

**Minutes of the
CRIMINAL SENTENCING COMMISSION
And the
CRIMINAL SENTENCING ADVISORY COMMITTEE
March 15, 2007**

SENTENCING COMMISSION MEMBERS PRESENT

Chief Justice Thomas Moyer, Chair
Common Pleas Court Judge Reginald Routson, Vice-Chair
Major John Born, representing State Highway Patrol Superintendent
Col. Paul McClellan
Common Pleas Court Judge Jhan Corzine
Juvenile Court Judge Robert DeLamatre
Jim Guy, Attorney, representing Rehabilitation and Correction
Director Terry Collins
Victim representative Staci Kitchen
Bob Lane, representing State Public Defender David Bodiker
Common Pleas Court Judge Andrew Nastoff
Dave Schroot, representing Director of Youth Services Tom Stickrath
Municipal Court Judge Kenneth Spanagel
Public Defender Yeura Venters
Prosecuting Attorney Dave Warren
Prosecuting Attorney Don White

ADVISORY COMMITTEE MEMBERS PRESENT

Monda DeWeese, Community Alternative Programs, SEPTA House
Lynn Grimshaw, OCCA Representative
Cynthia Mausser, Chair, Ohio Parole Board
Gary Yates, Ohio Chief Probation Officer Association

STAFF PRESENT

Scott Anderson, Staff Attorney
Natalie Corvington, Extern
David Diroll, Executive Director
Cynthia Ward, Administrative Assistant

GUESTS PRESENT

Dave Berenson, Rehabilitation and Correction
Liz Bostdorff, legislative aide to Representative Robert Latta
Jason Bottomley, legislative aide to Senator Tim Grendell
Abby Daubemire, Senate Republican Caucus
Lori Keating, Magistrate, Butler County Common Pleas Court
Robert Krebs, Magistrate, Butler County Common Pleas Court
Elizabeth Lust, legislative aide to Senator Steve Austria
Nathan Miner, Department of Youth Services
Scott Neely, Department of Rehabilitation and Correction
Becki Park, Senate Republican Caucus
Erin Rosen, Ohio Attorney General's Office
Bob Swisher, Office of Criminal Justice Services
Steve VanDine, Department of Rehabilitation and Correction

Chief Justice Thomas Moyer, Chair, called the March 15, 2007 meeting of the Ohio Criminal Sentencing Commission to order at 9:50 a.m.

DIRECTOR'S REPORT

Vehicular Homicides and Assaults After H.B. 451. Director David Diroll reported that H.B. 461 was passed late last year and increases the penalties for vehicular homicides and assaults with certain prior alcohol-related convictions. It goes into effect April 4th. Together with numerous other vehicular homicide, manslaughter, and assault bills passed since 2000, H.B. 461 makes the statutes very complicated. Dir. Diroll offered a written summary of the statutes and changes.

State Survey of Murder Penalties. H.B. 260 recently raised the penalty for rape of a child under the age of 13 to a level higher than the penalty for murder in some cases. This caused some Commission members to wonder if it might be reasonable to reconsider the penalties for murder and aggravated murder. Prosecutor Don White suggested that data on how other states penalize these offenses could be useful.

Ohio State University Extern Natalie Corvington researched how other states penalize the offenses of murder and aggravated murder. Most specifically recognize aggravated murder, while others treat first degree or felony murder as the equivalent of aggravated murder. Indiana, Kentucky, and Maine do not recognize a tiered model at all, treating all murder as simple murder. Others, such as Wisconsin, deviate by creating several tiers of murder.

She also found that the punishments for aggravated murder and its equivalents vary widely. 35 states specifically provide for life without parole in their statutory provisions for murder penalties, while 13 states allow life without parole as punishment for simple murder or second degree murder.

Pros. White reported that the Ohio Prosecuting Attorneys' Association is currently looking at that issue and may soon recommend raising the penalty minimum for murder from 15 to 20 to life and the aggravated murder minimum from 20 to 25 to life.

