Minutes of the
CRIMINAL SENTENCING COMMISSION
And the
CRIMINAL SENTENCING ADVISORY COMMITTEE
January 18, 2006

SENTENCING COMMISSION MEMBERS PRESENT
Major John Born, representing State Highway Patrol Superintendent
Col. Paul McClellan
Appellate Judge H.J. Bressler, Co-Chair
Juvenile Judge Robert DeLamatre
Defense Attorney Bill Gallagher
Senator Tim Grendell
Municipal Judge Fritz Hany
Victim Representative Stacy Kitchen
OSBA Delegate Max Kravitz
Bob Lane, representing State Public Defender David Bodiker
State Representative Robert Latta
Municipal Prosecutor Steve McIntosh
County Commissioner Bob Proud
Common Pleas Judge Reggie Routson
Common Pleas Judge John D. Schmitt
Municipal Judge Kenneth Spanagel
Youth Services Director Tom Stickrath
Public Defender Yeura Venters
Prosecuting Attorney David Warren
Sheriff Dave Westrick
Prosecuting Attorney Don White
Rehabilitation and Corrections Director Reggie Wilkinson

ADVISORY COMMITTEE MEMBERS PRESENT
Monda DeWeese, SEPTA Correctional Facility
Lynn Grimshaw, Ohio Justice Alliance for Community Corrections
John Leutz, County Commissioners' Association
John Madigan, Acting Law Director, City of Toledo
Karhlton Moore, Director, Office of Criminal Justice Services
Gary Yates, Chief Probation Officers' Association

STAFF PRESENT
Scott Anderson, Staff Attorney
Jo Ellen Cline, Legislative Counsel, Supreme Court of Ohio
David Diroll, Executive Director
Jeff Harris, Research Assistant
Mike Stinziano, extern for Jo Ellen Cline, Supreme Court of Ohio
Cynthia Ward, Administrative Assistant

GUESTS PRESENT

Sara Andrews, Superintendent, Adult Parole Authority
Kelly Anzelmo, Governmental Policy Group
David Berenson, Director of Sex Offender Services, DRC
Liz Bostdorff, legislative aide to Rep. Robert Latta
Jarrod Bottomley, legislative aide to Senator Tim Grendell
Bill Breyer, Prosecuting Attorney
Jeff Clark, Senior Deputy, Ohio Attorney General's office
Terry Collins, Asst. Director, Dept. of Rehabilitation and Corrections
Anne Connell-Freund, Ohio Community Corrections Association
Amanda Cooper, legislative aide to Rep. Bob Latta
Tim DeGeeter, State Representative
Dan Fitzpatrick, legislative liaison, Dept. of Public Safety
Jeff Gray, Sheriff, Mercer County
Lusanne Green, Ohio Community Corrections Association
Jim Guy, Department of Rehabilitation and Corrections
Adam Jackson, Correctional Institution Inspection Committee
Stephanie Kaylor, legislative aide to Senator Steve Austria
Lori Keating, Magistrate, Butler County Court of Common Pleas
Robert Krebs, Magistrate, Butler County Court of Common Pleas
Dave Lietenberger, Richland County Common Pleas Court
Irene Lyons, Department of Rehabilitation and Corrections
Heather Mann, legislative aide to House Speaker Jon Husted
Nathan Minerd, legislative liaison, Department of Youth Services
John Murphy, Executive Director, Ohio Prosecuting Attorneys' Assoc.
Scott Neeley, legislative liaison, Dept. of Rehab. & Corrections
Kelly Nomina, Attorney General's Office
Phil Nunes, Ohio Justice Alliance for Community Correction
Kelly O'Reilly, Governmental Policy Group, Inc.
Rebecca Park, Senate Republican Caucus
Candy Peters, Office of Criminal Justice Service
Shirley Pope, Executive Director, Correctional Inst. Insp. Cmte.
Ed Rhine, Deputy Director, Department of Rehabilitation and Correction
Denise Robinson, Alvis House
Carol Robison, Correctional Institution Inspection Committee
Mike Rodgers, legislative aide to Representative Keith Faber
Dave Schroot, Deputy Director, Department of Youth Services
Kevin Shepherd, executive assistant, Department of Youth Services
Randall Shively, Alvis House
Charlie Solley, legislative aide to Senator Kevin Coughlin
Allen Solomon, Sheriff, Auglaize County
Richard Spence, Correctional Institution Inspection Committee
Liesel Stevens, LSC intern for Senator Kevin Coughlin
Steve VanDine, Research Director, Dept. of Rehab. and Corrections
Jason Warner, legislative liaison for Representative Bob Gibbs
Scott Weaver, SEPTA Correctional Facility
Marianne White, legislative aide to Senator Gary Cates
Dana Wilkie, Alvis House

