

# OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor  
Chair



Sara Andrews  
Director

## **OHIO CRIMINAL SENTENCING COMMISSION And SENTENCING ADVISORY COMMITTEE Regular Meeting Minutes February 19, 2015**

### **MEMBERS PRESENT**

Thomas Marcelain, Vice-Chair, Common Pleas Court Judge  
Paula Brown, OSBA Representative  
Ronald Burkitt, Police Officer  
Robert DeLamatre, Juvenile Court Judge  
Paul Dobson, Prosecuting Attorney  
Gary Dumm, Municipal Court Judge  
John Eklund, State Senator  
Kort Gatterdam, Defense Attorney  
Kathleen Hamm, Public Defender  
Fritz Hany, Municipal Court Judge  
Craig Jaquith, representing State Public Defender Tim Young  
Ed Mejia, Staff Lt., representing State Highway Patrol Superintendent Paul Pride  
Steve McIntosh, Common Pleas Court Judge  
Gary Mohr, Director, Rehabilitation and Correction  
Aaron Montz, Mayor, City of Tiffin  
Dorothy Pelanda, State Representative  
Kyle Petty, representing Youth Services Director Harvey Reed  
Nick Selvaggio, Common Pleas Court Judge  
Kenneth Spanagel, Municipal Court Judge  
Cecil Thomas, State Senator

### **MEMBERS NOT PRESENT**

Derek DeVine, Prosecuting Attorney  
Sylvia Sieve Hendon, Appellate Court Judge  
Jason Pappas, Fraternal Order of Police  
Chrystal Pounds-Alexander, Victim Representative  
Bob Proud, Clermont County Commissioner  
Albert Rodenberg, Sheriff, Clermont County

**ADVISORY COMMITTEE MEMBERS PRESENT**

Douglas Berman, Law Professor, The Ohio State University  
Lori Criss, The Ohio Council  
Steve Gray, Chief Counsel, Rehabilitation and Correction  
Cynthia Mausser, Interim Managing Director of Court and Community, Rehabilitation  
and Correction  
David Picken, Attorney General's Office  
Joanna Saul, Correctional Institution Inspection Committee

**STAFF PRESENT**

Sara Andrews, Director  
Jo Ellen Cline, Criminal Justice Policy and Research Counsel  
Cynthia Ward, Administrative Assistant

**GUESTS PRESENT**

Leo Almeida, legislative aide to Senator Cecil Thomas  
Jim Butler, State Representative  
Garrett Crane, Legislative Service Commission  
Monda DeWeese, SEPTA Correctional Facility  
David Diroll, Past Director, Ohio Criminal Sentencing Commission  
Ryan Dolan, Rehabilitation and Correction  
Jenna Gant, Public Information, Supreme Court of Ohio  
Lusanne Green, OCCA  
Mark Hurst, Medical Director, Mental Health and Addiction Services  
Tony Kenzie, Supreme Court of Ohio  
Scott Lundregan, Speaker Rosenberger's Office  
Rashad Lyons, juvenile advocate  
Marta Mudri, Ohio Judicial Conference  
Scott Neely, Rehabilitation and Correction  
Whitney Pesek, Correctional Institution Inspection Committee  
Tracy Plouck, Director, Mental Health and Addiction Services  
Mark Schweikert, Director, Ohio Judicial Conference  
Kevin Stanek, Governor John Kasich's Office  
Paul Teasley, Hannah News Service  
Lou Tobin, Ohio Judicial Conference  
Steve Vandine, Rehabilitation and Correction  
Josh Williams, Ohio Judicial Conference

## **CALL TO ORDER**

The February 19, 2015 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was opened by Vice-Chair Thomas Marcelain, Common Pleas Court Judge at 9:40 a.m.

Director Sara Andrews reminded everyone that this was the first meeting where all materials were being provided electronically.

