Minutes of the
CRIMINAL SENTENCING COMMISSION
And the
CRIMINAL SENTENCING ADVISORY COMMITTEE
January 18, 2007

SENTENCING COMMISSION MEMBERS PRESENT
Chief Justice Thomas Moyer, Chair
Common Pleas Court Judge Reggie Routson, Vice Chairman
Major John Born, representing State Highway Patrol Superintendent
Colonel Paul McClellan
Juvenile Court Judge Robert DeLamatre
Jim Guy, representing Rehabilitation and Correction
Director Terry Collins
Victim Representative Staci Kitchen
Bob Lane, representing State Public Defender David Bodiker
State Representative Robert Latta
Common Pleas Judge Andrew Nastoff
Dave Schroot, representing Director of Youth Services Tom Stickrath
Public Defender Yeura Venters

ADVISORY COMMITTEE MEMBERS PRESENT
Cynthia Mausser, Chair, Ohio Parole Board
Lynn Grimshaw, Community Corrections
Phil Nunes, Community Corrections

STAFF PRESENT
Scott Anderson, Staff Attorney
David Diroll, Executive Director
Cynthia Ward, Administrative Assistant

GUESTS PRESENT
Sarah Andrews, Department of Rehabilitation and Correction
Robert Bauchmire, intern, House of Representatives
David Berenson, Department of Rehabilitation and Correction
Liz Bostdorff, legislative aide to Representative Robert Latta
Bill Breyer, Hamilton County Asst. Prosecuting Attorney
Lori Keating, Magistrate, Butler County Common Pleas Court
Robert Krebs, Magistrate, Butler County Common Pleas Court
Elizabeth Lust, legislative aide to Senator Steve Austria
Christina Madriguera, Ohio Judicial Conference
John Murphy, Exec. Director, Ohio Prosecuting Attorneys' Association
Scott Neely, Department of Rehabilitation and Correction
Phil Nunes, Ohio Justice Alliance for Community Corrections
Becki Park, Senate Republican Caucus
Diana Ramos-Reardon, Office of Criminal Justice Services
Steve Raubenolt, Ohio Attorney General's Office
Erin Rosen, Ohio Attorney General's Office

Bob Swisher, Office of Criminal Justice Services
Jason Walker, Legislative Service Commission

Chief Justice Thomas Moyer, Chair, called the January 18, 2007, meeting of the Ohio Criminal Sentencing Commission to order at 9:40 a.m. He then asked Director David Diroll to report on some recent successes in the General Assembly regarding Sentencing Commission matters.

LEGISLATIVE UPDATE

Forfeiture: H.B. 241. Director Diroll provided a section-by-section summary of Sub. H.B. 241, based on the Commission's asset forfeiture reforms, which was introduced by Representative Bob Latta. The Senate approved the measure with only minor amendments. The effective date was delayed to July 2007, to allow time for training.

Child Rape: S.B. 260. He next announced that S.B. 260, the Sex Offender Bill, was recently passed, changing the penalties for rape and attempted rape. The Sentencing Commission had made suggestions in the fall and Sen. Austria offered a substitute version of the bill to the House of Representatives which took many of the suggestions into account. The substitute bill focused on rapes of a victim under age 13. While the original bill called for a penalty of 25 years to life for almost all rapes, the substitute bill offered a sliding scale based on additional circumstances, such as force, etc. The result is similar to the Commission's proposals, but with longer terms for a few categories.

The bill also shifts child rape penalties to the Sexually Violent Predator Law (Chapter 2971), which makes them subject to the two-tiered review under the SVP law (*i.e.*, Parole Board review and recommendation followed by a release decision by the sentencing court). He noted that the legislators did not follow the Commission's suggestion of a dual track offering release through judicial release and/or through a Parole Board hearing.

According to Ohio Parole Board Chairperson Cynthia Mausser, the Parole Board will determine the offender's likelihood to recidivate and decide whether to relinquish him to the sentencing court. If the Board does not the offender, it must conduct a review every two years. If the Board relinquishes control to the sentencing court, the court will recommend whether to release the offender. If released, the offender will be under community control but supervised by the Parole Authority.