Appellate Judge H.J. Bressler, Co-Chair, called the January 18, 2006, meeting of the Ohio Criminal Sentencing Commission to order at 8:20 a.m.

DIRECTOR'S REPORT

Pending Bills
Executive Director David Diroll reported on the two bills that came out of Sentencing Commission recommendations currently pending in the General Assembly. Having passed the House of Representatives last summer, H.B. 241 sponsored by Rep. Bob Latta, the forfeiture measure, is dormant in the Senate. He anticipates action later in the year.

The Commission's clean-up traffic bill, H.B. 329, sponsored by Rep. Kevin DeWine, is scheduled to receive sponsor testimony soon in the House Judiciary Committee.

Meeting packets
Dir. Diroll reviewed the contents of the meeting packets, which include a press release from the Ohio Supreme Court summarizing the *Hernandez* decision on the importance of post release control (PRC) notices at sentencing, and consequences for violation of the conditions of PRC; a memo summarizing federal minimum requirements for sexual offender registration and notice (SORN) law; a draft quick reference guide on SORN law; a memo from staff attorney Scott Anderson on federal SORN requirements; and a summary of current bills pending in the Ohio General Assembly related to sex offenses. In addition, the staff distributed a report by the Office of Criminal Justice Services (OCJS) regarding recidivism rates of sex offenders, risk assessment, and tailoring of sanctions to the various sex offenders.

In relation to the Supreme Court decision on notice of post release control, Common Pleas Judge John D. Schmitt asked, as a practical matter, how the records would show whether notice had been given.

Sara Andrews, Superintendent of the Adult Parole Authority, reported that the journal entries are being examined of all felons released under PRC supervision. The determination will be based on the entry.

Judge Schmitt pointed out that things recorded in the entry are not always stated "on the record".

Rehabilitation and Correction's Director Reggie Wilkinson noted that the ruling will impact both the prison and supervision populations.

SEX OFFENDER REGISTRATION AND NOTICE (SORN)

Federal Minima
Regarding the federal minimum requirements for SORN, Dir. Diroll noted that failure to comply jeopardizes Byrne Memorial Grant funds. Any state that fails to comply faces a 10% reduction in the state's share of the Byrne program. According to OCJS Director Karhlton Moore, that currently amounts to about $6 million.

General Assembly's Request
Given that several bills have been introduced by the Ohio General Assembly regarding SORN laws, Dir. Diroll noted that legislators have asked the Sentencing Commission to assist in finding a solution for simplifying the laws while safeguarding the public. Since many judges and law enforcement personnel have serious concerns about additional

changes to these laws and how they can be implemented, the Commission begins with this informational meeting.

Recognizing that SORN legislation impacts different constituencies, including Sheriff's departments which have to deal with it on a daily basis, Judge Bressler explained that the goal is to simplify the process and come up with a workable product that everyone can accept and which will be beneficial to the citizens within the state of Ohio.

Krebs/Keating Overview
Judge Bressler introduced Lori Keating and Bob Krebs, magistrates from the general division of the Butler County Court of Common Pleas, who prepared an overview of SORN law, recently presented to the Common Pleas Judges' Association. Their presentation will include the possible impact of pending legislation related to SORN law.

Magistrate Krebs began by explaining that S.B. 5 in 2003 repealed longstanding statutes and replaced them with a new system. However, it failed to clarify which court decisions and other aspects of prior law continued to apply. Magistrates Keating and Krebs sought input from sheriffs, prosecutors, and defense attorneys in an attempt to simplify the range of requirements and make them workable and functional for the wide range of practitioners who have to implement SORN law. They also sought ways to address gaps discovered in the law.