## **PRESENTATION BY THE OHIO COURT NETWORK**

Tony Kenzie, Information Technology Program Manager for the Supreme Court of Ohio, provided an outline and offered an introduction to the Ohio Court Network, which is a statewide information exchange that the Supreme Court started building eight years ago. The cornerstone is a statewide data warehouse of information through a partnership with BCI, the Attorney General's Office, BMV, ODRC, and jails. The journals from the courts are supplied by the case management system while the jails offer information on jail bookings, charges, and information on visitations. DRC provides photographs, information on incarcerations and supervision. BMV offers driver and vehicle information and the Attorney General's Office provides information from BCI, which includes access to criminal history and instate protection orders. He explained that the OCN does not house all of the information from the other agencies but does offer access to their information. Noting that the OCN is not public record, he explained that a secure information portal is used that requires certain credentials to access the data and information. It can be accessed by all courts, jail systems, other agencies and justice system partners who have agreed to a memorandum of understanding.

It is a voluntary system with 318 courts actively participating and 12 more courts getting connected. An additional 32 courts have technical issues that will hopefully be resolved soon. Out of concerns of protecting their data, 19 courts have chosen not to participate. Some of those, however, are reconsidering. He noted that probate courts are more protective of their data but many of them use OCN to do background checks.

## **NEW SENTENCING COMMISSION AND ADVISORY COMMITTEE MEMBERS**

Director Sara Andrews welcomed the newest Sentencing Commission and Advisory Committee members. New to the Sentencing Commission membership are Circleville Municipal Court Judge Gary Dumm, who replaces Judge David Gormley; Champaign County Common Pleas Judge Nick Selvaggio who replaces Judge Janet Burnside, and Senator Cecil Thomas fills the Senate vacancy. The Sentencing Advisory Committee welcomes the addition of Professor Douglas Berman from the Moritz College of Law, and Lori Criss, representing the Ohio Council.

Director Andrews reported that she also intends to make some additional appointments to the Advisory Committee. The draft of the proposed roster reflects these additions to include: Professor Douglas Berman from the Moritz College of Law; Dustin Calhoun Chief Legal Counsel for the Department of Youth Services; Jill Beeler, with the Juvenile

Division of the State Public Defender's Office; Jim Cole, Juvenile Court Administrator of the Montgomery County Juvenile Court; Steve Gray, chief counsel for Rehabilitation and Correction; Steve Vandine, Bureau of Research Chief for Rehabilitation and Correction; Michele Miller, Warden of Belmont Correctional Institution; Chris Nicastro, Chief of the Bureau of Criminal Justice for the Ohio Department of Mental Health and Addiction Services; Director Mark Schweikert and his staff from the Judicial Conference; and Robert Tobias, city prosecutor for the city of Columbus, who is collecting data regarding serial thieves.

Judge Spanagel seconded Director Mohr's motion to approve the slate of appointments.

When questioned about the need to add someone from the Judicial Conference, considering the number of judges already on the Commission, Director Andrews explained that it would not be another judge, but a staff person. Judge Spanagel added that they help to pass information down the pipeline.

Because Pros. Tobias will need to get clearance from his supervisor, Common Pleas Judge Steve McIntosh suggested removing him from the list of prospects for now and adding him later.

The members of the Sentencing Commission unanimously approved the revised motion offered by Director Mohr and seconded again by Judge Spanagel:

**To adopt the list of recommended members for the Advisory Committee, with the exception of Prosecutor Tobias, whose nomination will be offered for approval at a later date.**

#### **PRESENTATION BY THE OHIO DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

After providing a copy of her power point presentation, Tracy Plouck, Director of the Ohio Department of Mental Health and Addiction Services and Doctor Mark Hurst, Medical Director of OhioMHAS presented to the group.

The key goals for FY16/17, said Director Plouck, will be to expand addiction recovery services and community investment in partnership with DRC and to expand recovery housing, probate court costs, forensic evaluation centers, and specialty dockets. Since treatment has been proven to lower recidivism rates, they look forward to less people returning to the court system. This will be helped by moving some budget money from DRC's budget to the OhioMHAS budget for providing treatment.

Director Mohr acknowledged that it has been a great partnership between DRC and OhioMHAS, opening the opportunity to get people into treatment sooner and has enabled expanded community funding for treatment programs and services.

