

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

**SENTENCING COMMISSION MEMBERS PRESENT**

Appellate Judge H.J. Bressler, Vice Chairman  
Major John Born, representing State Highway Patrol Superintendent  
Col. Paul McClellan  
Defense Attorney Bill Gallagher  
Victim Representative Staci Kitchen  
OSBA Delegate Max Kravitz  
Bob Lane, representing State Public Defender David Bodiker  
Municipal Prosecutor Steve McIntosh  
Common Pleas Judge Reggie Routson  
Dave Schroot, representing Youth Services Director Tom Stickrath  
Public Defender Yeura Venters  
Steve VanDine, representing Rehabilitation and Correction  
Director Reggie Wilkinson

**ADVISORY COMMITTEE MEMBERS PRESENT**

Monda DeWeese, SEPTA Correctional Facility  
Burt Griffin, Retired Common Pleas Judge  
Lynn Grimshaw, Ohio Justice Alliance for Community Corrections  
James Lawrence, Halfway House Association  
John Madigan, Acting Law Director, City of Toledo  
Karhlton Moore, Director, Office of Criminal Justice Services

**STAFF PRESENT**

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

**GUESTS PRESENT**

Elizabeth Bostdorff, legislative aide to Rep. Bob Latta  
David Berenson, Director of Sex Offender Services, DRC  
Abigail Gilbert, attorney, House Democratic Caucus  
Gail Gutter, intern with Ohio Community Corrections Association  
Jim Guy, Department of Rehabilitation and Correction  
Deborah Hoffman, Legislative Service Commission Fiscal  
Maura Jaipe, Ohio Attorney General's Office  
Magistrate Robert Krebs, Butler County Common Pleas Court  
David Leitenberger, Probation Officer, Richland Co. Common Pleas Court  
Christina Madriguera, Ohio Judicial Conference  
Robelyn Marlowe, Psychologist, Dept. of Rehabilitation and Correction  
Scott Nealy, Department of Rehabilitation and Correction

Becki Park, attorney, Senate Republican Caucus  
Candy Peters, Office of Criminal Justice Services  
Erin Rosen, Ohio Attorney General's Office  
Kris Steele, Ohio Judicial College  
Jason Warner, legislative aide to Rep. Bob Gibb  
Marianne White, legislative aide to Rep. Gary Cates

Appellate Judge H.J. Bressler, Vice Chairman, called the March 16, 2006 meeting of the Ohio Criminal Sentencing Commission to order at 9:50 a.m.

#### **DIRECTOR'S REPORT**

**DRC Omnibus Package.** Director David Diroll reminded the Commission that the Department of Rehabilitation and Correction (DRC) presented an "omnibus" package to the Commission, seeking feedback. Statutory language has since been drafted and feedback has been submitted by various sources. Director Diroll said his response is in the packets. More information will be presented at the next Commission meeting.

**Legislative Updates.** Director Diroll recapped some pending bills.

**Meeting Packets.** Dir. Diroll reviewed the contents of the meeting packets which included: A letter from DRC Director Reggie Wilkinson offering some recommendations on sex offender issues that the Commission should address; a memo on Felony Sentencing After *Foster*; comments on DRC's Omnibus Bill; a memo identifying the worst sex offenders; and minutes from the February meeting.

#### **STATE V. FOSTER**

Dir. Diroll turned to a memo on issues raised by the U.S. Supreme Court cases of *Blakely*, *Apprendi*, and *Booker*, as applied in the recent Ohio Supreme Court decision, *State v. Foster*.

According to Dir. Diroll, in *Foster*, the Ohio Supreme Court followed the U.S. Supreme Court's pattern and found that certain provisions of Ohio's sentencing guidelines violated the defendant's 6<sup>th</sup> amendment right to a jury trial. The *Foster* Court applied the *Booker* remedy and made the entire sentencing range apply to all felony sentences. The ruling authorized judges to sentence without requiring them to state reasons for imposing maximum sentences, consecutive terms, or sentences above the minimum. The Court declared that judges now have complete discretion within the sentencing ranges and may impose consecutive terms without stating a justification. In addition, the decision affords no appeal of right for defendants who may not have received the benefit of the stricken judicial guidance. Otherwise, the guidance in S.B. 2 (1996) was left intact.