According to Christina Madriguera of the Judicial Conference, to offer to release the sex offender, the court must find, by clear and convincing evidence, that the defendant is unlikely to commit a sexually violent offense in the future or indicate that the defendant does not create a substantial risk of physical harm to others.

Common Pleas Judge Andrew Nastoff expressed concern that the Parole Board determination of the likelihood to recommit the offense would undercut the judicial finding for classification as a sexual predator.

Representing the Attorney General's Office, Erin Rosen clarified that a Sexually Violent Predator specification is different from the sexual predator classification under SORN.

Chairperson Mausser explained that the Parole Board's decision is based on evaluations of the offender's progress during incarceration, including his behavior, participation and progress in treatment programs. She attempted to appease Judge Nastoff's concern about undercutting the judge's finding of labeling an offender as a sexually violent predator (SVP). In fact, she said that there has only been one case where the Board recommended release of an SVP. In that case, she noted, the Parole Board felt that the sexually violent predator label should not have been imposed for the offense committed, which involved the touching of a leg, not rape or another act of violence.

An offender gets assigned to the SVP category by nature of the offense, said Dir. Diroll. The release mechanisms under that chapter must then be followed, so a Parole Board review is not the end of it. Sub. S.B. 260, he noted, mirrors the current SVP release mechanism, independent of the SVP specification.

Dir. Diroll noted that there is a non-life penalty, with a range of 5 to 25, for attempted rapes where there are no other enhancements. Attempted rape with a victim under the age of 10 or the use of force warrants a 10 to life penalty. Attempted rape enhanced by serious physical harm or a prior results in a 15 to life penalty. The penalty is life without parole if the victim of attempted rape is under the age of 13 and the offender is a serious violent predator or was a prior serious violent predator.

There was a floor amendment to the bill regarding its application to juvenile offenders. Some legislators felt some juvenile offenders should be exempt from life without parole or other "up to life" penalties. The exemption is narrow, however, and essentially only applies to 14 or 15 year old offenders who did not have a prior equivalent offense, did not cause serious physical harm, and did not have a victim under the age of 10. Instead of 5 to 25 or 10 to life, or life without parole, Dir. Diroll said the bill is silent, but he assumes these juvenile offenders would fall into the standard F-1 penalty range.

At Chief Justice Moyer's urging, Director Diroll offered to write a summary of the bill, including comparisons of current law, the Commission's proposals, and what Sub. S.B. 260 says about penalties for rape when the victim is under the age of 13.

The bill has an emergency clause, so it took effect after Governor Taft signed it at the end of 2006.

The bill did not deal with sexual battery or sexual assault. Rep. Latta plans to introduce a bill to incorporate the Commission's proposals on these topics early this year.

Rep. Bob Latta remarked that legislators need to understand that there are building blocks that have been put in place to provide vital information and ease the overwhelming burden of the legislators. He commended the work of the Sentencing Commission as one of those building blocks. He reported that there were 22 sex offender bills presented to the House Criminal Justice Committee during the past year. He would like to get the many concerns compiled into one comprehensive bill. He emphasized his concern that many legislators do not understand

the benefit of the intense detailed work conducted by groups like the Sentencing Commission. As a result, some less experienced legislators attempt to push amendments calling for major changes without fully understanding the implications. He hopes to encourage new legislators to refer to the valuable building blocks in place and avoid impulsive actions. He again praised the dedicated thoroughness and diligence of the Commission.

Chief Justice Moyer commended Rep. Latta's diligence and continued support to the Commission, Ohio Supreme Court, and citizens of Ohio.

MONITORING REPORT DRAFT

The Commission provides a biennial monitoring report to the General Assembly on the progress of the changes made by S.B. 2 and other bills resulting from the Commission's proposals.