Legislative History. According to Mag. Krebs, Ohio's sex offender registration statutes first took effect in 1963 as Chapter 2950. They and applied to "habitual" sexual offenders, defined as those with two or more separate convictions for sexual offenses. The law required the registration of the habitual offender's address for 10 years.

Then came the Megan Kanga case in 1994 in New Jersey. The 7 year old girl was raped and murdered by a convicted sexual offender who lived across the street with two other convicted sexual abusers. The case drew national media attention and resulted in a call for community notice when a habitual sex offender moves into neighborhoods, particularly near schools. The result was "Megan's Law" which led Congress to enact legislation calling for all states to have SORN laws.

Ohio's version of "Megan's Law," Am. Sub. H.B. 180, took effect July 1, 1997. The bill created three classes of sexual offenders: (1) the sexually oriented offender/juvenile offender registrant; (2) the habitual sex offender; and (3) the sexual predator, including the sexually violent predator. In addition to registration and notification of the sexual predator, Am. Sub. H.B. 180 also required community notification of the address of each sexual predator and habitual sexual offender on a case by case basis, as ordered by a court. To be labeled a "habitual sexual offender", the offender must have a record of two or more separate felony convictions for sexual crimes. The offender is required to register his address and to reregister every 10 years.

Am. Sub. S.B. 5, effective July 31, 2003, altered the registration and notification provisions by creating a classification system for non-sexual offenses committed against children, while also imposing new restrictions on sex offenders. These changes were made to comply with federal law (42 U.S.C. §14071) that requires registration of persons convicted of offenses against a minor (regardless of whether they are

sexual in nature) and/or labeled as a "sexually-violent predator." Compliance is necessary to receive 10% contingent Byrne funding.

S.B. 5 Details and Issues. Mag. Krebs said S.B. 5 created two classes: (1) sexually oriented offenses and (2) child-victim oriented offenses committed with a nonsexual motivation. It also created a fourth layer of offense, called "presumptive registration-exempt."

The "exempt" class contains sexual offenses that are presumed not to require registration. These include sexual imposition, voyeurism, and menacing by stalking with sexual motivation, provided the victim is not under age 18. The court is allowed, however, to remove the presumption and require registration by considering relevant factors, particularly public safety, the interests of justice, and determinations made by the General Assembly about sex offenders under R.C. 2950. Noting that a hearing is not required for this, Mag. Krebs raised the question of whether this deprives the offender of procedural due process. The answer, he said, might rest on the burden of proof for removing the presumption and who has that burden.

The bill also changed the sexual predator hearing. If the court determines that the offender is not a sexual predator, the court must now state its reasons in the sentence and judgment entry. Since the court must find by clear and convincing evidence that a person *is* a predator, judges wonder if it is enough to state in the sentence and judgment entries that there was not enough clear and convincing evidence to make such a finding.

In addition, said Mag. Krebs, under S.B. 5, the sexual predator label became permanent for adult offenders.

Mag. Keating continued the presentation by explaining S.B. 5's new class of child-victim oriented offenses. This class refers to non-sexual offenses with a victim under age 18 who is not a child of the perpetrator. The offenses include kidnapping, abduction, unlawful restraint, criminal child enticement, and child stealing. She noted that the law does not specify if the definition of "child" includes step-children, foster children, adopted children, or grandchildren.

Although this classification does not include sex offenses, it relies on sex offense factors to prove predation. In addition, statute permits the use of a prior child-victim offense to evaluate the potential for recidivism of a sex offender. With this in mind, some people question whether this is a rational relationship since the child-victim offenses are expressly non-sexual.

S.B. 5 also imposed changed registration requisites. The deadline for registering changed from 7 to 5 days. The offender must now register his or her school and/or work locations in addition to the residential address. The bill also mandates the registration of offenders convicted in other states if they work or attend school in Ohio.

Mag. Keating said there tends to be a gap in the law regarding for offenders with jobs that involve roaming, such as truckers, salesmen, construction workers, and transient labor. For these types of jobs, no notification is required if the duration of the job is shorter than 14 days or shorter than an aggregate of 30 days.