Common Pleas Judge Reggie Routson asked if there has been any legislative response to the *Foster* decision.

The initial discussion, Dir. Diroll responded, has focused on addressing the mechanics. The first step might be to amend the Code by removing the offending paragraphs from the Code.

OSBA Representative Max Kravitz suggested keeping guidelines but making the factors more fact-based and less value-judgment oriented. Then they could be presented to a jury if there is evidence in the record to support a determination of that factor.

According to retired Common Pleas Judge Burt Griffin, if the formal opinion from the Ohio Supreme Court has not yet been published in its final form, then any speculation based solely on the press release about the decision might be premature. He noted one factual mistake in the draft opinion, which he mentioned to Justice Lanzinger's staff. He wondered what the defense bar plans to do, particularly in light of a defendant's option to waive the jury trial. He wondered if there were any plans to appeal to the U.S. Supreme Court.

According to Bob Lane, representing the State Public Defender's Office, a motion has been filed asking the Ohio Supreme Court to reconsider its decision.

As discussion turned to pending appellate cases that have been held awaiting this ruling, Atty. Kravitz remarked that he has a problem with the thought that the court could remand all of those cases for resentencing based on factors that it now deems as no longer applying, although they applied at the time of sentencing. He believes that most of those sentences would not change at this point. If a judge were to increase any of those sentences, he assumes it would be an act of vindictiveness.

It would not necessarily be an act of vindictiveness, said staff attorney Scott Anderson, because the original sentence was imposed based on guidelines and restrictions that no longer apply. The judge might have wanted to apply a harsher sentence at the initial sentencing hearing but was discouraged by the former constraints or the prospect of reversal on appeal. The judge now could impose a heavier sentence since the constraints have been removed. That possibility, he noted, might, in turn, serve as a prime test case for appeal.

Judge Routson does not believe that judges are gleeful over the prospect of resentencing. They are gleeful over no longer being bound by arcane statutory phrases and the difficulty in imposing the maximum sentence.

Judge Bressler asked how judges are sentencing in light of *Foster*.

Judge Routson admitted that he is now sentencing based on the assumption that *Foster* became the law of the state on February 27<sup>th</sup>.

Judge Griffin cautioned him that §2929.11(A) & (B) are still in the Revised Code and the appeal of a sentence "contrary to law" remains as well. Many judges are still looking at the old guidelines and considering that to be reasonable, he added.

DRC Research Director Steve VanDine remarked that, a few months ago, the Ohio Prosecuting Attorneys' Association had recommended getting rid of the minimum sentence requirement for F-1s. He supposes that is now irrelevant. He wonders if constituencies expect judges to increase sentences in light of the *Foster* decision.

Since the guidelines were initially intended to put constraints on some judges, Atty. Gallagher responded, he expects to see some judges take advantage of the opportunity to impose sentences that are at least a little tougher than those imposed since the enactment of SB 2.

Although the intent of the guidelines was to constrain some judges from giving outrageous sentences, Judge Griffin pointed out that part of the bargain included guidance away from the imposition of consecutive sentences (which was a tradeoff for removing former law's 15 year cap on consecutive sentences, noted Dir. Diroll). That guidance has now been removed.

Judge Routson does not expect to see very many judges stack sentences. He feels that most judges will continue to sentence in the middle of the ranges.

Atty. Kravitz pointed out that the Commission can't really do anything unless the legislature asks it to re-examine the sentencing guidelines.

As yet, said Dir. Diroll, no one has asked the Commission to look at the issue of consistency or any other *Foster*-related issue, other than to clarify the meaning of the case.

Considering that other states have had to deal with similar issues, Judge Bressler suggested that it might be worthwhile to examine what other states have done in response to *Booker* and *Blakely*.

Given that SB 2 has been in effect for 10 years, it might be time to examine its affect and revisit some of its provisions, said Judge Routson. In particular, he recommends examining recidivism factors.

Dir. Diroll said the staff plans to revise the Felony Sentencing Quick Reference Guide in light of the Supreme Court's decision.

Judge Griffin questioned whether the Commission should wait for the General Assembly to ask us to clean up the statute or if we should proceed to address these questions and make recommendations.