The current draft report, said Dir. Diroll, takes a look back at the major sentencing areas that have been addressed by the Commission, now that a decade has passed since S.B. 2. These include felony sentencing, victim rights, misdemeanor sentencing, traffic laws, juvenile sentencing, and forfeiture. The Commission has also influenced changes in laws pertaining to vehicular homicide and sex offenders.

At this point, the Commission needs to determine issues that warrant attention. For instance, the *Foster* case narrowed some of the findings that judges have to make in felony sentencing which has raised some new issues to be addressed. The Commission earlier suggested refinements to traffic law. And, although the Commission's forfeiture package standardized most forfeiture laws, two things were left unresolved: forfeiture involving animals and trademark violations. In the meantime, the Commission continues to work on current sex offender issues and SORN law issues.

The draft also contains a section on results of the juvenile sentencing changes made by S.B. 179, particularly blended sentences. Dir. Diroll reported that DYS has received 137 youths with blended sentences and only 4 of those have been invoked to the adult system.

Dir. Diroll remarked that he hopes to send the Monitoring Report to the General Assembly within a month. He asked members to read through the report and provide input before and at the February meeting.

SEX OFFENDER ISSUES

Dir. Diroll reported that when H.B. 95 passed last summer, addressing repeat violent offender (RVO) penalties, it included a provision that mandates a prison term from the F-2 range for sexual conduct with a victim under the age of 13. After the Commission informed legislators that this could be a problem because this offense carries the same elements as statutory rape, the General Assembly added a note that the spirit of the change was not intended to undermine the statutory rape penalty. The clause was added in temporary law, however, which will be overlooked by most practitioners. Dir. Diroll recommends codifying it.

S.B. 260 focused on child rape, but the Commission also had recommendations on other sexual assaults. As Rep. Latta mentioned, he hopes to introduce a bill that will address some of those.

The Commission worked in a hurried fashion on those, noted Public Defender Yeura Venters. He feels that the Commission's recent sex offense recommendations are well suited to address the key concerns pertaining to the rape of children, particularly since the recidivism rate among pedophiles is higher than for most other sex offenders. Given the rush in developing those recommendations, he had been most concerned about unraveling what the Sentencing Commission had accomplished with determinate sentencing in S.B. 2, especially since it has proven to accomplish the goals for which it was designed. He does not want to move forward too quickly on the adult rape provisions.

Judge Nastoff suggested that it wouldn't hurt to take a second look at what was proposed in the fall rush. He feels that it was good work and added consistency, but suggested looking at those offenses and recommendations in a different light now, without the political pressure of a pending election.

Two areas of focus, said Dir. Diroll, are on standardizing the enhancements and preserving judicial input on indefinite sentences.

If we want to do it right, said Phil Nunes, we should be driven by research with the focus on offenders with high rates of recidivism.

Atty. Venters remarked that he had presumed the focus was on SORN law.

According to Rep. Latta, S.B. 260 only had three or four hearings in the Senate before passing to the House of Representatives. He noted that many bills come out of the Senate very quickly, with few hearings, then have multiple hearings in the House. He suggested not reinventing any of the recommendations, but picking up where we left off.

It sounds as if the Commission needs to be proactive rather than reactive, said Judge Nastoff.

Very proactive, Rep. Latta emphasized.

Admitting that he does not favor a *carte blanch* return to determinate sentencing, Judge Nastoff remarked that there are aspects of that which he would like to revisit.

Atty. Yeura Venters recommended including empirical evidence to support any changes we recommend.

Dir. Diroll asked if there should be additional judicial input worked into the indeterminate sentencing for rapists and sexual predators to better honor the judicial control aspects of truth-in-sentencing.

If the topic of indeterminate sentencing is to be revisited, then Judge Nastoff insisted that judicial input must be part of that discussion. He declared that the judge needs to maintain control of the sentence.

Defender Venters agreed.

The General Assembly probably will not want to revisit what it did for child rape cases just a month ago, said Dir. Diroll.

Two other areas that might need to be discussed, said Common Pleas Judge Reggie Routson, are the sentencing ranges and the merger of offenses, since few offenders enter the court with just one offense.

