 21, 2018

MEMBERS PRESENT

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Chrystal Alexander, Victim Representative
Kristin Boggs, State Representative
Brooke Burns, Attorney, Juvenile – Office of the Public Defender
Charles Chandler, Peace Officer
Carl DiFranco, Municipal Court Judge
Gary Dumm, Municipal Court Judge
Robert Fragale, Family Court Judge
Kathleen Hamm, Attorney, Criminal Defense
Thomas Marcelain, Common Pleas Court Judge
Charles “Chip” McConville, County Prosecutor
Stephen McIntosh, Common Pleas Court Judge
Gary Mohr, Department of Rehabilitation and Correction
Harvey Reed, Department of Youth Services
Jeffrey Rezabek, State Representative
Larry Sims, Sheriff
Kenneth Spanagel, Municipal Court Judge
Cecil Thomas, State Senator
Elizabeth Miller for Tim Young, State Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Douglas Berman, Professor of Law, OSU
Jim Cole, Juvenile Court Administrator
Lori Criss, The Ohio Council
Beth Heldreth, Ohio Chief Probation Officer’s Association
Paul Dobson, County Prosecutor
Brian Martin, Department of Rehabilitation and Correction
Cynthia Mausser, Department of Rehabilitation and Correction
Jason McGowan, Ohio Chief Probation Officer’s Association
Michelle Miller, Department of Rehabilitation and Correction
Paul Pfeifer, Ohio Judicial Conference
Keith Spaeth, Common Pleas Court Judge representing OJACC

STAFF PRESENT

Lisa Hickman, PhD – Research Specialist
Todd Ives, Researcher
Scott Shumaker, Criminal Justice Counsel
Sara Andrews, Director
Pam Segalewitz, Intern – University of Dayton
Jared Michael, University of Notre Dame – School of Law

CALL TO ORDER & ROLL CALL OF COMMISSION MEMBERS, ADVISORY COMMITTEE

The June 21, 2018 meeting of the Ohio Criminal Sentencing Commission and its Advisory Committee was called to order by Vice-Chair Selvaggio and he called the roll of members and advisory committee.

APPROVAL OF MINUTES FROM MARCH 15, 2018

The minutes of the March 15, 2018 meeting of the full Commission were unanimously approved, noting a revision for clarification in the second paragraph, second to last sentence, changing “he” to Representative Dever.

INTRODUCTION OF NEW STAFF AND INTERNS

Sara introduced Todd Ives, the new Researcher in the office. She additionally introduced two interns working in the office this summer, Pam Segalewitz an undergraduate student at the University of Dayton and Jared Michael a law student at Notre Dame.

SENTENCING MATTERS

Lisa Hickman, PhD, Research Specialist presented data from a small, intensive, qualitative study of journal entries of sentence in just a few counties, some now participating in TCAP and some not on why T-CAP eligible F5 offenders might be sent to prison. Using both allowed to better see if there may be similarities or differences between the groups, while at the same time knowing it was/is a small case study and not representative of all counties or Ohio. The purpose and intent is to consider what was/is happening at the local level. Common themes from the data include violations, offender refusal to participate, agreed sentences and co-occurring or companion cases. Lisa suggested that the local and broad data are complimentary and urged a *data informed* rather than a *data driven* approach.

Commission members discussed the difficulty in defining violations (relapse) versus new crimes, especially for drug offenders. Representative Rezabek acknowledged the legislature has struggled with how to hold people accountable and emphasize treatment. Other points of conversation included that sometimes a prison sentence forces treatment and a suggestion that if a treatment oriented model (discouraging prison) is preferred, as a matter of balance, a system should be designed that specifies the crime isn't prison eligible. There was also agreement that the defendants have to be willing to participate in treatment services. The group also noted that short prison sentences (Felony 5) are problematic and often have exhausted treatment service options before the short prison sentence is imposed.

Lori Criss suggested that research around substance use, treatment and recovery should be considered in crafting legislation, such as Targeted Alternatives to Prison (T-CAP). She advised that the treatment process/physiological response is important to consider and using additional data and information to develop options helps to hold people accountable. People need motivation, capacity and opportunity.

Judge Routson then addressed the group and noted that the debates remain the same since he was with the Commission. Judge Routson reviewed his history with the Commission and noted he believes understanding and explaining sentencing law is unnecessarily complicated. Recent enactments like T-CAP and capping the amount of time for probation violations only add to the complication.

Judge Routson noted that many of the same arguments recycle without resolution. He suggested that the Commission should get into the weeds rather than rearranging deck chairs and working on the fringes. Judge Routson said that he believes we are dancing around the Felony 5 issues and that instead we should return those crimes to misdemeanor classifications or create a non-prison penalty instead of arguing about eligibility. Administrative application of the law would be improved.

Judge Routson opined that sentencing is a three legged stool and we all have a role to play. Judge Routson noted that while judges make sentencing determinations, prosecutors have charging decision, and legislature sets sentencing guidelines. He suggested there are better ways to direct judges toward community control sanctions. Rather than hyper-technical laws, present a broad criminal justice strategy for what the Legislature views as the criminal justice philosophy of the State.