Declaring that the Ohio Supreme Court went beyond the remedy in *Booker*, Atty. Kravitz reiterated his earlier suggestion that a simpler solution would be to regard the guidelines as advisory rather than mandatory.

In the *Mathis* case, which accompanied *Foster*, Judge Routson noted that the Court said the guidelines could continue to be used as advisory.

Judge Bressler suggested researching where the Commission might want to make changes in light of the Supreme Court ruling.

Mr. VanDine suggested having someone speak to the Commission about the voluntary sentencing guidelines used in some states.

Judge Griffin agreed this might be helpful and recommended inviting someone from the National Association of Sentencing Commissions.

Judge Bressler suggested seeking more information on the national level as to what other states are doing in light of *Blakely* and *Booker* and what resources are available.

## **SEXUAL OFFENDERS**

**Senate Work Group.** According to Dir. Diroll, at the February meeting, Sen. Tim Grendell reported that a Senate work group was going to examine SORN and sex offender issues and pending legislation. The Commission was unwelcome at the work group's meeting. Dir. Diroll noted that there is a strong desire to get some of the pending legislation enacted this spring. Meanwhile, the Commission continues to take a broad view of these issues.

**Sex Offender Risk Assessment Research.** At the January Commission meeting, the Office of Criminal Justice Services distributed a report on sex offender risk assessment. Representing OCJS, Candy Peters offered a more detailed presentation of that report.

Ms. Peters said that a five month intake study was conducted of people coming into DRC's Sex Offender Risk Reduction Center in 1999.

Based on 1999 intake data, she reported that 45% of the male sex offenders admitted to DRC in 1999 had victims under the age of 13. 23% of the male sex offenders admitted had victims aged 13 to 17, and 21% had victims who were aged 18 and older. An additional 1% victimized multiple classes of people within that group.

The offender was known to the victim in 85% of those cases and in 93% of the child victim cases. 51% of the child victim offenders victimized only children that were related to them, Ms. Peters reported.

The average age of offenders with child victims was 38. The average age of offenders who committed their crime against a teen was 32. Offenders with adult victims had an average age of 33, but in 2000, the average age among all sexual offenders was 29. On average, sex offenders are older than the average of all offenders entering the system. Additional data revealed that the majority of child victim sex offenders are more likely to be married and employed, whereas all offenders entering the system are more likely to be single, added Ms. Peters.

Surprisingly, the data revealed that 85% of the sexual offenders had no prior conviction for a sex offense. In fact, said Ms. Peters, 93% of the sex offenders convicted for victimizing a child had no prior convictions and 84% of those with adult victims had no prior convictions. 65% had no prior violent offense.

Although the majority of sex offenders had no prior convictions for sex offenses, it is suspected that most of them had in fact committed prior offenses, said Ms. Peters. Florida and Connecticut authorities used a polygraph to ask sex offenders about their history before their first arrest and conviction. Based on these 1982 studies, incoming sex offenders reported that they had committed an average of 5.2 child rapes and 4.7 sexual assaults before their arrests and convictions. A 1998 study conducted at an Oregon treatment program revealed that the number reported by incoming sex offenders was 9 prior victims. When a Colorado treatment program conducted intense questioning of sex offenders from a number of states in 2001 that included polygraph testing, the response among sex offenders was an average of 110 victims

and 318 prior offenses or episodes prior to their arrest and convictions.

Based on 2004 Ohio data, the average time served for all sex offenders is 13.2 years. Those offenders convicted of rape without a life sentence served about 11.4 years. Offenders sentenced to life sentences for rape were eligible for release after serving 17.8 years.

The data revealed that, although most F-1 offenders were given sentences near the bottom of the available sentencing range, rapists usually receive sentences near the top of the available sentencing range. 38% of all F-1 offenders received more than 6 years, whereas 58% of all F-1 rape offenders received more than 6 years, with the majority receiving 10 years or more, Ms. Peters noted.

Keeping in mind that DRC defines recidivism as recommitment to prison, sex offender treatment practitioners declare that completing treatment effectively results in lower recidivism rates. The data tends to back this up by revealing that sex offenders recidivate at a lower rate (22%) than other offenders (39%). Of the 22% who are recommitted on a subsequent offense, only 9.3% were for a new sex offense, and most occurred within 3 years of release. On the national level those numbers are higher, with 13.4% being convicted of a new sex offense. According to *reported* sex offenses, incest offenders are the least likely to recidivate. Whether this is because the family is apprehensive about reporting any new offenses, the offender keeps his distance from likely victims, or the offender was truly rehabilitated is anyone's guess, she added. Overall, this data implies that there is no correlation between a sex offender's sentence length and the likelihood of recidivism.