A statute authorizes county sheriffs to collect the registration fee each time the offender registers and each time the offender verifies his or her address. This only applies, however, to offenders over the age of 18 and is waived if the offender's income is below 125% of the federal poverty level. The annual fees are capped at $100 for predator, $50 for habitual offenders, and $25 for all other registrants. A new crime has been created for those who fail to register, with the penalty tied to the severity of the underlying offense and an increased penalty for repeated failure to register.

Recent Change. Effective November 23, 2005, H.B. 15, expanded community notification provisions by requiring notices to include a photograph of the sexual offender, according to Mag. Keating. The bill also prohibits "occupying" a residence within 1,000 feet of any school and applies to *all* sexually oriented offenses and child-victim oriented offenses. The bill lets a landlord evict a tenant who allows a sex offender to reside with him or her.

How Many? Mag. Krebs said Ohio has at least 13,788 registered sexual offenders. In Ohio prisons, 2003 data reveals that there were 66 sexually violent predators, 552 habitual sex offenders, 3,262 sexual predators, and 5,802 sexually oriented offenders.

Pending SORN Legislation. Pending H.B. 191 creates a new F-4 criminal penalty for offenders residing within 1,000 feet of a school, which would apply to sex offenders and child victim offenders, said Mag. Krebs. Since no culpability or mens rea is required, it may be a strict liability offense, or the standard would be recklessness (R.C. §2901.21(B)). The bill may also raise questions regarding whether it applies *ex post facto* to persons already occupying a residence.

Pending S.B. 146 would prohibit a sex offender from residing within 1,000 feet of any school bus stop and also apply to sex and child victim offenders. The offense would be an F-5. It excludes residences established before the effective date of the law. The bill would allow the landlord to terminate the lease of a tenant who violates the law. It permits a school authority to relocate the bus stop away from the registered offender.

Pending H.B. 118 would prohibit a sex offender from residing within 1,000 feet of any preschool. It also would apply to sex and child victim offenders. The bill excludes students and rental agreements established before the bill takes effect. Mag. Krebs noted two problems with the bill. First, the definition of "preschool" involves any property on which a school is located regardless of whether any school activities occur there. Second, although it excludes leases created before the effective date, it does not have a similar exemption for home purchases.

Pending H.B. 227 would allow the civil commitment of sex offenders labeled as sexually violent predators or charged with a violent sex offense but who are also NGRI or incompetent to stand trial.

Possible Constitutional Challenges. Mag. Keating turned attention to three important Ohio court decisions regarding pre-S.B. 5 statutes.

State v. Cook, decided in 1998, examined former Chapter 2950 under the Ohio Constitution's Retroactivity Clause and the U.S. Constitution's *Ex Post Facto* Clause. Mag. Keating asked whether S.B. 5 will cause the ruling to be revisited because the bill retroactively increased the punishment for an offense committed prior to enactment. This raises the question of whether legislature intended S.B. 5 to be civil law rather than criminal. Arguably, it is a civil law to address public safety and to show confidence in the mental health systems to treat these offenders. Conversely, the law's effect appears is punitive and negates the civil intent.

To date, because the registration does not impose a serious restraint on the offender and strives to protect the public, it has been deemed acceptable under the constitution. The Supreme Court found there is no violation of the retroactivity clause or prohibition against *ex post facto* laws, because the law is considered remedial, not punitive.

Proposed H.B. 191 and S.B. 146, pose additional constitutional concerns by making residency near schools a crime and adding bus stops to the residency restrictions. These add to the *ex post facto* concerns, particularly since they may force many offenders out of their homes and have other repercussions.

One issue that some defense attorneys are prepared to raise concerning H.B. 191, volunteered Mag. Krebs, is whether an offender will be forced not only to vacate a home but even to forfeit it if it is near a school purchased before the law takes effect. If so, this would constitute an additional punishment that did not exist at the time of conviction.

