



OHIO CRIMINAL SENTENCING COMMISSION & ADVISORY COMMITTEE
Full Commission Meeting Minutes
March 15, 2018

MEMBERS PRESENT

Nick Selvaggio, Vice-Chair, Common Pleas Court Judge
Lara Baker-Morrish, Columbus City Attorney's Office
Kristin Boggs, State Representative
Carl DiFranco, Municipal Court Judge
Gary Dumm, Municipal Court Judge
John Eklund, State Senator
Robert Fragale, Family Court Judge
W. Scott Gwin, Appellate Court Judge
Stephen McIntosh, Common Pleas Court Judge
Kevin Miller, State Highway Patrol
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
Tim Young, State Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Jill Beeler, Ohio Public Defender's Office
Jim Cole, Juvenile Court Administrator
Beth Heldreth, Ohio Chief Probation Officer's Association
Paul Dobson, County Prosecutor
Jim Lawrence, Ohio Community Corrections Association
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
Karhlton Moore, Office of Criminal Justice Services
Kyle Petty, Department of Rehabilitation and Correction
Paul Pfeifer, Ohio Judicial Conference
Justin Stanek, Department of Rehabilitation and Correction

STAFF PRESENT

Lisa Hickman, PhD – Research Specialist
Scott Shumaker, Criminal Justice Counsel
Sara Andrews, Director

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

The March 15, 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 DECEMBER 14, 2017

The minutes of the June 15, 2017 meeting of the full Commission were unanimously approved.

HB439 ADDRESS PRETRIAL RELEASE

Representative Dever provided an overview – Sub-HB439 (version 9). The Representative advised that the Speaker is interested in moving the bail reform conversation forward. He noted there has been collaborative consensus from a month and half ago and the introduced version of the bill. He said there were at least 40 various interests represented in the process including courts, bail entities and clerks. Representative Dever advised that Senator McColley is working with House sponsors and expects to introduce a bill in the Senate. Representative Dever told Members that the bill is designed to create uniformity, consistency of outcome – same person, same facts treated the same in different counties and use real information, real data, analytics with a provable model that can predict outcomes. He mentioned that the State of North Carolina is an example.

Representative Dever opened the floor for questions. Vice-Chair Selvaggio told the Representative, on behalf of the Commission, his attendance at the meeting is appreciated and that we value the opportunity to provide legislators with our respective positions on policy. Vice-Chair Selvaggio also noted that judges have reached out to him about their concerns, including the transfer of data – how does it work? Ohio doesn't have a unified court system, not a physical system set up. Representative Dever said that conceptually, we shouldn't be afraid of that and the two year cooling off period in the legislation gives the Supreme Court of Ohio a year and allows the Court to delegate to the Commission or other entity. Representative Dever also said there was no appropriation associated with the bill because next year is a new budget and associated costs can be factored in during that time. The two year window is designed to accomplish the review and recommendations.

Vice-Chair Selvaggio noted the second concern he wished to raise is about whether a judge follows a recommendation (from pretrial services). He opined that the recommendation is only as good as those making it and that judicial decisions are already trapped – ie. Judicial release, transitional control. He went on to suggest that the data point of a recommendation needs the back story behind it and also needs to be defined, i.e. what does it mean to follow a recommendation and what defines a recommendation? How much discretion does a judge have to alter a recommendation before it is 'counted' as non-concurrence?

Representative Dever noted that the Subbill specifies risk is a factor to consider and is not dispositive. He also said that judicial discretion is important to him and with discretion comes transparency for voters to know which judges are doing their job. Enactment and implementation is on the practitioners (and the Supreme Court of Ohio). How to report is in the hands of the judge. Representative Dever asked that suggested language revisions be sent to him.

Senator Thomas expressed that he is happy to see the bill introduced. His office has been working on it for a year since the Commission came out with the recommendations. He said he'd like to compare versions and work toward consensus with the Commission providing input.

Judge Dumm expressed concern about a “parallel universe” with legislation and Criminal Rule 46 – noting, that judges are the assessment tool. He isn’t opposed to the concept, but prefers a strategy that deals directly with those who need it rather than adding layers and conflicts with Crim Rule 46.

Sheriff Sims cautioned that when looking at data, the evaluators and subsequent information needs to consider and include the full story – not just data points.

Representative Dever cited the difference between companies like Toys R Us and Amazon – one uses data analytics. He opined we are process based and there is a need to collect the data to create operational efficiencies.

Judge Spanagel pointed out the Commission’s recommendations included both legislative and court rule revisions. He also asked about timing for the bill. Representative Dever said there is a limited window of committee days – doesn’t know how soon or timing – session days are few and far between.