Dir. Diroll rhetorically asked if the Commission should look at other sex offenses that do not involve direct assault, such as pandering, obscenity, and prostitution, including misdemeanors.

Staff Attorney Scott Anderson noted that today's presentation on the Adam Walsh Act and SORN Law will include discussion about the "Certificate of Good Conduct", which had been discussed when the Commission was working together with DRC on the Omnibus Reentry Bill.

SEX OFFENDER REGISTRATION AND NOTIFICATION (SORN) LAW

Last fall, Congress rewrote the Federal SORN requirements in the Adam Walsh Act. A work group led by the Attorney General's office and the Office of Criminal Justice Services studied the Federal changes, existing Ohio law and relevant court cases and issued a report of recommendations to the Ohio General Assembly in December 2006.

Atty. Anderson noted that the Adam Walsh Act (AWA) was introduced in 2005, and signed into law July 27, 2006. The AWA changes the classifications of sex offenses and sex offenders, revises the SORN registration requirements, lengths, implementation, and database, and even the procedure by which registrants can be relieved from the registration requirements.

In response to offenders who have pleaded double jeopardy issues, some states have made the long timer registration more "civil" (as opposed to criminal) by offering the option of being released from the registration requirements at some point. Since no guidelines have been offered yet by the Federal government, each state is faced with the challenge of how to implement these requirements.

Erin Rosen, representing the Attorney General's Office, reported that, in addition to the work group that has spent the past four months working on this report, H.B. 260 sets up an additional committee comprised of both Senate and House members with the task of reviewing the AWA. Hopefully, the report developed by the first work group will make the task a bit easier for the H.B. 260 work group.

The first step, she noted, is to recognize the changes to the designation and classification of sex offenses and sex offenders, as called for by the AWA. It divides these into a three tier system for offenders, based on the type of offense and prison time to be served.

Designation & Classification. Tier I under the AWA covers the lowest level sex offenders, usually with less than a one year penalty, Atty. Rosen reported.

Tier II covers sex offenders whose sex offense is less than a Tier III offense and includes a penalty of one year or more in prison. Tier II offenses include offenses comparable or more serious than sex

trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, and/or abusive sexual contact when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor; *or* involves use of a minor in a sexual performance, solicitation of a minor to practice prostitution, production or distribution of child pornography; *or* occurs after the offender becomes a Tier I sex offender; *or* transportation generally.

Tier III comprises sex offenders with a penalty of one or more years in prison *and* is comparable to or more severe than aggravated sexual abuse or sexual abuse, abusive sexual contact against a minor who has not attained the age of 13 years; *or* involves kidnapping of a minor (unless committed by a parent or guardian); *or* occurs after the offender becomes a Tier II sex offender; *or* offenses resulting in death.

For Ohio, Tier I offenses are expected to include: importuning; unlawful sexual conduct with a minor; voyeurism; sexual imposition; gross sexual imposition; illegal use of a minor in nudity-oriented material or performance; and child enticement. Tier II offenses could include compelling prostitution; pandering obscenity involving a minor; pandering sexually oriented material involving a minor; illegal use of a minor in nudity-oriented material or performance; child endangering; kidnapping with sexual motivation; unlawful sexual conduct with a minor; and any sexual offense that occurs after the offender has been classified as a Tier I offender. Tier III offenses could include rape; sexual battery; aggravated murder with sexual motivation; murder with sexual motivation; unlawful death or termination of pregnancy as a result of committing or attempt to commit a felony with sexual motivation; kidnapping of a minor to engage in sexual activity; kidnapping of a minor, not by parent; gross sexual imposition; felonious assault with sexual motivation; and any sexual offense that occurs after the offender has been classified as a Tier II offender.

Atty. Rosen explained that this is an offense-based system with no hearing procedure and no consideration for recidivism. The offense drives the serious violent predator label and SORN registration requirements. She added that there are no federal guidelines yet for how this is to be implemented.