When questioned by polygraph about their recidivism, 14% of the sex offenders reported that they had committed additional sex offenses while on community supervision while 44% indicated "high risk" behavior while on community supervision.

Sex offenses often go unreported. Only 36% of rape victims over the age of 12 report the crime. Only 40% of the victims of rape or sexual assault by a family member ever report the crime. It was further discovered that 12% of those victims who did not report the crime, claimed that it was because they wanted to protect the offender. Data was not available on whether this might be out of fear of repercussions or because of the offender's position within the family. Additional data reveal that 83% of female victims who were victimized as children never reported the offense, said Ms. Peters.

The following factors tend to be predictors of future sex offenses, noted Ms. Peters: a prior sexual offense conviction; sexual deviancy such as cross dressing; antisocial orientation; a history of violating rules; sexual attitudes; a strong emotional identification with children; conflicts with intimate partners or lack of an intimate partner; and sexual preoccupations. In contrast, non-sex offense predictive factors include: antisocial orientation; a history of violent or non-sexual crimes; general self regulation problems; employment instability; substance abuse; and the degree of force used in a sexual offense.

On the other hand, *non-predictive* factors include: adverse childhood environment; general psychological problems; phallometric measures; social skill deficits or loneliness; clinical presentations such as denial or lack of motivation for treatment; and the degree of sexual intrusiveness of an actual offense.

Available treatment for sexual offenders include the elements of cognitive behavioral treatment, relapse prevention, close community supervision, collaboration in the process, and plans for victim safety, claimed Ms. Peters.

**Research on the Effectiveness of SORN Laws.** Very few studies have been conducted to examine whether Sexual Offender Registration and Notification (SORN) legislation has actually increased public safety, reported Ms. Peters. A 1999 Massachusetts Study looked at a sample of 136 criminal sexual psychopaths before the SORN law went into effect. These offenders were clinically diagnosed as habitual or compulsive offenders and 89% of their crimes were against children. Based on their criminal history, only 27% of these offenders would have been subject to SORN law. In two-thirds of these cases, the victims knew the offender. Only 4% of the offenses involved might have been prevented by SORN law, said Ms. Peters.

Of course, the people in this study were not subject to SORN law at the time of their crimes. The study was designed to see whether they would have been subject to SORN law if it had been in place at that time.

A 2000 Iowa study used a comparison group pre and post SORN law, finding that there was no difference in recidivism for either new sex crimes or any new crime. In fact, this study found that registry offenders had a shorter time in the community before their arrest for a general crime.

A similar study was conducted in Washington State in 1995, Ms. Peters reported. Washington has enacted three major SORN laws (1990, 1995, & 1997). The study included a pre and post SORN comparison over 9 years, finding that the rates of recidivism were similar for both groups. 84% of those convicted after SORN law went into effect complied with the registration requirements. Those offenders who registered under the SORN law were arrested more quickly for a new offense, most likely because they could be found more easily.

According to data from a more recent Washington Study (2006), general felony recidivism rates have remained basically the same after SORN law went into effect as they were before. It is noted, however, that, under SORN law, the violent felony recidivism rate of sex offenders has been less and felony sex recidivism has been less. This implies that there is no causal relationship between the arrest and registration rates. Ms. Peters noted that the average time served for sex offenders in Washington is 3.6 years.

The Washington study reports that risk assessment ("MonSORT") evaluations have little or no accuracy in predicting sex offender recidivism. The study further claims that the notification consideration score has little or no accuracy in predicting sex offender recidivism. Ms. Peters declared, however, that some

practitioners feel that this study was looking at the wrong things in order to make this claim.

