

**Minutes of the
CRIMINAL SENTENCING COMMISSION
And the
CRIMINAL SENTENCING ADVISORY COMMITTEE
February 16, 2006**

SENTENCING COMMISSION MEMBERS PRESENT

Major John Born, representing State Highway Patrol Superintendent
Col. Paul McClellan
Appellate Judge H.J. Bressler, Co-Chair
Defense Attorney Bill Gallagher
Senator Tim Grendell
Victim Representative Staci Kitchen
OSBA Delegate Max Kravitz
Bob Lane, representing State Public Defender David Bodiker
Municipal Prosecutor Steve McIntosh
Public Defender Yeura Venters
Prosecuting Attorney David Warren
Sheriff Dave Westrick
Prosecuting Attorney Don White
Rehabilitation and Correction Director Reggie Wilkinson

ADVISORY COMMITTEE MEMBERS PRESENT

Monda DeWeese, SEPTA Correctional Facility
James Lawrence, Halfway House Association
John Madigan, Acting Law Director, City of Toledo

STAFF PRESENT

Scott Anderson, Staff Attorney
David Diroll, Executive Director
Jeff Harris, Research Assistant
Khlayer Graves, extern

GUESTS PRESENT

Sara Andrews, Superintendent, Adult Parole Authority
Emmy Ashmus, intern, House Democratic Caucus
David Berenson, Director of Sex Offender Services, DRC
Liz Bostdorff, legislative aide to Rep. Robert Latta
Bill Breyer, Prosecuting Attorney
Jeff Clark, Senior Deputy, Ohio Attorney General's Office
Courtney Combs, State Representative
Michael Farley, representative from Governor Taft's Office
Abbie Gilbert, attorney, House Democratic Caucus
Jim Guy, Department of Rehabilitation and Corrections
Niki Hanselman, Ohio Advocates for Mental Health
Debra Hoffman, Fiscal, Legislative Service Commission
Stephanie Kaylor, legislative aide to Senator Steve Austria
Lori Keating, Magistrate, Butler County Common Pleas Court

Robert Krebs, Magistrate, Butler County Common Pleas Court
Ashley Moreland, student, Capital University
Scott Neely, Department of Rehabilitation and Corrections
Phil Nunes, Ohio Community Corrections Association
Becki Park, Senate Republican Caucus
Candy Peters, Office of criminal Justice Services
Randall Shively, ALVA House
Liesel Stevens, LSC intern for Sen. Kevin Coughlin
Steve VanDine, Research Director, Dept. of Rehabilitation & Corrections
Jason Warner, legislative aide to Rep. Bob Gibb

Appellate Judge H.J. Bressler, Vice-Chair, called the February 16, 2006, meeting of the Ohio Criminal Sentencing Commission to order at 9:50 a.m. He welcomed Rep. Courtney Combs and acknowledged his interest in refining sex offender law.

DIRECTOR'S REPORT

Legislative Updates. Director David Diroll offered some updates on pending legislation. The Commission's forfeiture bill looks like it will linger until after the election before being considered in the Senate. The Commission's traffic bill is pending in the House Judiciary Committee with more hearings to come.

Meeting Packets. Dir. Diroll reported that there was no formal packet for the day's meeting because the only documents for review were a letter reflecting SB 2 concerns from Pickaway County Judge Randall Knece and Dir. Diroll's response to that letter. He agreed to share Judge Knece's concerns with the Commission.

THE HERNANDEZ CASE

The Ohio Supreme Court ruled a few months ago in *Ohio v. Hernandez* that notice of post release control (PRC) must be disclosed in the court's judgment entries and orally in open court. Senator Tim Grendell said that he introduced an amendment clarifying that when PRC is mandated by statute, the PRC term is valid, even if a judge inadvertently omits placing it in the judgment entry. It would not be so required for discretionary PRC. *Hernandez* would apply in those cases. He expects the amendment to pass within the next week with an emergency clause so that it will become effective once it is signed by the Governor.

Dir. Diroll noted that 41 offenders were released because of the ruling in the *Hernandez* case.

Sen. Grendell added that 19 of those 41 offenders were sex offenders. The intent of the amendment, he said, was that a judge's technical failure should not kill a statutory mandate.

Prosecutor Bill Breyer reported that, in Hamilton County, the cases are being considered for re-sentencing to get the judgment entries in order. Pros. Breyer wondered if the Commission had considered this as a remedy for similar cases.