FEDERAL SORN LAW IMPLEMENTATION

Guidelines and Work Groups. Erin Rosen, representing the Ohio Attorney General's Office, reported that she had recently attended the National Attorneys General Spring Meeting in Washington, D.C. A major topic of discussion was federal sex offender registration and notice (SORN) changes in the Adam Walsh Act (AWA) and its implementation in the 50 states. She reported that Laurie Rogers, Director of the SMART (Sex Offender Sentencing, Managing, Apprehension, Registration, and Tracking) Office of the Department of Justice was present at this meeting. Ms. Rogers is in charge of drafting the guidelines for implementing the AWA and for dispersing grant money.

Atty. Rosen noted that the Ohio AG/OCJS working group's document was distributed at that meeting. She said the Attorney General from Illinois praised the document, stating that it will serve as a good example of how to implement the requirements in other states.

The federal guidelines, said Atty. Rosen, are not finished but should be available in a few weeks. The guidelines are expected to offer a definition of what it means to "substantially implement" the AWA and

will serve as a road map for the states to follow. The SMART Office is also actively creating software for sex offender databases.

The attendees were informed that the AWA will be applied retroactively. The most challenging portion of this provision, said Atty. Rose, is that if someone has ever been convicted of a sex offense (even 25 years ago) and is currently "on paper" for anything, including non-sex offenses, he will have to register for the previous conviction, even if he was not required to register before.

When asked about the legislative AWA work group formed under S.B. 260, Atty. Rosen reported that all Legislative members have been appointed. The group will meet March 29, and faces a March 30 deadline for an initial report. Committee members have been given a copy of the AWA and AG/OCJS reports.

Dir. Diroll noted that a bill has already been introduced by Sen. Austria to bring Ohio's SORN law into compliance with the AWA. There have been several other new sex offense bills introduced in addition to the reintroduction of the SORN license plate bill. The other bills involve some crime redefinitions, civil commitment, pandering, and voyeurism.

According to Becki Park, from the majority caucus, committee hearings have already begun for several of these bills.

Regarding the sex offender license plate bill, Prosecutor Don White asked which would take precedence if the offender already has a DUI plate and would now be mandated to use a sex offender license plate.

If Ohio can meet the "substantially implemented" standard for complying with the AWA by this July, the state gains 10% in federal funding, said Atty. Rosen.

Constitutional Challenges. Public Defender Yeura Venters asked to hear from Magistrates Bob Krebs and Lori Keating, of the Butler County Common Pleas Court, on the constitutional issues with the AWA.

Noting that some portions of the AWA could be problematic, Magistrate Krebs declared that the biggest question is whether Ohio will adopt AWA as is or will make adjustments that work best for Ohio. If AWA is adopted as is, there will be more Constitutional concerns. The retroactive application of AWA along with Ohio's current residency and employment prohibitions could cause the most problems.

Although all enactments of the General Assembly are presumed to be constitutional, this presumption can be overcome if there is a clear conflict between the legislation in question and a particular provision of either Ohio's Constitution or the United States Constitution. Magistrates Krebs and Keating believe that there are several features of the AWA that may present constitutional issues. These include the retroactive application; forced classification without a court adjudication; classification itself, which attaches to a conviction, diminishing the assumption that it is remedial and not punitive; lack of connection to the potential for recidivism; lack of judicial appeal; lack of an opportunity to be heard prior to classification; and the possible legislative reversal of court adjudications.

Separation of Powers. The separation of powers doctrine creates a system of checks and balances so that each branch maintains its integrity and independence. The General Assembly is vested with the power to make laws, but this power is limited by the state and federal Constitutions. The courts "possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of government."

If an offender has proceeded through trial, received an adjudication, and perhaps appealed to higher courts, if that verdict then gets changed legislatively by the retroactive provision of the AWA, it could violate the separation of powers doctrine. It is not fair to affect someone retroactively without due process. If the trial judge has already determined that a habitual sexual offender should not be subject to community notification under the current system, and the AWA reverses the adjudication, it undermines the judiciary.