It should be noted, said Ms. Peters, that when the notice levels changed in 1997, the number of offenders in Wisconsin who must register increased to 90% of all sex offenders. These notification levels did not reflect the risk for reoffending. In fact, according to the Wisconsin study, the percentage of those offenders required to register but fail to do so increased from 5% to 18%. As one would expect, sex offenders convicted of failure to report generally have a higher rate of recidivism. 38.5% of them were rearrested for a felony compared to only 22.9% of those who registered. 15.8% of the nonregistrants were rearrested for violent felonies compared to 9.4% of the registrants. 4.3% of those failing to register are rearrested for a felony sex offense, compared to only 2.8% of those who register.

In an effort to determine the effectiveness of SORN law, a Nebraska study revealed that 72% of the sex offenders told their therapists that SORN law encouraged them to refrain from further sex crimes. The Wisconsin study, however, revealed the opposite effect since most offenders asserted that SORN law would have no impact on whether or not they committed new sex offenses.

Since a key aim of the SORN law is to limit the sex offenders' proximity to schools, it is interesting to note that the 2004 Colorado study reveals that there is no relationship between re-offending and living in proximity to schools and childcare centers, Ms. Peters said.

Though the intentions of SORN law are obviously good, there tend to be some unintended consequences as well. Based on information from these studies, SORN law gives the public a false sense of security. It also tends to have a negative impact on family members through retribution and difficulty in finding housing or employment, which hinders the offender's transition back into the community upon release from prison. Even though the offender may have progressed well through treatment and complying with the requirements for release, isolation and stress can trigger recidivism. If nothing else, it usually pushes the offender to end his compliance with the registration requirement. Some studies have found that the pressure has caused an increase in vandalism and retribution, from 4% to 23%. Victims can be reluctant to report subsequent offenses for fear of additional retribution.

As of January, 2006, the Ohio Registry of Sex Offenders contained 13,500 entries. It is noted, however, that conviction for the crime of failure to register has increased from 41 in 2000 to 218 in 2004.

**Sex Offenders in Prison.** Given the high numbers of priors admitted to by the offenders, Dir. Diroll asked how that correlates with the lower recidivism numbers.

Dr. Robelyn Marlowe, Director of the Sex Offender Risk Reduction Center for DRC, explained that the recidivism numbers are based on reconviction and imprisonment, not re-arrests that might involve a sanction other than prison. No one, she said, knows how to consider re-arrests in these statistics. She noted that the 13% recidivism rate was over a 5-year period. When recidivism is examined over a longer period,

such as 10 or 20 years, the percentage increases to about 20%. Over 25 years or a lifetime, the reconviction rates are as high as 40 to 55%.

David Berenson, DRC's Director of Sex Offender Services, noted that most people think of sex offenders as a homogeneous population. Actually they are inordinately a heterogeneous population. Offenders who exhibit deviant arousal and anti-social behavior, such as pedophiles and compulsive repeat offenders, compose a very small subset of the sex offender population.

Ms. Peters noted that researchers disagree on why these numbers are low. No definitive theory or research is given, although some speculate that offenders are getting smarter to avoid capture.

Mr. Berenson reported that all male sex offenders sent to DRC facilities are first placed in the Sex Offender Risk Reduction Center (SORRC) for assessment. Every sex offender goes through a regimen of 20 hours of psychological education, which includes victim awareness, sex offender risk, and management. DRC sometimes has as many as 1,300 sex offenders in the system.

Dr. Marlowe pointed out that all risk instruments used are actuarial, as compared to the previous use of clinical judgment to do meta-analysis. The most common actuarial instrument used—the Static 99—is a 10 item test. Some indicators of recidivism include:

- An offender over age 25 is less likely to reoffend;
- Offenders with male victims are more likely to reoffend;
- Offenders who never had a significant monogamous relationship that lasted longer than for two years are more likely to reoffend;
- An offender with prior sex offenses is more likely to reoffend.

Dr. Marlowe noted that SORRC also looks at prior nonsexual violations and prior sentencing dates. On a scale of 0-6, 0-3 designates low and medium-low risk of recidivism. 4+ designates a medium-high and high risk of recommitting a sex offense.

The RRASOR instrument, she noted, is a 4 item test that focuses on sexual deviance. Sexual deviance can be measured by attitudes toward rape, child molestation, indecent exposure, or pornography. The Static-99 instrument focuses on the violence component. SORRC uses both of these actuarial instruments, together with clinical judgment. However, the actuarial tests are not suitable for sexual sadists, female sex offenders, and adolescent sex offenders. She added that a high degree of psychopathy and sexual deviance contribute most to the high risk of recidivism for sex offenders.