Superintendent Sara Andrews of the Adult Parole Authority reported that, in addressing the offenders identified as having been sentenced

with a lack of PRC notice, some jurisdictions are using judgment entries for the offenders who are still incarcerated. Some judges have stated that they will not send corrected entries after an offender has completed the stated prison term. Still other judges are sending proactive entries for those offenders still under supervision.

There are currently 15,571 offenders under PRC, she added. The APA is seeking further clarification from the sentencing courts regarding the PRC provision for about 1,500 of those offenders. If the journal entry includes a reference to secondary documentation, such as a plea agreement that is journalized, then APA seeks a copy of that documentation. Supt. Andrews noted that approximately 12,000 cases have already been reviewed.

SEX OFFENDER REGISTRATION AND NOTIFICATION (SORN) LAW

The Senate's Approach. Judge Bressler reported that moments before the day's meeting began, Sen. Grendell advised him of a change in the General Assembly's approach to SORN Law.

Sen. Grendell reported that the Senate leadership agrees with the need to address SORN law holistically, but prefers that it be done by a working group in the Senate. This working group has already had two meetings and plans to extend an invitation to the Commission to participate, he said. A key reason for the change, he noted, is that the Senate feels an urgency to put this issue on the fast-track and to keep it in the Senate. House members have also been invited to participate.

Dir. Diroll remarked that he had spoken with Heather Mann of House Speaker Husted's Office, regarding deadlines for the package. He had speculated that the Commission's deliberations would go through the summer with the intention of presenting a package for fall consideration.

That would be too late, said Sen. Grendell, because the General Assembly plans to shut down in May so that legislators can campaign for the fall election, then reconvene after the elections. Most legislators prefer to pass some form of SORN legislation by the end of May.

Dir. Diroll recognized the political timetable of the legislators and agreed that the Commission's participation in the work group could be beneficial.

Sen. Grendell acknowledged that the input of the Commission is vital because it can best address the major questions that need to be answered.

OSBA Representative Max Kravitz asked Sen. Grendell to identify SORN issues with which the Sentencing Commission can be of help.

Some of the key issues, Sen. Grendell responded, involve the residency distance requirements; notice and administrative burdens that are too harsh; how to zero in on the real problematic offenders; and how to shorten the time needed to implement the registration law. Currently, he noted, there are several new sex offender bills being considered: one to increase mandatory penalties for various SORN offenders; one

deals with indecent exposure cases; and a third deals with the use of green license plates for sexual predators.

Special License Plates. Sheriff Dave Westrick warned that green license plates will create vigilantism against the sexual predator's family. Another problem, he noted, involves a sex offender with a gross sexual imposition in Indiana who comes into Ohio at the highest offender category. He stressed a need for more uniformity regarding the categories.

Lifetime SORN Review. Atty. Kravitz raised concerns about the lack of adequate means to allow some offenders to eventually get out from under SORN requirements at some point. He feels there some options are needed rather than a total lifetime stigma. It is totally unfair, he argued, that an offender can "stub his toe", and 20 years later, as a perfect citizen, is not permitted to shake the SORN label. At what point, he asked, can this offender be regarded as normal again? He clarified that he is not referring to the worst offenders. He agreed with the sheriffs that the offenders who are complying with SORN are not the ones to be worried about. He agreed with a need to re-examine the categories.

Life Sentences for Sexual Predators. Rep. Courtney Combs agreed with a need to clarify the categories, noting that conduct of a 17 and 18 year old having sex with someone is not the same as the actions of a violent sexual predator. He acknowledged that drastic measures often result in "feel good" legislation. Working too hastily could cause more restrictions to become exactly that.

He contended that the really bad actors are the recidivists, which is why he has proposed lifetime imprisonment for repeat violent sexual predators. He noted a recent case where a sexual offender was released and recommitted a sexual offense within one week. Since that second victim has to serve a lifetime sentence as a victim, the offender should also be required to serve a lifetime sentence.

He acknowledges that many people argue that it will be too taxing on the state to house these offenders. He contends, however, that the benefits of keeping the offender in prison saves the costs of retrying them for subsequent crimes.

The focus on disallowing an offender to reside or hang out around school playgrounds is misguided, he argued, because most sexual predators do not seek victims in playgrounds. The true bad apples offend against family members and neighbors.

Atty. Kravitz asked which offenders would be targeted for this penalty of lifetime imprisonment under Rep. Combs's H.B. 318.