The AWA requires the offender to register prior to release from imprisonment or within 3 days after being sentenced if the offender is not imprisoned. The length of registration is tier driven. Tier I offenders would be required to register for 15 years (5 years longer than current Ohio law). Tier II offenders must register for 25 years (5 years longer than current Ohio law). Tier III offenders must register for life. According to Atty. Rosen, of the current sexual predators in Ohio, 70% would be classified Tier III and required to register for life. 20% of the current sexual predator in Ohio would drop down to Tier II and 1% would fall to Tier I.

Discussion of Offenses. To comply with the AWA, Ohio will need to add a few offenses to the list requiring registration, while a few offenses will also be removed from the list.

Many child pornographers move to Ohio because Ohio does not require them to register, Atty. Rosen said. The AWA will change that. Another offense to be added to the registration list in Ohio is that of human

trafficking. Three bills were introduced into the Ohio General Assembly last session to create a new offense of human trafficking. None passed. The AWA requires Ohio to recognize it as an offense that requires sex offender registration.

The offense of child enticement should be changed because Ohio law currently does not require it to include an element of sexual motivation, Atty. Rosen claimed.

A few offenses will be excluded from those requiring registration. These include consensual sexual conduct between an offender over 18 and a minor ("Romeo & Juliet" offenses), unlawful restraint, menacing by stalking, and abduction. By special motivation, most of those offenses are covered under other offenses, such as kidnapping.

Juvenile Offenders. Under the AWA, juveniles 14 and older who are adjudicated delinquent for a sex offense that is comparable to or more severe than aggravated sexual abuse will be included on the National Sex Offender Database. Atty. Rosen noted that the offenses that will mandate this registration are rape and GSI with a victim under the age of 13, which are Tier III level offenses. So far, those are the only juvenile offenders that will be affected by the AWA. It does not mandate juvenile registration, but leaves the decision to each state. The work group feels that it might be best for the state to comply with this requirement to an extent. Rather than requiring these juvenile offenders to be included in the national database, however, the work group recommends that the juvenile offenders be registered and listed on the website at the local level.

In-Person Verification. Registrants will be required to appear in person to have a recent picture taken and to verify the information in the registry on a regular basis: Tier III—every 90 days; Tier II—every 6 months; and Tier I—annually.

Failure to Comply. Under Ohio law, the penalty for failing to register is usually one level higher in seriousness than the original offense. The AWA does not mandate that offenders who fail to comply be subject to incarceration, but does require that failure to comply have a maximum sentence of more than one year in prison. This would require Ohio law to enhance failure to comply for misdemeanor or F-5 sex offenses to the F-4 level, with its prison term of up to 18 months.

Retroactivity. The AWA leaves the decision about retroactivity to the U.S. Attorney General. To date, no decision on this issue has been made. In the meantime, the Ohio Attorney General will be responsible for notifying current registrants of their new classifications and new duties. This will include notifying eligible juvenile offenders who are currently not on the public registry.

The work group decided that the Ohio Departments of Rehabilitation and Correction and Youth Services will be responsible for notifying inmates that will be affected by these changes. The work group also suggests granting the offender the right to an administrative hearing with the Ohio Attorney General's Office to change their classification.

Registration. Steve Raubenolt, also representing the Ohio Attorney General's Office, remarked that Ohio's current registration system

functions as something of an honor system, trusting the offender to register on their own within 5 days of release. Upon release from incarceration or sentencing, the local sheriff's office is notified to expect this person to arrive for registration purposes. The AWA would make that period more restrictive.

Under the AWA, the offender must register prior to release from imprisonment or within 3 days of sentencing if not imprisoned. The Act emphasizes registration while the offender is still within the control of the criminal justice system. It requires the offender to register at the time of conviction, prior to incarceration, and requires the judge to notify the arresting law enforcement authority.

This will place a burden on local law enforcement, declared Judge Nastoff.

Referencing Rule 29(C) and a defendant's move for acquittal, Judge Routson argued that no one is convicted until they are sentenced.