Some judges dole out the sexual predator label rather liberally, said Mag. Keating, while others reserve it for the worst of the worst.

Representing the State Public Defender's Office, Bob Lane noted that the majority of cases are resolved by pleas. Sometimes a defendant pleads guilty in return for a promise that he will not be labeled a sexual predator. The defendant, in good faith, waived his right to trial when he pled.

David Berenson of the Department of Rehabilitation and Correction remarked that several years ago, as a result of H.B. 180, many cases were reviewed involving trigger offenses that may have been sexually motivated. The purpose was to determine if those trigger offenses were sexually oriented offenses and should be labeled as such.

That was administrative, declared Atty. Lane, not part of the sentence. In contrast, this retroactive provision would become part of the sentence. Another related factor, he noted, was that no one could foresee that a sexual predator label was coming prior to H.B. 180, so they had no option to plead it away. After H.B. 180, defendants knew the classification existed and could make it part of a plea bargain.

Conviction of a sex offense already labels a person as a sexually oriented offender, said Atty. Rosen, which means that Ohio already has an offense-based classification trigger.

Atty. Lane pointed out that a sexually oriented offender is different from a sexual predator, which will affect which federal tier they get placed in. For prospective offenses, the same challenges do not exist, he declared. The problem is in applying AWA provisions retroactively.

Mag. Krebs acknowledged that the majority of problems with adopting the AWA involve applications that go backward. Applying AWA provisions to future cases will not present the same problem. In an attempt to find a middle ground, he suggested that it may be better to have two parallel systems than to apply the Act retroactively.

Double Jeopardy. By automatically attaching registration and community notice requirements to an offender by virtue of a *conviction* for a categorized offense, AWA makes the notification requirement seem like a form of punishment. By doing so, said Mag. Keating, it creates an issue of double jeopardy by punishing the offender twice (prison term and automatic registration classification) for the same offense.

Equal Protection. Under the current system, only a minority of offenders are automatically classified and made subject to community notification without an adjudication. The determination is based largely on the likelihood of recidivism. By contrast, the AWA automatically classifies *all* offenders into a tier system based upon the commission of particular offenses, even without an adjudication and regardless of the likelihood of recidivism. This will mean that, post-AWA implementation there will be two groups of similarly situated sex offenders who are being treated unequally with respect to SORN law.

Retroactivity Clause. Section 28, Article II of the Ohio Constitution provides that "the general assembly shall have no power to pass retroactive laws". If a person had due process and was adjudicated he should have "a reasonable expectation of finality".

The argument goes, if the AWA were applied retroactively to sex offenders, the prior adjudications will be legislatively altered. There will be no reasonable expectation of finality for anyone sentenced as a sex offender.

Ex Post Facto/Retroactivity. The intent of the Revised Code Chapter 2950 was civil because it was narrowly tailored to achieve its remedial purpose. Although the AWA claims to be civil, it is punitive in nature because it applies automatically to three pre-determined categories of criminal offenses without a determination of recidivism. In addition, there is no judicial appeal for a classification.

A determination should be made, said Mag. Keating, as to whether the new classification is excessive, especially in terms of its alternative purpose. In addition, the Constitutional challenge is that adjudications of recidivism have been left out of the equation which prevents the legislation from being tailored narrowly enough to comport with the legislative interest in combating recidivism.

Of the 1,400 sex offenders that enter the prison system every year, Mr. Berenson claimed that there are always some who would fall into Tier II of the AWA because they have been labeled a sexual predator, but, in his opinion, were assigned that label erroneously.

Mag. Keating agreed that judicial discretion may be to blame for some of the inconsistency in labeling sex offenders as sexual predators.