Judge Routson then provided several examples of opportunities to improve statutory provisions of sentencing such as:

- 2929.13 guidance v presumption away from prison was eliminated when mandatory community control was enacted, but created with exceptions and thus, practitioners aren't obligated to follow it.
- Better define merger, what it means and when it applies. Merger has increased crowding by allowing for longer sentences due to consecutive sentences.
- *Foster* has produced longer sentences for F4 and F5 offenders which has increased prison population because the Judge is not required to say why the maximum sentence is imposed.
- Consider more than what Judges do at sentencing and just that piece of the system. Prosecutorial charging decisions and diversion programs should be evaluated.
- 2929.15b – technical violation definition – what is it?
- 2929.19 – community control – reserve a prison sentence – specify a number from a range – most judges impose maximum. Judges tend to suspend the maximum sentence when imposing a community control sanction, and then impose that maximum sentence for a violation – Removing the requirement Judges inform defendants of a specific number would ameliorate this issue.
- Why 5 year probation? Let's consider 3 year maximum.
- Probation violation punishment – what are we punishing when someone violates probation? The violation or the original offense?
- ? SB2 v Court guidance

Representative Rezabek asked about a return to an indefinite sentencing scheme. Judge Routson said he might recommend indefinite – but, there are some constitutional questions with recent legislative proposals. If we return to such a scheme, there has to be trust that DRC will rehabilitate people and that release decisions are at the discretion of the Parole Board.

Routson said that one of the issues that has occurred over the years is an erosion of institutional trust between the correctional facility and the judges with the implementation of truth-in-sentencing. Judges and ODRC must cooperate regarding prison sentences and time served.

Director Mohr advised that data points from 2015 show that the number one reason people are coming to prison is drug possession. The number of men who come to prison with drug possession as the most serious

offense has risen by 5% and for women 10%. Drug possession cases are growing the density in prison. Director Mohr stated that research shows it is difficult to rehabilitate people in prison for short periods of time. He also said that how a person spends time in prison should count and that the population impact as a result of *Foster* needs to be addressed. Director Mohr stated that the goal of ODRC is to ultimately reduce the prison budget and give money back to the community for better rehabilitation.

Judge Zmuda said the system is built on charges, not risks. An F5 offense limits how long the government can monitor, and yet it generally takes longer than those limits to solve the drug addiction problem. He went on to say that:

- Courts, in managing cases, need to be actively involved in the person's case to the extent that the law allows. The same thing happens after they are sentenced. Judges need to be involved in the case-management cycle and view it as part of a continuum.
- There is not good communication between courts and parole staff as an example of a lack of trust.
- Judges today have more data at their disposal to make informed sentencing decisions. We need to consider this, and make real change rather than just shuffling the deck again.

Judge Spaeth said he appreciates Lori's comments and that the current (statutory) limitations are preventing successful outcomes for drug court. Prohibiting prison sentences jeopardizes specialized dockets because participants need the consequence of prison to sometimes force compliance with treatment. Consequences and follow through have been taken away. He also said that there needs to be a way to track the number of violations a person commits before a prison sentence is imposed.

Judge McIntosh suggested there must be trust in the system and truth in sentencing. In court the Judge advises the sentence and if DRC intervenes to release the person, the Judge has to explain why person is released. The relationship with DRC is negative because Judges feel they are 'blamed' for overpopulation and legislation that is brought forward is solely designed to reduce prison population rather than assessing risk and considering public safety.

Judge Fragale noted that as a juvenile court judge his perspective is that the key is to reduce young adults entering in prison – prevention matters and consider addressing in juvenile system. Funding in the juvenile system is an important part of this.

Lt. Chandler discussed that often times persons are stopped or arrested for a misdemeanor offense and then drugs are found which leads to a felony charge. If the misdemeanor is dismissed, this brings up the issue of dismissed charges and pleas.

Director Mohr said that state agencies are doing transition documents and preparing budget documents for the incoming administration. He asked, "Is it the belief of the Commission and/or legislative representatives that we need to budget for more prisons? Or is it the belief we ought to be moving towards more enhanced community sentencing and have more resource investment here?"

Judge McIntosh cited overcriminalization as a massive issue requiring wholesale reform rather than piecemeal solutions. The group then discussed that the current system as constructed contributes to the prison population and that future work can't be piecemeal – need balance. Representative Boggs discussed political realities of

reducing penalties and that public opinion drives policy so public education is necessary and important. Representative Rezabek suggested that to effect real change, there would have to be a moratorium on political parties attacking each other. Alaska was brought up as an example state that has had to go back on many of the sentencing reforms they instituted because there was not public buy-in. Future policy also has to be conscious of differences between the counties in Ohio recognizing that not all communities have the same resources. Director Mohr added that ODRC statistics show that some of the smallest counties are sending as many F4s and F5s as the largest counties.

Sheriff Sims commented on counties needing more information – noting that jails don't know about first time offenses, criminal history, how many times someone has been diverted and asked if that information is available for those people admitted to prison. Director Mohr said that the ODRC data is “bad on probation”, but that there are patterns by size of county, rural vs urban, etc. Sheriff Sims asked if we should be looking at individual communities and asking if they have resources, the ability to divert, or if they are just against it?

JUSTICE REINVESTMENT AD HOC COMMITTEE UPDATE

Topic was not discussed. Members will receive the power point presentation.

SEPTEMBER MEETING DATE

The September meeting date was changed to September 27, 2018.

With no further business before the Commission, the meeting was adjourned by Vice-Chair Selvaggio.