## **APPELLATE REVIEW COMMITTEE UPDATE**

Jo Ellen Cline, as Criminal Justice counsel, offered version 11 of the Appellate Review Committee's proposal to address certain appellate issues. They hope to have a final version ready for a vote by May. She asked members to review the latest draft. It was noted that Appellate Judge Sean Gallagher is taking it to other appellate judges for review.

Another important issue for policy discussion, said former Director Diroll, involved §2929.202 which relates to the review of extended sentences. This would fill a void that is currently in the law. For a person with a total term of more than 15 years, this proposal would allow them to petition for a review after serving 15 years of the term. A juvenile with an extended sentence of more than 20 years would be permitted to petition for a review after serving 20 years. The key decision maker would most likely be the Parole Board.

Attorney Cline reported that Steve Vandine had offered some data on the youth who fall within this category for extended sentence review. Of the 62 people who entered DRC as a juvenile with an extended sentence, most are now in their 40's and 46 have finally had their first hearing before the Parole Board.

Mr. Vandine remarked that there are 4 to 5 cases per year of juveniles that enter DRC with very long extended sentences that are not serving life without parole. Of more than 500 offenders who have received a sentence of life without parole, only 5 of those were sentenced as juveniles.

Former Director Diroll clarified that juveniles with LWOP would not be able to petition under this proposal.

## **PRESENTATIONS BY SENATOR JOHN EKLUND AND REPRESENTATIVE JIM BUTLER**

Director Andrews invited State Senator John Eklund, Chair of the Senate Criminal Justice Committee and State Representative Jim Butler, Chair of the House Judiciary Committee to provide an overview of the key issues facing their committees and offer suggestions for how the Sentencing Commission might be of assistance to their respective committees.

The Senate Criminal Justice Committee is currently addressing numerous issues, said Senator Eklund, involving the statute of limitations for rape in the presence of DNA evidence; Violent career criminal legislation that has carried over from the previous session; the Ohio Supreme Court's Death Penalty Task Force Recommendations (some of which were put into H.B. 663); The Criminal Recodification Commission that was recently created; H.B. 663; and the joint legislative study commission on the manner and means of court ordered sentences of death. Those issues aside, Senator Eklund stressed the importance of educating legislators on the various issues and educating the

public on available options. He emphasized the need to engage constituencies that are most heavily impacted by policies that are made. The General Assembly, he said, is being educated on the people being most directly impacted by the policy they make.

He values the type of setting offered with the Sentencing Commission, where policy is discussed by a wide variety of entities, resulting in fruitful collaboration. He is open to suggestions on how the Senate Criminal Justice Committee can be more purposeful.

Representative Jim Butler, as Chair of the Judiciary Committee in the House of Representatives, remarked that the legislators are moving quickly on several issues. His committee deals with both civil and criminal issues. Among some of the difficult issues they are facing is the goal of rewriting the OVI statute jointly with Senator Obhof; recommendations of the Death Penalty Task Force; addressing the issue of record sealing, together with Senator Seitz; H.B. 508, which he sponsored, and focuses on getting tougher on drug dealers, particularly in connection with trafficking and overdose deaths; Another avenue for possession charges, while focusing on getting more users into treatment programs rather than prison; dog laws involving maulings; violent crimes against children, law school reform; drivers' license suspensions, particularly for non-driving related offenses; and mandatory bindovers for juvenile offenders. He welcomes additional ideas that need to be addressed.

At the invitation of Prosecutor Dobson, they agreed to come to the Sentencing Commission occasionally to discuss issues they are working on.

## **DIRECTOR'S REPORT**

### Reports/Quick Reference Guides

Director Andrews reported that she has been working diligently in cooperation with the Supreme Court Law Library to update the Drug Offense Quick Reference Guide. A copy of the Drug Offense Quick Reference Guide was provided for review.

Judge Marcelain, OSBA Representative Paula Brown, and several other members expressed interest in having them laminated. Director Andrews agreed to check further into the possibility, noting that if lamination is pursued, it will be very limited to keep costs down.