H.B. 180 established a two-part test, said Atty. Lane, whereby the offender must first be convicted, then have a hearing to determine his likelihood to commit another crime. Only then could he be assigned the label of sexual predator. He declared that studies show that the commission of a single sexual offense does not always show a likelihood of committing a similar crime in the future. Occasionally, a person who commits a serious offense is less likely to commit another offense, but a person who commits a less severe offense may be *more* likely to commit

a similar or worse offense in the future. The future potential crimes may not be as severe for the first time offender, but he may be more likely to commit them. Under H.B. 180 the concern is focused more on the potential of what the offender may do in the future, than on a single immediate offense. In contrast, he declared, what the offender may potentially do in the future has no bearing under the AWA. The AWA ignores the psychological evaluation regarding recidivism.

Judges attempt to use evidence and science-based decisions as well as psychological evaluations to determine the chance of recidivism, said Common Pleas Court Judge Andrew Nastoff. Studies agree that what may seem to be relatively minor sex offenses are often strong signs of the potential for recidivism. He declared that the offense has some bearing, but is not the sole factor in determining whether the offender is labeled a sexual predator. The psychological evaluation carries a great deal of weight in helping the judge to make this determination.

In sex offender treatment, the state of finding what works and the attempt to make valid predictions about future behavior is still in an evolutionary stage, said Mr. Berenson. More research is needed before practitioners can be sure about their predictions.

This highlights the practical difficulty in trying to line up a recidivism-based system with an offense-based system, said Mag. Krebs.

Procedural Due Process. The Fourteenth Amendment of the U.S. Constitution and Section 16, Article I of the Ohio Constitution grant all citizens the right to procedural due process. The basic requirements under this clause are notice and the opportunity to be heard. Under Ohio's R.C. Chapter 2950, offenders have to be adjudicated as a habitual sexual offender and/or a sexual predator in order to be subject to community notification. They are thus provided with notice and an opportunity to be heard. Mag. Krebs declared that if an offender is not currently subject to the community notification requirements, but is suddenly mandated to do so under the Adam Walsh Act, he should have the right to procedural due process and be granted a hearing because it is imposing a "stigmatizing statement".

Representing the Office of Criminal Justice Services, Bob Swisher remarked that the work group's duty was to determine how to best implement AWA. It was not asked to decide *whether* or not to implement the Act, but *how* to implement it. He feels any recommendations regarding which parts of the AWA should be implemented should be forwarded to the H.B. 260 work group, because that is their task.

The majority of people who are on the H.B. 260 work group were also on the Attorney General/Criminal Justice Services work group, said Atty. Rosen. She expressed an intention toward a proactive focus so that the Constitutional issues can be addressed before they arise. She stressed that AWA requires some form of retroactivity because it requires getting all sex offenders classified into the federal tiers.

Atty. Lane questioned why the work group has a March 30 deadline when the federal guidelines are not yet available. He emphasized that Ohio is not required to implement the Act. It is a matter of qualifying for more federal money. He declared that it might be more economically feasible to take ample time to address the Constitutional issues and

lose the bonus money, rather than implement the Act too soon and risk forfeiting the money through litigation. He added that the final report should not predate the arrival of the rules and guidelines.

A key concern, said Mag. Keating, is how much of Ohio criminal law we want to give up to the federal system.

Atty. Lane declared that if Ohio adopts AWA without the retroactivity provision, then no one loses. If Ohio is mandated to adopt the retroactivity provision, however, then many people have a lot to lose. He declared that it will remove the judge's discretion in determining who is labeled a sexual predator.

According to Mr. Berenson, adoption of the AWA, as is, will result in many low risk offenders suddenly being categorized as Tier III offenders. Moreover, some Tier I offenders will be high risk offenders who should get long, possibly lifetime, registration requirements.

Atty. Rosen acknowledged that some offenders may have had 10 years with a clean record with hopes of applying for a clean record certificate, only to be knocked down again by the new AWA requirements. Noting that it might be possible to grandfather some offenders in as Tier II, she remarked that it might be possible to bump some offenders up a level, but not down a level.