Another Ohio Supreme Court case that poses some interesting concerns is *State v Williams* (2000). The case looked at whether SORN requirements impinge upon the offender's "natural law" rights of privacy, favorable reputation, acquisition of property and the ability to pursue an occupation. The Court ruled that the individual's criminal conviction is already a matter of public record and that the active distribution of information about a convicted sexual offender does not hinder his or her right to privacy. It further ruled that nothing in Ch. 2950 hampers the offender's right to acquire property or pursue an occupation.

On the issue of whether Ch. 2950 impinges upon the offender's natural right to a favorable reputation, the Supreme Court ruled that the effects of SORN are the direct societal consequence of the offender's actions. The Court further ruled that SORN law does not violate the Bill of Attainder Clause in the US Constitution because it does not inflict punishment but is remedial.

Another issue raised by *State v. Williams* involved equal protection. The Court ruled that sex offenders are not a *suspect* class because the sex offender classification does not involve race, alienage, or ancestry. The ruling added that nothing in Ch. 2950 infringes upon any *fundamental right* of privacy or any other *fundamental right*. Some people feel, however, that this issue will need to be addressed once again in light of the restrictions proposed by H.B. 191 and S.B. 146.

A third Ohio Supreme Court case to keep in mind regarding the constitutionality of SORN law is *State v. Thompson* (2001), which reviewed former law under the separation of powers doctrine. The Court

ruled that legislative factors in sexual predator determination did not encroach on the court's fact-finding authority. A new argument might be that since the legislature cannot direct, control, or impede courts, then it cannot order the court to state reasons why an offender is not determined to be a predator.

Under Federal Case Law. Mag. Krebs remarked that there has been a popular misconception that the U.S. Supreme Court has determined that SORN laws are completely constitutional. In fact, he declared, the U.S. Supreme Court has only considered two SORN cases. One involved civil commitment and the other one was decided on a very narrow basis. He noted that the U.S. Supreme Court stated that there were other issues within these cases that caused concern but would be left for another occasion.

The *Smith v. Doe* (2003) case examined Alaska's Sex Offender Registration Law, and became the first *ex post facto* challenge to a SORN law considered by the U.S. Supreme Court. The issue was whether the legislature intended SORN as civil law or whether the effect of the law was actually punitive. The act was codified under the probate code instead of criminal because the criminal procedure code points to criminal intent. In this regard, restrictive measures on sex offenders were considered a legitimate objective. The principal effect of the registration is to inform the public through passive notification. It invokes the criminal process itself as notice. Truthful information is posted publicly through the registry. The offender might feel some humiliation by having past criminality revealed, but he or she is still free to change jobs or residences since the restraints are the same as those for a typical background check. The reporting time, whether one or five or more years, is linked to recidivism.

Looking at S.B. 5 in light of this case may raise additional issues, said Mag. Krebs. First, Ohio's SORN law is in the Criminal Code, mandates procedures in the criminal context, and is implemented by Bureau of Criminal Identification and Investigation (BCI&I). It includes lifetime labels, active notification, and restricts the offender's residency. This, he said, is likely to cause a revisit of the *Smith v. Doe* case with the U.S. Supreme Court.

Sheriffs' Concerns. Mag. Keating reported that he sought input from the Buckeye State Sheriffs' Association. Noting that the original intent of Megan's Law was registration and community notification, some sheriffs feel that straying too far from this intent may lead to some unintended effects and difficulties in enforcement.

Sheriff Jeff Gray, Chairman of Ohio's Sheriff's SORN Committee, stressed the importance of making laws that are easy to enforce and fair. If a law is too difficult to comply with, most offenders will not try. He remarked that recent changes to Megan's Law have led to difficulty in enforcement. Compliance has even led to homelessness for some offenders. The proposed prohibition to reside within 1,000 feet of a bus stop will make it even harder to comply because the stops are so numerous and their locations change.

The offenders who are currently complying, Mag. Keating added, are not the offenders that law enforcement worries about because, at least, the department knows where they live. Sheriffs are spending so much time

notifying the public about offenders who comply that they do not have adequate time to go after the sex offenders that fail to register.