The criteria sound different, said Judge Routson, than the list used by judges to determine who should be labeled as sexual predators.

Having a weapon and the degree of violence is not predictive of who will recidivate, claimed Dr. Marlowe.

This information is needed at the court level, said Judge Bressler.

According to Dr. Marlowe, NetCare follows this research and uses it in its evaluations. It is a source used by many Ohio courts.

Judge Routson said that he had been told that these factors are irrelevant for female sex offenders.

Ms. Peters added that the information presented here has no application to juvenile sex offenders.

Dr. Marlowe intoned that, contrary to Freudian theories, an offender's relationship with his mother does not affect the likelihood of committing another sexual offense. Nor does drug use affect recidivism.

Mr. Berenson reported that DRC is now implementing a new treatment approach (begun in January), including a 4 month program for offenders in denial. Different treatment programs are offered, he noted.

Some studies, said Judge Routson, claim a high correlation between female substance abuse and sex abuse as child.

Common wisdom seems to be that a large number of felony offenders were sexually abused as children, said Judge Bressler.

According to Mr. Berenson, data shows that most adult sex offenders were *not* abused as children, based on polygraph results.

Scott Neely, of DRC, asked if there is a group for whom treatment does *not* work.

Dr. Marlowe replied that treatment does not work for the psychopath, which includes serial rapists.

It is not really possible, said Ms. Peters, to tell by the offense. A full evaluation is needed to make that determination.

Noting that Ohio has a broad definition for rape, Atty. Kravitz said that the "psychopath" designation should not apply to all rapists.

Evaluation is needed to make any such determination, said Dr. Marlowe. However, in reference to date rapes or rapes occurring during drinking binges, she noted that intoxicated people do not do something totally out of the realm of their consciousness.

**Victims of Rape and Sexual Abuse.** Victim representative Staci Kitchen reported from the victim's perspective, noting there are real consequences for people who have to endure these crimes. She feels that it is necessary to understand what it is like to be sexually abused or raped in order to understand its impact. The pain, she noted, does not end with the offense itself. The victim often endures continuing fear, physical pain, shock, and shame. Some children find themselves having to decide between holding the family together and reporting the crime.

The victim feels a need to be on guard at all times. A child victim will, at some point, begin acting differently; boys "act out", girls "act in", Ms. Kitchen said. There are usually long term mental and emotional health problems.

Cutting classes and body image problems, such as anorexia, bulimia, overeating, and sexual health problems, are prevalent among sex offense victims. Victims are found to have continuing problems in work, school, and in relationships. They endure sexual identity and orientation crises, which sometimes develops into their own history of offending.

In 2002, she noted, Governor Bob Taft formed a task force to review Ohio's SORN law and recommended changes to: expand the number of offenses defined as "sexually oriented offense"; mandate lifetime registration for repeat sex offenders; stiffen penalties for those who fail to register; mandate registration where they live and work; and create statewide database of convicted sex offenders.

There is a dire need, said Ms. Kitchen, to educate the public about numerous aspects of sexual crimes including SORN law and the impact on victims. There is also a need, she said, to re-examine the judge's discretion in sentencing sex offenders. She feels that sex offenders rely on the ignorance of the public to escape punishment. There is great concern among victims, she noted, about sex offenders who plead cases down to lesser charges.

She urges legislators to take that whole picture into consideration, when considering changes to sex offense laws.

Ms. Kitchen concluded that persons who have been victimized and traumatized want to be validated, heard, believed, and understood. They need the support of the community and judicial system in hopes that they can gain the confidence that the crime will not happen again. They seek accountability by the offender. If the perpetrator was a family member, the survivor usually wants that person to either get treatment or be imprisoned indefinitely. Victims want to know that, the judicial system will take into consideration the needs of the person most affected by the crime. They want assurance that the system will either protect them from further sexual violence or, at least, that the offender's actions will not be left unanswered. Victims believe, she said, that when one sexual offender is not held accountable, the message spreads to other offenders. Victims want to know that Ohio will not tolerate this type of violence against any of its citizens.