Atty. Lane recommends waiting until the guidelines come out.

According to Atty. Rosen, those states that have an offense-based classification system probably won't have the same Constitutional problems in complying with AWA that Ohio is facing. She heard a rumor that California is rejecting AWA because it is not economically feasible to implement it.

Since California may be rejecting the AWA, Lynn Grimshaw, representing the Ohio Community Corrections Association, wondered if there might be additional states that plan to reject it. Given our current reservations about the Act, he remarked that it might be worthwhile to team with other states that have similar concerns.

Since we recognize obvious Constitutional challenges to implementing the AWA, Atty. Venters said that the Commission has a responsibility to bring these issues to the attention of the General Assembly in an effort to help the legislators make informed decisions regarding the Act. Knowing that a deadline is looming, he feels it is imperative that they have this information in the early stages of decision-making.

So far this whole process is like shadow-boxing in the dark, said Judge Spanagel. Noting that it is common for legislatures to pass bills and presume constitutionality, he feels the Commission has an obligation to inform Rep. Latta and Sen. Austria that we have concerns about the retroactivity provision of the AWA. He feels the Commission should suggest removing that provision from the bill, based on certain scenarios where the retroactivity clause would violate Ohio's Constitution. He believes that Ohio will still be substantially compliant with the Act even if the retroactive provision is rejected.

No matter how the Act is implemented, Atty. Rosen recognized that there are bound to be complaints and challenges.

Atty. Lane noted that, after S.B. 2, there is one offender serving 10 years for rape and another offender serving 25 years for the same offense. Both are serving different sentences for the same crime, based on the dates they committed the crime. He remarked that, in those cases, the Constitutional argument on disparity was rejected.

Pros. White reported that the OPAA also opposes the retroactivity provision in the Adam Walsh Act.

If a statement regarding the Commission's concerns is to be forwarded to the H.B. 260 work group, Atty. Rosen noted that Senator Stivers and Representative Latta are the co-chairs of that group.

Atty. Lane moved that the Commission make a recommendation to the General Assembly that as they address potential adoption of the AWA, a distinction should be made between the prospective and retroactive applications of the Act. Due to constitutional concerns, the retroactive application of the AWA provision should not be adopted in Ohio. Prosecutor White and Judge Spanagel seconded the motion.

Atty. Rosen echoed earlier suggestions to encourage the legislators to wait until the federal guidelines are released before taking action.

Recognizing that the March 30 deadline for the H.B. 260 work group involves developing a plan for how to implement the AWA and not a final report to meet compliance with the federal standards, Judge Nastoff stressed that it is still important to get the problematic constitutional issues brought to the forefront during that planning process. The constitutional issues need to be addressed so that adjustments can be made to achieve substantial compliance.

Chief Justice Moyer encouraged the Commission members to bring its constitutional concerns to the attention of the General Assembly.

After considerable discussion, the Sentencing Commission members unanimously approved the following motion:

To notify the Ohio General Assembly that, based on serious Ohio Constitutional issues, there are universal concerns regarding retroactive application of the federal Adam Walsh Act to Ohio. If the Adam Walsh Act were to be implemented in Ohio, the Commission recommends that it be made prospective.

SEXUAL ASSAULT STATUTE REVISIONS

Dir. Diroll reported that a bill is being drafted to implement the Commission's suggestions about sexual assault statutes (other than rape of a person under age 13) that were made last November. Because those changes were made in a fast-paced and charged environment, a few members wondered if we should revisit those recommendations, he added.

While Pros. White opposed revisiting the recommendations, Atty. Venters argued that the Commission may have acted hastily on some items since

it was under the gun and in a rush to get something to the legislature. He would like to revisit some of the recommendations.

Judge Nastoff remarked that, as an elected official entrusted by the public, he has a vested interest in taking a second look at these recommendations before they are set in stone by the legislature. He prefers a scheme where the responsibility for releasing a felony sex offender from prison lies with him, rather than with the Parole Board.