Maps are being developed which will make it easier to recognize if a sex offender resides in a prohibited area. However, because prohibited areas take up so much of the available residences and homeowners resist having sex offenders in more affluent neighborhoods, sex offenders usually end up in the poorer neighborhoods, often together, increasing the likelihood of recidivism.

It seems inconsistent, said Mag. Keating, that sex offenders cannot live within 1,000 feet of any school yet may freely enter school grounds. A restriction prohibiting a sex offender from being on or near a school would be easier to enforce than the residency restriction.

Sheriff Allen Solomon of Auglaize County warned that making compliance too difficult for a sex offender is likely to make him or her feel that the effort is useless and cause them to take it out on new victims.

Sheriff David Westrick reported that there are over 100 sex offenders in Defiance County and the registration process costs his county about $70,000 per year. The requirements boil down to an unfunded mandate. He stressed that, contrary to the public's belief, sheriffs are not probation officers, just keepers of their addresses. Although he knows that the idea flies in the face of truth-in-sentencing, he recommends considering indeterminate sentences for this group of offenders.

Concerns about Residency Restrictions. Common Pleas Judge Reggie Routson asked if data was available that would corroborate the dangers of a sexual offender residing within 1000 feet of a school.

In most cases, Mag. Krebs responded, where the victim was a child, it was a crime of opportunity (usually in his own residence or the child of a neighbor), not necessarily within proximity of a school.

Heather Mann, representing the Speaker of the House, reported that constituents have raised questions and concerns regarding a sex offender's physical proximity with school, park, etc. where children congregate. She wondered if physical proximity would be more vulnerable for a constitutional challenge than residence restrictions.

Mag. Krebs responded that physical proximity where children congregate would be a target for a vagueness challenge. The trick, he warned, would be how to enforce such a restriction. It would even cause problems for the offender in attempting to go to a doctor's office, grocery store, mall or theater. That type of restriction would be easier to enforce if tied to post release control (PRC) because law enforcement would then have the authority to make an arrest and the sex offender could be returned to prison for violation of PRC.

Mag. Keating contended that the restriction of not being allowed within proximity of a school should be limited to offenders who had child victims. The biggest problem with the residency issue, she noted, is if it is applied retroactively, which causes an ex post facto problem for those who committed their offense several years ago.

According to Sheriff Westrick, 95-98% of the people that present a challenge regarding SORN law requirements are sex offenders who are family members and relatives.

A lot of the problems cannot be fixed through legislation, declared victim representative Staci Kitchen. In fact, she noted, many of these issues raise more questions than answers.

A major obstacle, said Mag. Krebs, is the lack of a grandfather clause for those who had the home before the law took effect. The loss of that home might be seen as a forfeiture. Forfeiture mandates a nexus between the property taken and commission of the crime. The issue also raises due process concerns by making it a criminal action just because the offender returns to where he has lived for years. Part of the argument might be the lack of *mens rea*, where the criminal state of mind has to be "knowingly." At this point, the argument again returns to whether the sanction is punitive or remedial.

DRC Director Reggie Wilkerson remarked that it might be helpful if the sheriff could have discretion to mitigate these facts.

To avoid S.B. 5 challenges, Mag. Krebs recommended the following: add a "grandfather" clause to H.B. 118; limit the school residency restriction to offenders who had child victims and to *predators*; add a culpable mental state; consider a student exception that was applied for the preschool restriction; make the housing determination part of the sexual predator hearing; and/or make the residency restriction a sanction of post-release control.

Another approach, said Mag. Keating, is to ask why a predator is free to prey. That addresses most of the public's concerns. In response, he recommended creating a "predator specification" with a greater penalty attached, enhancing penalties for offenses against children, and expanding post release control for sex offenders.

Another key aspect needed to keep these requirements at the remedial level and not punitive is to create the possibility for rehabilitation and removal of the "predator" label, no matter how remote. Rehabilitation would need to be shown by clear and convincing proof. A set minimum number of years could be established before the offender would be allowed to petition for label removal, and a set amount time could be established between petitions. He stressed that it should not be easy to have this label removed, but at least possible.

Noting that homeowner's Associations are saying that sex offenders cannot live in certain areas, Judge Ken Spanagel asked if there was anything in state law that makes this exclusively a state law issue. There was no ready answer.