Rep. Combs responded that an offender who is designated by the judge as a violent sexual predator would qualify for this penalty.

Ohio's rape statute allows for a rape conviction in non-force situations. If all rapes count, and only one offense is required, then any rape, declared Atty. Kravitz, could result in lifetime imprisonment for the offender.

Since the judge is the trier of fact in determining whether the offender should be designated as a violent sexual offender, this would become a *Blakely* problem if it elevates the penalty for rape to life imprisonment, said Prosecutor Don White.

Rep. Combs believes that any *Blakely* issues can be worked through.

Victim Representative Staci Kitchen expressed concern about limiting the sexually violent offender label to only those who commit the most heinous crimes. It could be a first time offender who commits that heinous crime as compared to repeat offenders who don't get caught as easily, such a relative who rapes a child over a number of years. One is as harmful as the other, although the family offender may not shock our conscience as much.

The key focus, said Rep. Combs, is to prevent these offenders from getting out of prison too quickly and recommitting sex offenses. We have to find some means to prevent that from happening. He referred to a case in Warren County where the perpetrator blatantly admitted that he would commit more sex crimes upon release and that no one could prevent it. He suggested defining the category in any way that would get them locked away.

Magistrate Lori Keating asked Rep. Combs if H.B. 318 used the current definitions for the various sexual offenses, or if it used new definitions. She noted that the current definition for a sexually violent predator (R.C. §2971.01(H)(1)) is "a person who commits a sexually violent offense and is likely in the future to engage in one or more sexually violent offenses."

As written, Rep. Combs responded, the bill uses current definitions.

Atty. Kravitz argued that the current SORN statutes are unwieldy and unreadable. He favors reexamining the entire Code regarding sexual offenses.

Magistrate Bob Krebs insisted that certain distinctions must be included, noting that the definition of "sex offender" is too broad. He agreed that there is a certain class of offender who should be treated differently and targeting those particular people would be a better use of resources.

Mag. Keating warned of constitutional challenges under the 8th Amendment's cruel and unusual punishment clause. She also noted that many families would be loathe to report a sexually oriented offense if lifetime imprisonment is required.

Rep. Combs disagreed, remarking that he didn't see much difference between a prison term of 25 years and lifetime imprisonment.

Municipal Prosecutor Steve McIntosh asked for clarification on what circumstances subject an offender to lifetime imprisonment today.

According to Atty. Kravitz, forcible rape of a child under age 12 carries life with no eligibility for parole.

Dir. Diroll added that this applies on a first offense.

Atty. Gallagher expressed serious concerns over the possibility of allowing lifetime imprisonment for a single offense.

Mag. Krebs remarked that there is case in Butler County involving three boys who were sexually assaulted for more than 10 years by the same relative. Although the case involves hundreds of individual criminal acts by the perpetrator, it has been condensed into only a few changes. It is a good example, he said, of where imposing lifetime imprisonment for a single conviction would be appropriate.

Judge Bressler reminded the Commission that Rep. Combs' bill is just one of several being proposed on sex offenses in both the House and Senate. With that in mind, he asked how the Commission should proceed.

Commission's Timetable. Pros. White urged the Commission to convince the legislators that it is ridiculous to expect anyone to develop an adequate solution in a mere three months. If they want the job done right, he declared, then the Commission should do it, not a small work group of legislators. Otherwise, he fears, the results will be very problematic. He insisted that the political timeframe is inappropriate.

Declaring that rewriting existing SORN law could be a dead end, Atty. Kravitz contended that it would be quicker to write on a clean slate.

Rep. Combs agreed that speeding up the procedure or creating a knee-jerk response are bad ideas. He welcomes the Commission's input because he would like to see changes done right the first time.

Noting that the Senate plans to proceed with or without the Commission, Judge Bressler asked again how the Commission should proceed. Should the Commission make its own advisory/ideal/model SORN act? Or should the Commission go over and convince the legislators that haste makes waste?

Pros. McIntosh asked if only SORN law was at play or if the legislators want the entire sex offense code overhauled.

No one is certain, said Dir. Diroll, but most are guessing that, based on the recently introduced bills, the Senate tends to be considering far reaching sex offender changes. He acknowledged that to deliberate is problematic, but to rush at the speed described by the legislators implies more piecemeal law.

Do we focus on SORN law, knowing that the General Assembly will still write new law or, do we highlight the bevy of issues that are inherent in the sex offender Code? Dir. Diroll asked if it would behoove the Commission to develop a systematic listing of the issues to present to the General Assembly.