Judge Nastoff argued that it would be more appropriate to have offender registration begin at the time of sentencing.

The goal, said Atty. Rosen, is to keep these offenders from slipping through the cracks.

Atty. Anderson argued that few offenders would apply Rule 29(C).

This requirement would be most used in cases where the offender is convicted and the judge does not revoke the bond, said Atty. Rosen.

According to Judge Routson, these offenders usually are not on bond. If they are on bond, it is usually revoked. For offenders place on probation, he suggested that the registration requirement could be made a condition of the probation.

Judge Nastoff believes that you cannot order an offender to register until the time of sentencing because it is not a conviction.

Registry. Ohio is in good shape, said Atty. Raubenolt regarding the registration elements required by the AWA, although they do not all appear on the public registry. Ohio's registry already includes the offender's alias, physical description, photograph, social security number, address of residence, address of employment, address of school, driver's license, auto license plate number, make and model of the offender's vehicle, description of the violation, supervision status, criminal history, DNA, and fingerprints. He noted that Ohio's "eSORN" website already complies with the public access requirements. In addition, any updates made to Ohio SORN registration information also update its connection to the National Registry.

Reduced Period for Clean Record. After lunch, Atty. Anderson reported that the AWA recommends that states develop a procedure by which sex offender registrants can have their registration period reduced based on maintaining a clean record.

When the Sentencing Commission worked with DRC on reentry issues, it included the possibility of offering a "Certificate of Good Conduct" to

offenders who kept a clean record for a certain amount of time. This certificate was designed to grant certain offenders who lead a law-abiding life after being released from prison, the opportunity to remove the stigma of criminality based on the fact that they were ex-cons. The intent was to afford them an opportunity to apply for jobs that they were otherwise denied. The AWA work group decided to use the the certificate as a model for the proposed implementation of a judicial reduction process under the AWA.

To qualify for consideration of a reduction in the registration requirements, the AWA requires the that the offender must maintain a clean record which would include: 1) no conviction of any offense that carries more than one year of incarceration; 2) no conviction of an additional sex offense; 3) successful completion of supervised release, probation, and parole; and 4) successful completion of any required treatment program. The period of reduction would differ, based on the offender's tier. Tier I sex offenders would have to maintain a clean record for 10 years; Tier III sex offenders and those adjudicated delinquent for an offense requiring registration must maintain a clean record for 25 years; and no reduction would be allowed for Tier II and Tier III adult offenders.

Implementation of the provision would require two distinct processes. The first is a judicial process to determine if the reduction is warranted and the second is a system for the certification of treatment programs, Atty. Anderson added.

The offender would not be allowed to apply for a reduction until the waiting period for documentation of a clean record has lapsed. The applicant would be responsible for making the application, providing the court with the necessary documentation, meeting the eligibility requirements, and paying filing fees. The court would decide whether to conduct a hearing. The court will also be allowed to either grant or deny the application without a hearing, commented Atty. Anderson.

Atty. Anderson noted that this procedure would give SORN law a more "civil" appearance which, in turn, will make it appear less constitutionally suspect in respect to double jeopardy issues.

Because the AWA requires that the offender complete a certified treatment program, it will be necessary for Ohio to set up a process for certifying programs. The Work Group recommends that DRC and DYS be statutorily required to establish administrative rules for certifying sexual offender treatment programs within one year. The departments should also be responsible for inspecting and certifying programs as meeting the certification requirements.

Dave Schroot of DYS suggested that the trigger for juvenile offenders should be before adjudication because there are some who sexually offend and are in treatment programs that are not adjudicated.

Juvenile court Judge Robert DeLamatre pointed out that successfully completing a program does not mean that the offender is no longer a risk. He argued that the AWA will limit the judge's ability to do anything except commit a juvenile offender to DYS and force the judge to make the juvenile offender register immediately. He predicted that juvenile court judges will oppose it.