Civil Commitment. Expressing gratitude for this opportunity to hear a detailed discussion of the issues, Senator Tim Grendell asked where the civil commitment approach lies in the mix of things.

In a case from Connecticut, Mag. Krebs said the U.S. Supreme Court ruled that it has no problem with civil commitment law for someone found not guilty by reason of insanity or mentally incompetent.

Civil commitment law is difficult for courts to enforce, said Judge Bressler, because of relatives in the home. Even more challenging are cases where the offender is found incompetent or has an extremely low I.Q. There is a hole in the system for those offenders, forcing the court to drop charges because there is no realistic option available.

OSBA representative Max Kravitz wondered about sex offenders who are not incompetent but might need to continue to be held in order to protect the public after the criminal penalty has been completed.

Some states, said Sen. Grendell, allow continued placement of sex offenders under civil statutes after the criminal penalty has been completed.

According to Mag. Keating, that could present an *ex post facto* challenge. She stressed that it certainly could not be applied retroactively without posing major Constitutional issues.

That option would have to be reserved for the most serious types of sex predators, said Mag. Krebs, and it would have to be determined that they are extremely mentally deviant.

Jim Lawrence, Director of Oriana House, claimed that the state of Washington is using civil commitment for the most heinous sexual predators on a limited basis.

Some of the higher level sexually violent offenders, who by nature of their crime get labeled as predators, said Dir. Wilkinson, are held in prison on indeterminate sentences. When the initial criminal penalty has been served, the Parole Board generally orders them held under a civil commitment and the offender is no longer classified as an inmate.

David Berenson, Director of Sex Offender Services for DRC, remarked that 17 other states have civil commitment laws for this level of offender. It is very effective in a practicality and cost sense.

Representing the Attorney General's Office, Jeff Clark remarked that "predator" is supposed to be defined as someone who is likely to reoffend. Civil commitment could be reserved for low or medium level offenders who have been determined by a mental health professional to have an irresistible impulse to recommit an offense and to whom, SORN would not apply.

Candy Peters, from OCJS, noted that the OCJS Report on Sex Offenders includes information on the application of SORN law in other states.

Next Steps. Sen. Grendell suggested putting together a composite consensus and making a unified recommendation to the General Assembly. He acknowledged that taking on this challenge would not be an overnight project and offered to convey the message to both the House and Senate that the Sentencing Commission is willing to take on this assignment. Dir. Diroll agreed that this would be a worthy task.

To continue with this challenge and make any viable progress toward developing a practical package in a reasonable amount of time, said Judge Bressler, it will be necessary to have continued involvement from all of the interested parties.

Constitutional issues regarding SORN law might be remedied by sentencing changes, said Dir. Diroll. It will be necessary to determine how much should be handled civilly versus criminally. Since truth in sentencing issues will come up in both areas, it may be worth visiting both areas.

That will be difficult, said Atty. Kravitz, due to the timetable.

Liz Bostdorff, legislative aide to Rep. Robert Latta, remarked that, after today's presentation, the legislators realize the greater scope of what needs to be addressed regarding SORN law and is willing to allow more time. They also would like opinions on DRC's Omnibus Proposal.

The scope and magnitude of the project should not take as long as S.B. 2 or the juvenile sentencing bill, said Judge Bressler, because the Commission has a framework from which to work, similar to the way it tackled the restructuring of forfeiture law. He agreed to set up a committee to work on SORN legislation.

REENTRY: DRC's OMNIBUS BILL

DRC Director Reggie Wilkinson reported Ohio has been making progress along with numerous other states in developing better plans for assisting offenders as they reenter the community upon their release from prison. A major effort toward easing that process is an "omnibus bill" proposed by DRC.

Employment
When an offender attempts to reenter the community upon release, there are numerous barriers that prevent that transition from being smooth. One key barrier is in their effort to get productive employment, often because they are banned from certain occupations. The omnibus bill addresses this by recommending there should be a nexus between the occupation and the crime.

Local jurisdictions should help the offender's transition back into the community and employment. This is bigger than the Department of Rehabilitation and Correction, said Dir. Wilkinson.