Sheriff Westrick stressed an urgency to find some way to slow down the General Assembly.

Noting that Rep. Combs generated a lot of discussion, Judge Bressler feels it is imperative for the Commission to participate in the working group, if only to demonstrate how difficult this will be.

Liz Bostdorff, legislative aide to Rep. Latta, remarked that their office has been asked to create a similar working group, although Rep. Latta keeps advising the General Assembly of the Commission's concerns and difficulties of the process. Rep. Latta, she stressed, wants the Commission to handle this, but the pressure from within the legislature is building.

Atty. Gallagher agreed with Judge Bressler that the Commission should participate with the Senate working group.

Public Defender Yeura Venters asked how the Commission would participate in the working group. One option would be to give the work group our list of issues, while another option, if allowed, would be to fully participate in the law drafting component. He prefers offering a list of issues, noting the Commission's thoroughness while also being thoughtful and reflective.

In concurring, Pros. Don White, asked what the working group might actually want from the Commission.

Judge Bressler envisions that many Commission members should participate in the working group. He particularly recommended that Magistrates Bob Krebs and Lori Keating be involved.

Noting their research and experience, Atty. Kravitz concurred. Another advantage, he said, is that the Commission is bipartisan, although the General Assembly does not appear to be approaching the issue in that way. Though the Commission operates in a political environment, Dir. Diroll acknowledged that it tries to be neutral.

DRC Research Director Steve VanDine pointed out that the sex offender bills have a lot of Democratic co-sponsors, so it is not merely a Republican concern.

Atty. Gallagher proposed setting up some working groups within the Commission to address more details of the sex offender issues.

Federal Activity. Candy Peters, from the Office of Criminal Justice Services, reported that some federal SORN law changes are forthcoming, and it will be necessary to implement those changes if the State hopes to utilize federal funding. This, she said, is another reason for slowing down the General Assembly's work group, since it may be necessary for them to change their recommendations once the new federal requirements come through.

Staff attorney Scott Anderson agreed that it might be wise to hold off on state legislative changes until the federal law changes, as a result of the *Hatch* bill, are received.

According to Judge Bressler, there have been several SORN cases heard in federal courts which are expected to have a dramatic impact on the application of SORN law in the states. He doubts that the Ohio General Assembly is aware of the fallout effect this could have. He noted that the General Assembly is not looking to rewrite current SORN law or even to do a comprehensive package, but is looking to add on to current SORN law with new offenses and by enhancing penalties. This will not solve the current problems with SORN law, but will only add new ones. It

seems obvious that the legislature wants to do something, but not a comprehensive rewrite.

Since federal changes are forthcoming, said Atty. Kravitz, it would be helpful to know what these are as soon as possible so that they can be incorporated into any proposal that is developed.

The federal changes are not comprehensive, said Dir. Diroll. The biggest focus of the federal SORN changes, said Atty. Anderson, is to make sure that the state-by-state registry system works for cross-state sharing.

A lot of it, said Ms. Peters, is modeling Washington State's SORN law.

Simultaneous Equations. Dir. Diroll reported that he and Atty. Anderson had been brainstorming on some of the concerns. He noted that there are some simultaneous equations involved regarding civil commitment, SORN law, etc. The initial question is how to best address each disparate issue while also recognizing the intertwining tendrils. He recommended using a systematic approach and rounding out a list of questions and highlights for the General Assembly.

Jeff Clark, representing the Attorney General's Office, recommended that the Commission set some goals for "streamlining" and "layering" the sexual offender Code and SORN laws. "Restructuring", he said, might be a third goal. He feels that the fundamental shifts needed in SORN law would best be achieved by this Commission.

In addressing the Sheriffs' concerns about the time constraints for handling notification and registration, he wondered if this might better match what the APA and probation officers do. In addition, with the 1,000 foot rule for sex offenders residing near school properties, he suggested that this might be better implemented if it were changed to "being on" school property, as opposed to "residing near" school property. These problems involve fundamental shifts in restructuring SORN law, which he feels could best be achieved by the Sentencing Commission. The Commission might consider streamlining by starting anew in writing a SORN law, even incorporating the same elements and requirements in a manner that would make it easier to understand and execute. Weighing the relative merits from the two tracks, he credited the Sentencing Commission with being the best body to achieve the longer term goals.