### Supreme Court Support

Director Andrews announced that the Supreme Court Law Library is able to provide free access to old statutes. She has invited them to attend the next month's meeting to provide an overview of services available.

She has also been working with the Judicial Conference on updating the Felony Sentencing Quick Reference Guide. She provided a draft copy to members for review and hopes to make the final revision available within the next month or two. The two offices are working on the draft collectively through Google.doc. She welcomed the

participation of others, noting that a gmail account is needed to participate in Google.doc.

She commended the Supreme Court Library for all of the research they have conducted on these projects.

Director Andrews reported that Attorney Cline has checked into record retention policy to help make a determination on which documents need to be saved and which ones should be archived or recycled. A memo of the retention policy was provided for perusal.

Plans are in the works for Ohio Government Television to start doing audio recordings of future Sentencing Commission meetings and post the recordings on the Sentencing Commission website.

The Public Information Office is also helping the Commission work on branding and hopes to develop a brochure about the Sentencing Commission that can soon be distributed.

#### Notable Meetings, Collaboration and Opportunities

Director Andrews reported that she has been participating in the Governor's Task Force on Community Police Relations as Chief Justice O'Connor's designee. She provided a list of the members of the Task Force. One topic of discussion involved the secretive nature of the process used by the Grand Jury system. She and Attorney Cline later met on this issue with Representative Williams, who is working on legislation to seek a remedy.

Additional efforts by Director Andrews have involved participating in meetings of the Ohio Judicial Conference Legislative Committee, and Criminal Law & Procedure Committee. Next week she will be meeting with municipal court judges and DRC to discuss some of the same issues being discussed by the Sentencing Commission, such as ORAS, audits, and performance standards in the municipal courts. She continues to participate in the Justice Reinvestment Initiative with DRC and OJACC.

She has also been invited to a pilot demonstration of the Heroin Partnership Project in Ross County to view a community response to address the common heroin epidemic.

Columbus City Attorney Robert Tobias serves as Director of the Prosecution Resources Unit, which has been studying the trends of drug dependent serial thieves. Many are stealing fabric softener sheets and Red Bull drinks to resale. Director Andrews has invited him to provide an update on this study at the April Commission meeting.

Director Andrews reported that her meetings with various legislators and agencies are going well. She provided a copy of her testimony before the Senate Criminal Justice

Committee and noted that there tends to be genuine interest in more engagement with the Sentencing Commission.

#### **DISCUSSION OF SENTENCING COMMISSION GOALS**

Noting that she wants the goals of the Sentencing Commission to be more focused, Dir. Andrews sought additional input from the members.

One concern that has been brought to her attention, said Director Andrews, is that if the Commission only meets once a month then there needs to be a way to debate some of the issues in between meetings in order to respond more efficiently to legislators. She intends to solve this by communicating electronically with Commission members on a more frequent basis.

Welcoming the input from Senator Eklund and Representative Butler, as chairpersons of the legislative Criminal Justice and Judiciary Committees, Judge Hany suggested finding out what their priorities are. He proposed choosing our top three points of focus and then prioritizing our agenda.

#### **FURTHER DISCUSSION OF REVIEWS FOR EXTENDED SENTENCES**

Prosecutor Dobson resurrected the issue about including §2929.202 in the Appellate Review package. Since it involves offering reviews for offenders serving extended sentences, he moved to delete it from the package so that it can be addressed separately and not hinder the progress of the Appellate Review proposals. Judge Spanagel seconded the motion.

The Sentencing Commission unanimously approved Prosecutor Dobson's motion after it was seconded by Judge Spanagel.

#### **MEMBER UPDATES**

Mr. Vandine reported that the latest report on time served by type of crime, the 2014 commitment report, and the latest recidivism numbers will soon be available on the DRC website.

#### **FUTURE MEETINGS**

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for March 19, April 23, May 14, June 18, July 16, August 20, September 17, October 15, November 19, and December 17, 2015

The meeting adjourned at 2:00 p.m.