Ed Rhine, DRC's Chief of Offender Reentry, reported that the omnibus proposal might include the Certificate of Good Conduct concept to verify rehabilitative efforts. Re-entry Courts are another opportunity to establish mutually accepted guidelines and sanctions for post release control. (Both of these were discussed earlier by the Commission.)

To reduce the offender's barriers to identification, the proposal includes a provision for a state-issued release ID upon release.

The Federal Tax Credit offers a tax credit for employing recent prison releasees (ex-felon. The state could even expand the impact of the Federal Tax Credit with a similar state-sponsored credit.

Another area of concern involves non-relevant prohibitions to employment which tend to result in collateral sanctions. As stated,

these should be removed unless there is a reasonable nexus between the offenders' prior criminal behavior and the proposed employment. In reviewing those barriers, it was discovered that there were as many as 359 collateral consequences for violating those barriers in Ohio.

Prison Population Measures
Sara Andrews, superintendent for the Adult Parole Authority, noted that the omnibus proposals include legislation to address issues confronting the offender both while he is in prison and after release. The bill could be beneficial to 7,000 nonviolent offenders through intervention in lieu of conviction, judicial release by expanding eligibility, community control, prosecutorial diversion, medical release by including those with a terminal illness or dementia, including foreign nationals, and offering more "earned credit".

DRC Research Director Steve VanDine reported that there is a low rate of involvement in the earned credit program. The number of days to be earned is based on program achievement. If this could be expanded it would save prison beds. This could be significant because the intake in prison population has increased by 5,000 though the crime rate has dropped significantly.

Ms. Andrews suggested allowing the APA to reduce the amount of time a releasee is on post release control, based on the length of their original sentence and to increase it for more serious offenders.

DRC Omnibus Reentry Proposal Offers Comprehensive Legislation which will: provide expanded treatment and sentencing continuum for specific offenders; strengthen offender reentry; address collateral sanctions impacting offender reentry; and enhance agency operations.

Discussion
Dir. Wilkinson contended that the "reentry movement" is not merely the flavor of the day. He argued that effective reentry practices contribute to public safety.

Judge Schmitt asked where the resources would come from to make the reentry concept work.

Dir. Wilkinson explained that it is more of a philosophy than a program and it would be necessary to cross tabulate to the various resources.

Atty. Kravitz was puzzled as to why the number of prison beds has increased, particularly since sentencing options have been restricted since S.B. 2 went into effect.

Mr. VanDine explained that there has been an increase in the number of available prison beds. Also, when S.B. 2 took effect, 60% of the people entering the prison system were first time offenders. The system now has a more veteran population. Offenders often have been through local alternatives and courts have tired of them, sending them to prison. In addition, jails and community-based correctional facilities are full.

Judge Bressler added that 2,500 offenders came into the system during 2005 for offenses that were not even felonies ten years ago.

Regarding resources, said Dir. Wilkinson, DRC provides no funding to Judge DeWeese's reentry court in Richland County. Dir. Wilkinson argued that it saves the community money to help the offenders reenter effectively so that they won't reoffend.

Atty. Kravitz asked if there is anything in DRC's proposal that would restore discretion.

Dir. Wilkinson declared that earned credit is not "good time" revisited. The inmates just need to be able to earn more than one day of credit for the program to be meaningful.

Atty. Kravitz agreed that short-term offenders need an incentive to behave. He recommended reinstating the option of "good time".

Common Pleas Judge John D. Schmitt warned that if we do that, then we need to let the public know that "truth-in-sentencing" will not be absolute.

On the national level, said Dir. Wilkinson, "truth-in-sentencing" usually only means serving 85% of the sentence. Given that it has been 10 years since S.B. 2 went into effect, Dir. Wilkinson feels that it might be time to revisit it.

Reentry court now operates without statutory authority, said Judge Bressler. He asked if DRC's proposed legislation would address that.

Dir. Wilkinson believes it will, noting that eight other states have reentry courts.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission were tentatively scheduled for Feb. 16, March 16, April 20, May 18, June 15, and July 20.

The meeting adjourned at 1:40 p.m.