Pros. McIntosh favored maintaining the two recommended tracks of participating with the two legislative work groups while also developing our own suggested law changes.

Judge Bressler acknowledged consensus by the Commission to take the "two track approach" to participate in both the Senate and House working groups as well as develop our own comprehensive overview of SORN with proposed changes.

Dir. Diroll acknowledged there is merit to starting completely anew with SORN law but warned that the context must be given careful consideration. Streamlining tends to be the major concern coupled with a need for making the law more readable. He recommended drafting language that would aid in streamlining the statutes.

Atty. Kravitz warned that the categories of offenses cannot be value neutral. He insisted that it will be necessary to redefine the offense categories, redefine the reporting requirements, and allow for step downs. With SORN law, he noted, it is not a matter of dealing with penalties, but with collateral consequences. He recommended starting with the categories and how they are grouped.

Pros. McIntosh recommended defining all issues before getting to specific questions.

Judge Bressler recommended starting with the questions in the Diroll/Anderson memo, which appear to be fairly comprehensive.

Definitions may be a good place to start, said Dir. Diroll, although they are also the hardest part of SORN.

Reducing Recidivism through SORN. Otherwise, the first question that might be asked is whether SORN law adequately protects the public whether the right people are identified for scrutiny, said Mr. Diroll.

Atty. Gallagher asked what SORN is ultimately expected to do in regards to protecting the public.

Ohio's SORN law was originally set up to meet the federal requirements, said Mag. Krebs, to establish a registration and reporting system specifically for people who commit offenses against children and those categorized as sexually violent predators. That eventually morphed into six different sexual offense categories.

Jim Lawrence, representing the Ohio Halfway Association, reported that, in urban areas, these laws make it more difficult to protect the public because the majority of the sex offenders are unable to find housing that meet the SORN requirements and end up in homeless shelters which, in turn, prevents them from being able to register or receive the additional sex offender treatment that is required.

Atty. Gallagher pointed out that protecting potential victims and aiding law enforcement seem to be the goals of SORN.

When asked if registrants are recidivating, Sheriff Westrick responded that most recidivists move away and don't register.

Atty. Venters warned of the necessity to keep collateral issues of categorization in mind, especially in the context of offender re-entry policies.

According to a Washington study, said Ms. Peters, non-registering offenders are twice as likely to recidivate as those who do register.

Atty. Kravitz asked if there were suggestions on how to get those folks to register.

Sheriff Westrick questioned why it is necessary to register some of them at all, noting that 75% of those who do register will not recidivate. He considers it a waste of time to put so much effort into

registering the ones unlikely to recidivate while the most dangerous offenders who need to be locked up indefinitely are still out there.

Ms. Kitchen expressed frustration that there are so many conflicting issues regarding the logistical implications of enforcing SORN law as well as fear caused by misinformation among the general public. In order to get practical results, she declared, it is necessary to answer the defined question. She stressed a need to look to the public's perception, noting that many practitioners tend to assume too much about what the public demands. Some victims want the offender to be locked up and the key thrown away, whereas other victims just want to know where the offender is, or are willing to give the offender a second chance in society if he is monitored and provided with adequate sex offender treatment. The stakes, she insisted, are too high to ignore. It may also be necessary, she said, to address the public's lack of understanding about sex offenses.

Definitional Jabberwocky. Judge Bressler cautioned against a misuse of terms. He noted that there are very significant differences between a sexual predator and a sexually oriented offender. A sexually oriented offender, a habitual sexual offender, a sexual predator, and a violent sexual predator cannot be lumped together in the same category.

Mag. Krebs explained that a sexually-oriented offender is any person who has committed any of the enumerated sexually oriented offenses.

Judge Bressler added that these can include felonies or misdemeanors and be violent or nonviolent. Any sexual offense automatically makes the offender a sexually-oriented offender.

The habitual sex offender, said Mag. Krebs, is any offender who has previously been convicted of a sexually-oriented offense and is then convicted of an additional sexually-oriented offense, which could be either nonviolent or violent.

That category, said Sheriff Westrick, has the smallest number of offenders.

The sexual predator has committed a single sexually-oriented offense but is determined as likely to engage in one or more sexually-oriented offenses in the future. Some judges say that could involve a very low level nonviolent sexual offense while others say it should be reserved for those who commit the most egregious offenses. Statutorily it applies to anyone in any of the ranges of sex offenses.