Atty. Anderson stipulated that the good conduct certificate only says the offender has shown good behavior for a certain length of time. It does *not* assure that the offender will not reoffend.

Implementation. The AWA stipulates that each state must implement changes by July 27, 2009, or lose federal funding, said Atty. Rosen. There is a 10% bonus in funding if the changes are enacted by July 27, 2007. Since Ohio's registration process already matches up well with the federal registry, the bulk of the challenge will be changing Ohio's classification process.

According to Jim Guy, staff attorney for Rehabilitation and Corrections, enacting the AWA will require large sections of the Ohio Revised Code to be rewritten. He noted that the child victim offender designation disappears under the Act.

Atty. Rosen explained that child victim oriented offenses are not offenses committed with sexual motivation. A perpetrator cannot be forced to register if the offense is not sexually motivated, therefore the AWA calls a child victim oriented offense a specified sex offense against minors in order to get it added to the tier of sex offenses.

She reiterated that the AG's Office will notify current sex offenders of their new classification based on the Federal tiers. Any offender who opposes his/her new classification can petition for an administrative hearing. However, they will not necessarily have the right to counsel at this hearing.

Atty. Guy pointed out that the Adam Walsh Act, itself, does not provide a hearing to appeal the offender's classification.

Director Diroll said that, by tying the registration requirements to the new tiers, SORN seems like another penalty for conviction, rather than a civil process. He also said that there may be differences of opinion as to which offenses fit into the three tiers.

Bob Lane, representing the State Public Defender's Office, declared that the factors that made the AWA or SORN law look civil are gone. He said that applying the Adam Walsh Act retroactively will create serious problems. Pleas were made on the basis of avoiding the SORN law. Now many of those offenders will be notified that they will have to register after all. For some offenders, he declared, the registration requirements trump the sentence itself.

The Work Group discussed retroactivity quite a bit, said Atty. Rosen. The biggest problem, she noted, involves sex offenders who move from state to state to avoid registration. Part of the purpose of this Act is to set up uniform registration requirements among all states.

Since there is a hearing process for someone coming in from out of state, said Judge Nastoff, it should be possible to set up a similar process for appeal of an offender's tier of classification.

The Group recommended keeping Ohio's current hearing process, said Atty. Rosen, but it is not much use if classification is to be based only on the offense.

Given the federal registrations, Atty. Anderson wondered how Ohio could refuse to comply without losing federal money, even if not constitutional.

Judge Routson declared that the state is not required to comply. If willing to risk the money, the state can refuse.

Atty. Rosen reminded the Commission that it means taking the risk of losing millions if we don't comply by 2009.

The Commission may want to offer suggestions on these issues as the S.B. 260 Work Group develops its own report by the deadline, said Dir. Diroll.

The only way to get out of complying with the Adam Walsh Act, said Atty. Guy, is to state the specific state constitutional provision that prevents us from enacting any specific portion of it. Otherwise the state would lose the full grant amount attached to the AWA.

Judge Nastoff opined that the General Assembly is going to find a way to comply with AWA to prevent losing valuable federal funding.

Atty. Lane declared that there is already a precedent regarding constitutional provision that can prevent Ohio from being forced into implementing the AWA.

According to Mr. Nunes, the requirements could be accommodated by simply using the right language. Atty. Rosen, however, cautioned against taking unnecessary risks that could jeopardize approval by the Department of Justice and cause Ohio to lose millions.

Atty. Anderson suggested that the Sentencing Commission could list the concerns raised today and forward them to the Work Group. The first step, said Atty. Anderson, might be to check which portions of the AWA would be impossible to implement in light of Ohio's Constitution.

Atty. Rosen acknowledged that current sex offender registrants only had to register for 10 years and expect to get off soon. They won't be very receptive to suddenly being mandated to register for life.

The next meeting, said Dir. Diroll, will be a good time to discuss the potential Constitutional pitfalls of implementing the AWA and how the various offenses fall within the federal tiers.

FUTURE COMMISSION MEETINGS

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

The meeting adjourned at 2:00 p.m.