Puzzled by how the Commission could be accused of making a rush decision, Atty. Grimshaw reminded the members that a full year was spent in developing those recommendations. He fears that if the Commission now chooses to change those recommendations, it will lose credibility.

Dir. Diroll assured him that there is no intention to revisit all of it. The focus at this time is more on the indeterminate sentences and how high the ranges go.

After lunch, Dir. Diroll said that the Commission agrees that the key point of contention is not the sex offender proposals, *per se*, but the larger issue of determinate versus indeterminate sentences. He said that topic would be on the Commission's agenda at its April meeting.

From a judge's standpoint, said Judge Nastoff, the 2 to life sentence is regarded as a "poster child" sentence. There is a big difference between someone who should spend 3 years in prison and someone who should spend the rest of his life in prison.

Atty. Grimshaw defended a wide sentence range, such as 8 to 25 years. He argued that this gives the judge the flexibility to offer judicial release if he sees that the offender has made rehabilitative progress while incarcerated or feels he has served enough time and deserves to be released.

Part of the problem, said Atty. Venters, is whether the judge will still be on the bench by the time the offender serves the minimum portion of the sentence. The minimum is intended to be the minimum point at which the offender could be considered for parole consideration. A sentence of 9 to 25 recognizes the seriousness of the offense. If the crime is regarded as less serious, the judge can choose a flat sentence at the lower portion of the range.

When the judge chooses the initial sentence, said Parole Board Chairperson Cynthia Mausser, he is unable to take into consideration the offender's rehabilitation while in prison. The Parole Board has that benefit, since it conducts hearings throughout the offender's incarceration and evaluates his efforts and progress toward rehabilitation. She noted that the public often thinks the offender is getting out early, when he actually has served the statutory minimum. Unless the offender commits another crime, the public needs to realize that he is eventually going to be released.

It also works the other way, said Pros. Dave Warren. If the offender's behavior gets worse, the Parole Board has the chance to hold him longer, up to the maximum portion of an indeterminate sentence. He

noted that victims just want a chance to tell their story to the Board before a decision is made to release an offender.

If the judge makes the call rather than the Parole Board, said Judge Nastoff, the public knows whom to blame.

DRC Research Director Steve VanDine stated that his section has been analyzing S.B. 97, regarding sex offender registration. The bill could increase the years that sex offenders spend in incarceration. If the offender violates the registration requirement, he will be charged with a new offense at the same level as the original crime.

Ms. Mausser said that failure to register currently is treated similar to escape, which is one level less than the original offense.

Having just returned from testifying at the House Criminal Justice Committee on behalf of the Judicial Conference, Judge Corzine reported that he listened to sponsor testimony on a couple of bills while there. One was the SORN license plate bill. The other was the voyeurism bill. There were a few constitutional issues raised about the SORN license plate bill and concern about how the requirement would be applied if the offender already has a DUI license plate. The voyeurism bill, he noted, talks about spying, but offers no definition of spying. It makes the offense of voyeurism a felony instead of a misdemeanor.

Pandering. Previously, when the Commission members discussed which additional sex offenses should be addressed, pandering was one of those selected. This includes the making or distributing of obscene materials, making or distributing obscene or "sexually-oriented" materials that include minors (§2907.321 and §2907.322), and using a minor in "nudity-oriented" material or performances (§2907.323).

Although pandering began with magazines and other publications, Staff Attorney Scott Anderson stated the offense has followed the evolution of technology to include movies and computers. As finely-honed proscriptions have been legislated to curtail the use of media to harm innocent victims, the increasingly narrow statutes have become less consistent. The Commission, he suggested, might review these statutes to propose more consistent offenses and more comprehensive penalties.

He noted that two of the offenses have presumptions that guide a trier of fact in determining whether material is, in fact, prohibited. Additional confusion is caused, he said, by the similarities between "obscenity" versus "nudity oriented material" versus "sexually oriented material" involving a minor. He suggested that the Commission may want to streamline these proscriptions.