The worst of the worst are the sexually violent predators that commit a single violent sexual offense, such as rape, GSI with a victim under 12, murder or assault with sexual motivation, etc.

Another category requiring notification was added later, said Mag. Krebs. It covers anyone who commits an offense against a child regardless of whether it is a sex offense. These child victim offenses mirror the tier of sex offenses. The child victim offender involves a crime against a child under the age of 18 who is not related to the offender. These offenses only include kidnapping, abduction, unlawful restraint, criminal child enticement, and child stealing, but sexual

motivation is not part of offense. If sexual motivation is involved, it falls under the sexual offense category.

Judge Bressler pointed out that people who commit sexually oriented offenses often get lumped together regardless of the degree of the offense. The trial judge has the responsibility of seeing into the future to determine which of these offenders deserves the label of sexual predator. This is a heavy burden. To determine if the offender is not a SVP is to determine that he is not likely to recidivate. Since everyone is most concerned about the bad apples, the implications of SORN law are very difficult for trial judges.

SORN Reporting Requisites. Atty. Kravitz asked for information on what triggers the reporting requirement and their lengths.

Virtually all sex offenders must report, said Mag. Keating, but there is a small sliver of "presumptive registration exempt" sex offenders. Otherwise, all sex offenders must register for a minimum of 10 years. Habitual sex offender must register for 20 years and sexually violent predators are required to register for life.

Mag. Krebs and Judge Bressler explained that the residency restriction applies to *all* sexual offenders, including the few registration exempt offenders.

Judge Bressler again warned against lumping all sexual offenders into the sexual predator category. He feels it is an injustice to treat all sexual offenders the same.

When questioned further on whether *any* sex offender could really be labeled a sexual predator, Mag. Krebs admitted that, due to misunderstandings of this broad category, even a panderer can be found a sexual predator and, hence, treated the same as a repeat sex abuser.

Admitting that sexual predator hearings are based mostly on value judgments, Judge Bressler noted that the many issues involved exacerbate the challenge. At this point for the Sentencing Commission, he remarked, it boils down to what we really want to accomplish via SORN law.

It is always going to be subjective, said Pros. White.

SORN Limitations. Atty. Clark noted that the listed sexual offenses include only half of the child porn offenses, which presents a serious problem in dealing with cross-state offenders. He noted that child pornographers are not required to register in Ohio under current SORN law, but federal law might change that. He feels that this should be added to the list of sexual offenses in Ohio that require registration. He contended that public notification of sex offenders poses more difficulty for sheriffs than registration. He feels that, at the very least, child pornographers should be required to register.

Pros. White added that pandering obscenity to minors should be included as a predatory sexual offense because it is difficult for the offender to control.

Another issue, said Judge Bressler, is that SORN applies to all currently incarcerated offenders who are serving time for committing pre-S.B. 5 sex offenses. This means that they have to be brought before the court for a hearing to determine whether they should be labeled as a predator based on evidence from more than 10 to 20 years ago, and some of them won't even be released for another 5 to 15 years.

It might be helpful, said Pros. White, to limit who gets labeled as a sexual predator because some of the lowest level offenders probably don't deserve that label.

Federal Requirements. Dir. Diroll asked how specific the federal requirements are.

Federal law, said Mag. Krebs, simply requires each state to set a system for registration and notification of sex offenders. It specifies that this is required for people who commit offenses against children, regardless of whether it is a sex offense, and for people who commit sexually violent offenses. Neither of these categories, however, is defined by federal law.

Atty. Kravitz feels there ought to be a couple of well-defined categories and the label of sexual predator should be reserved for the worst-of-the worst.

It is necessary to recognize how this is handled in other states, said Sheriff Westrick, noting that Indiana labels all sex offenders as predators, no matter what. The categories, he stated, are supposed to be somewhat uniform across all states.

According to Ms. Peters, there are three categories in the federal law and the labels are not tied to just an offense because recidivism is more of a behavior issue.

Who are we most worried about? asked Atty. Gallagher. Presumably the habitual sexual offender over the judge-determined sexual predator. Someone convicted of a second offense has already proven that he will recommit. He added that those discernments cannot be made via public notification process.

Mag. Keating reiterated that the residence restrictions apply to *all* sex offenders.

Acknowledging that there is no process or provision for allowing the sex offender label to be removed, Mag. Krebs noted that rehabilitation, as a concept, is gone even though degrees exist as to the offender's likelihood of recommitting.