Representing the Attorney General's Office, Erin Rosen pointed out that SORN law is not intended as a form of punishment but as a civil designation. She remarked that a lot of what Ms. Kitchen addressed and recommended goes beyond the intentions of SORN law. Those concerns fit more along the lines of prosecution and sentencing. She noted that legislation has been proposed recommending the use of GPS monitoring for sex offenders. In response to the concerns about rape charges that get pled down to lesser crimes, she explained that this could happen for any number of reasons. Sometimes it is because the victims themselves do not want to go through the trauma of the courtroom experience.

Prosecutors, she noted, believe that the victim is vital to preventing the offender from continuing on his destructive path. Most prosecutors favor the victim's active participation in the process to help get these offenders put away. They would even favor more active participation, particularly since statistics show that SORN law has little or no effect on recidivism.

Some of the difficulty in getting victims to participate in the process, Ms. Kitchen responded, is the shame involved. It is ironic that the victim becomes responsible for getting his/her perpetrator convicted so that he won't seek another victim. Although SORN law is not structured as a punishment, she contended, it cannot be crafted in a vacuum. The whole picture must be taken into account in order to understand how all of the pieces fit together.

Judge Bressler pointed out that the Commission is looking at other things regarding sex offenses besides SORN law.

**DRC Sex Offender Recommendations.** Dir. Diroll then drew the Commission's attention to a letter from DRC Director Reggie Wilkerson in the meeting packets. The missive reflected his perspective on the scope of sex offenses and SORN law. One concern for DRC is the sexual violent predator specification as expanded by HB 318, sponsored by Rep. Courtney Combs. It would require a sentence of life without parole for all people convicted as sexually violent predators.

Other concerns include a repeat violent sexual offender specification and the large gap between sex offender crimes and penalties. Heavy penalties exist for F-1 offenses but then the penalty options slack off at the F-2 sex offender crime levels and below, Dir. Wilkinson noted.

Scott Nealy remarked that, for DRC, cost is the biggest issue regarding pending sex offender legislation. The Department agrees with "hammering" the worst offenders but feels that more precise direction and a more comprehensive view of all entire sex crime statutes is needed.

Dir. Diroll reported that HB 227, Rep. Faber's sex offender bill, passed the House unanimously and includes civil commitment and GPS monitoring.

In looking at the civil commitment measure, Mr. VanDine noted that similar words used in different parts of the Revised Code. According to the definition in the pending legislation, there could be as many as 800 to 1,000 people per year who would be eligible for the sexually violent predator (SVP) definition for civil commitment, whereas there are only 10 or 15 per year who enter the prison system with that label otherwise. He emphasized that standard definitions are needed in an effort to simplify the Code. The staff of DRC feels that there should be a mid-range definition that can be used and that the designation should be determined at the beginning of the offender's term with DRC.

DRC also recommends creating a new "Repeat Violent Sex Offender Specification" that carries a presumption of a SVP designation. It is recommended that some of the physical harm language should be used, which automatically includes rape or attempted rape, and, with the inclusion of physical harm, gets to the broader range of offenders. A repeat incident of one of those offenses would give the offender an additional 5-10 years. With rare exceptions, said Mr. VanDine, it would take them out of society for the rest of their lives.

Noting that there are many nuances involved at the F-2 level, DRC also recommends restructuring the entire criminal code regarding sex offenders, to make same sex offenses punishable at the F-2 level.

When SB 2 went into effect, it reclassified some felonies, said Dir. Diroll. But the bill changed the actual substance of relatively few offenses. The most significant were burglary and robbery, which were broken into tiers. He suggested that it would probably be best to determine who the worst offenders are and work backwards in an effort to develop a more appropriate F-2 category of sex offenses.

Representing Youth Services, Mr. Dave Schroot cautioned the Commission to keep in mind that adult and juvenile sex offenders are very different. He noted that, on any given day, 20 to 35% of the population at DYS consists of juvenile sex offenders. He also noted that DYS is currently working with DRC's sex offender management to develop recommendations for juvenile sex offenders and juvenile SORN law.

#### **FUTURE MEETINGS**

The next meeting of the Ohio Commission is scheduled for April 20<sup>th</sup>. Additional meetings are tentatively scheduled for May 18<sup>th</sup>, June 15<sup>th</sup>, and July 20<sup>th</sup>.

The meeting adjourned at 1:45 pm.