An additional concern to be addressed involves a recent case accepted by the Ohio Supreme Court, *State v. Tooley*, which challenges possession of child pornography under §2907.322 and §2907.323 on the grounds that the statutes are unconstitutionally vague or overbroad. The U.S. Supreme Court previously found, in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), that protecting children from harm is the appropriate basis for infringing another's otherwise protected First Amendment right to possess and view pornography. The issue revolves around pornography involving virtual images as opposed to real images. If the image in the pornography is of an actual child, then the

behavior is criminal; if the image is of a virtual child, then the behavior is constitutionally protected. The *Tooley* case challenges the statutory presumption that the image is a real child. The defense argues that, since no viewer of pornography can distinguish between real and actual children in downloaded digital images, the statutes are either 1) so vague that a person could not conform his conduct to the law's dictates or 2) overbroad, in that they prohibit protected conduct along side criminal conduct.

According to Judge Nastoff, there is also a U.S. Supreme Court case arguing that the downloading of pornography from the internet is a form of trafficking.

Atty. Rosen explained that every time the image is downloaded, the victim is revictimized, which is why the penalties for pornographic offenses are getting tougher.

It may be best to wait and see what the Ohio Supreme Court decides with the *Tooley* case, said Judge Corzine.

Judge DeLamatre asked if there is a prohibition against creating a virtual image.

There is a difference between a morphed image (where a picture is "morphed" to include an image that was not in fact present in the original picture) and a virtual image that is created from scratch, said Atty. Rosen. Virtual images are constitutionally protected because they are completely original. Morphed images are not constitutionally protected because they involve taking a real image and morphing it into a separate real or virtual image. She contended that there are experts who can easily tell the difference between a morphed, virtual, or real image. The defendant's perception of whether the image was real or virtual should not matter.

CODE SIMPLIFICATION

Over the past ten years, the criminal code has become more complex due to numerous exceptions and side bars added to statutes, said Dir. Diroll. He reported that Rep. Latta would like to have the Sentencing Commission simplify the criminal section of the Revised Code again and would like to introduce the results before the end of his term. Dir. Diroll suggested having a smaller group work to streamline sections and bring them back to the full Sentencing Commission for consideration.

Among the more substantive aspects that are in need of simplification are the segments dealing with judicial release and vehicular homicide.

Of particular concern to Judge Routson is the lack of a mechanism in the Revised Code for dealing with multi-jurisdictional cases. At issue, he said, is whether a judge can impose a consecutive sentence on the back of a previous sentence from another jurisdiction.

The old Revised Code clearly spoke to that, said Atty. Lane, allowing a judge to make a new sentence consecutive to that from a previous jurisdiction.

Noting that DRC often has to sort out those issues, Atty. Guy claimed that the second judge usually has control over the issue.

Some clarification might be needed, said Dir. Diroll, for how to handle multiple terms of parole and post-release control when consecutive sentences are involved.

Judge Nastoff asked how post release control is affected if an offender is released early to community control under judicial release.

According to Atty. Guy, the post release control would not kick in unless he violates conditions of release or is sent back to prison.

To ease confusion, Judge Corzine remarked that he explains to the offender up front that if he serves the full sentence, he will be released on post release control.

Another concern raised by Judge Nastoff was H.B. 450, which eliminates the ability to file for mitigation of a sentence on a misdemeanor but still allows it on a felony sentence. He asked how it could be allowed on a felony sentence but not a misdemeanor sentence.

Dir. Diroll agreed to look into it.

Another area needing simplification and clarification, said Judge Routson, is the difference between a mandatory prison sentence and the period of a sentence for which an offender is ineligible for judicial release (§2929.13(F)).

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for April 19, May 17, June 21, July 19, August 16, September 20, October 18, and November 15, 2007.

The meeting adjourned at 1:35 p.m.