Atty. Clark explained that the predator label was designed to capture the repeat offender who is good at not getting caught, so he warned against limiting the predator label too strictly.

Psychological Risk Profiles. There is a cottage industry of psychologists and psychiatrists, said Judge Bressler, who do investigations and evaluations for sexual predatory hearings to determine who is at minimal risk to recidivate. He suggested starting at square one by looking at the existing SORN law and taking it apart

to examine each piece rather than merely identifying the parts we don't like. He also recommended seeking input from these mental health professionals who do the predator evaluations/screenings as to what the evaluations actually entail.

Mag. Keating agreed that it would be helpful to gain information on the psychological makeup of a sexual offender and how they can be rehabilitated.

Since there is more than one side to the issue, Ms. Kitchen recommended hearing from the victim's side to better understand the impact these crimes have on their lives. Efforts are being made for both sides to work together for solutions and effective rehabilitation efforts.

Ms. Peters asserted that the OCJS report, which was distributed at the January meeting, answers some of these questions, including research data on which rehabilitative efforts are effective, and indicators which predict the risk and probability of recidivism.

DRC's OMNIBUS BILL

The meeting reconvened after lunch as DRC Director Reggie Wilkinson reported that the Department of Rehabilitation and Correction is advocating to increase its discretion 10 years past S.B. 2 in response to a need for more control over inmates. He contended that "truth-in-sentencing" does not have to mean that an offender serve 100% percent of their sentence of incarceration. Most states, in fact define it as serving 85% of the stated sentence.

Scott Neely reported that the DRC proposals have been given to Rep. Bob Latta in hopes of getting it introduced soon. DRC will also be meeting with Sen. Jordan soon as a possible sponsor in the Senate.

The goal, said Dir. Wilkinson, is to get LSC language written for further discussion with the Sentencing Commission.

MORE SORN

Returning to SORN law, Judge Bressler suggested starting with existing SORN law and offer workable solutions for current SORN problems, then attacking other problems as they arise.

Ms. Peters asked if legislators were looking at penalties *versus* SORN.

Noting that the legislators are looking at a variety of options, Judge Bressler recommended that the Commission should proceed to do a thorough review.

If penalty enhancement is being considered by the General Assembly, then Ms. Kitchen wondered if the Commission might also want to look at the sentencing structure *before* SORN.

Judge Bressler feels that the Commission will eventually arrive at the same place on all of these issues, including how penalty enhancements might affect SORN requirements.

Mag. Krebs proposed starting with how to streamline SORN law to make it more legible and tackle policy issues as they come up.

By consensus, Judge Bressler acknowledged that the Commission should start with SORN legislation and hear from the victim's perspective as to how SORN law requirements impact them.

Dir. Diroll recommended that the Commission could start by examining the actual SORN law statutes in Chapter 2950 and the sex offenses covered in Chapter 2907, both the elements and their penalties. The next step might be to draft proposed legislation to address some of the difficulties in working with this law.

Pros. White favored the idea of proposing a draft statute.

Atty. Venters requested that copies of the federal proposals be made available.

Ms. Peters offered to present a summary of the facts that were included in the OCJS report on sex offenders. These would include facts on rehabilitative efforts.

Ms. Kitchen asked if statistics were available on plea negotiations in sex offender cases, particularly when rape gets pled down to assault. Whatever fix the Commission comes up with should also fix the limitations, said Ms. Kitchen.

Ms. Peters pointed out that, in some cases, the charge might get pled down to a lesser charge because of evidentiary issues. That would not change, no matter what legislative changes are attempted.

It is too easy, said Atty. Venters, for people to make unfounded assumptions when plea bargains occur.

Pros. White noted that, on a subsequent offense, the PSI would include prior pled down information.

On the recidivism issue, David Berenson, Director of Sex Offender Services for DRC, noted that DRC's Risk Assessment division has a huge research pool from which to draw data and offered to invite Dr. Robin Marlow to offer additional input on the "likely to commit" issue.

Ms. Peters offered to do a presentation at the next meeting on risk/recidivism, and Ms. Kitchen agreed to do a victim presentation.

Atty. Clark added that the Attorney General's Office has a database on registered sex offenders and a website for the dissemination of additional information on sex offenses. He offered to get input from some of the people who set up and run these programs, as well as advice on connected statewide issues.

FUTURE MEETINGS

Future meetings of the Commission are tentatively scheduled for April 20, May 18, June 15, and July 20.

The meeting adjourned at 1:19 p.m.