CRIMINAL JUSTICE LEGISLATIVE PREVIEW

Senator Eklund said that criminal justice reform is a priority and important work. But, may not be on everyone’s mind in the general assembly. He referenced SB66 and that the provisions may not be earthshaking, but the bill is purposeful and sets tone to legislative process. He discussed the provisions in the bill and noted it has passed the Senate. He is already in conversation with Representative Manning and will be providing sponsor testimony next week in the House Criminal Justice Committee.

Senator Eklund discussed the difficulty in special offense categories and bills introduced on single case stories.

Representative Rezabek reviewed several pending bills including:

SB1 – out of committee

HB439 – version 9 accepting sub-bill – continued input

HB56 related to SB4 – Dever

HB30 (SB20) – creates additional prison term – age of victim and type of injury differences

HB81 Seitz – death penalty and Serious Mental Illness

Sexting bill – Rezabek – define it and give juveniles opportunity for diversion

HB365 – amended sub-bill introduced this week – committee is working through changes. Two parts – sentencing and release/post release monitoring.

HB394 – juvenile omnibus bill – mandatory bindover, juvenile sentences – sub bill forthcoming

HB409 – veterans court and allow other counties to use the court. Trying to help communities that may not have such a court.

Justice Cupp and Rezabek – probate update

Judge McIntosh noted that criminal justice reform is a term that is frequently used, but when it is discussed is it considering the current system? Is there evaluation of what is happening and if it is working as intended? He suggest that instead, what appears to be happening is that new laws, new penalties are introduced, resulting in more prison commitments and then legislation is crafted to stop prison commitments. He encouraged Members to look at system as a whole, identify what is important and take it seriously. He further suggested that criminal justice reform has to be defined – look at now and make improvements versus a moving target.

COMMITTEE REPORTS & DIRECTOR'S REPORT

a) Juvenile Justice (Paul Dobson)

- * The committee continues to evaluate the best approach to systemic juvenile probation reform and the collection/analysis of juvenile justice data.

b) Sentencing/Criminal Justice (Judge Spanagel)

General Updates:

- * Appellate Review

There is movement toward consensus for the draft proposed by Judge Gallagher. A small group will work via email for a report at an upcoming meeting of the Committee. Working group will include Judge Gallagher, Judge Spanagel, Jill Beeler, Chip McConville, OJC representative and Lara Baker-Morrish.

- * T-CAP & 2929.15 – Grant application period is open until March 26, 2018.

Drug Chapter – Scott Shumaker advised the Members we will have a small working group and will start with the recommendations from the Recodification Committee. The group will identify issues, concerns and compare to current legislation and then make recommendations on what to move forward. The target date for final recommendations for consideration by the Commission is the September 2018 meeting.

Marsy's Law – Lara Baker-Morrish reported the amendment became effective February 5, 2018 and a working group has met five days thus far to work on drafting the implementing legislation. The last working group meeting is scheduled for next week. Lara advised there will be significant impact to court processes.

“The Neighborhood Safety, Drug Treatment and Rehabilitation” amendment – Hayden Capace, JD provided an overview of the proposed ballot initiative and will provide a written report in the near future.

c.) Director's Report

NASC 2018 – save the date(s) August 13 – 15, 2018

JRI 2.0 – next meeting April 5, 2018

DRC POPULATION & WHAT'S AHEAD – DIRECTOR MOHR

Director Mohr noted that the comments made by Judge McIntosh regarding criminal justice reform today are the “most thoughtful comments” he’s heard in seven years of attending these meetings. He said that the DRC is focused on preparing people/inmates for jobs and those efforts are aligned with public sector employers. Director Mohr went on to say that the agency is concentrating resources on recidivism data from high security prisons and that effort is the direction of agency. Those rates are the higher, but yet still 19% below national average. He noted that 3,000 inmates/year are released from high security prison releases. He also noted that inmate participation in programs is lower during first year of incarceration and that the sooner inmates get involved in programs the better the recidivism rates. He said the focus of system needs to be targeted at those

with a higher rate of return to prison and he is aligning program resources to those inmates. Director Mohr went on to say that DRC needs to do a better job prioritizing high risk prison releases – community programs need to take higher risk inmates – tenets of provisions proposed in HB365 for post-prison supervision. He mentioned reduced caseloads and developing improved supervision practices, citing that Texas is a national leader in criminal justice reform. He also pointed out that DRC is projected to be 1,912 people above funding level which equals a \$30m deficit and he will have to take that money out of the community line(s).

With no further business before the Commission, Senator Thomas moved to adjourn the meeting, the motion was seconded by Representative Rezabek and by unanimous vote the meeting was adjourned by Vice-Chair Selvaggio.