OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Thomas J. Moyer
Chairman

David Diroll
Executive Director

Minutes of the
OHIO CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCING ADVISORY COMMITTEE
December 14, 2000

SENTENCING COMMISSION MEMBERS PRESENT

Chief Justice Thomas Moyer, Chair
Appellate Judge John Patton, Vice Chair
Capt. J.P. Allen, representing State Highway Patrol Superintendent, Col. Kenneth Marshall
Common Pleas Judge H.J. Bressler
Assistant Prosecutor James Cole
Common Pleas Judge Burt Griffin
Municipal Judge "Fritz" Hany
Juvenile Judge Sylvia Sieve Hendon
Becky Herner, representing State Public Defender David Bodiker
OSBA Delegate Max Kravitz
City Prosecutor Steve McIntosh
Jack Reil, representing Youth Services Director Geno Natalucci-Persichetti
Public Defender Yeura Rommel Venters
Director of Rehabilitation and Correction Reggie Wilkinson
Representative Ann Womer-Benjamin

ADVISORY COMMITTEE MEMBERS PRESENT

James Corfman, Director, Northeast Ohio Community Alternative Program
John Guldin, Chief Counsel, Bureau of Motor Vehicles
John Madigan, Sr. Attorney, City of Toledo
Mike Toman, former County Commissioners Association of Ohio representative
Gary Yates, Ohio Chief Probation Officers Association

GUESTS PRESENT

Sandra Cannon, Ohio Department of Health
Kristen Convery, *Dayton Daily News*
Michael Dundr, Hannah News Network
Scott Miller, *Gongwer News Service*
Fran Penn, legislative aide to Senator Ben Espy
Holly Simpkins, Legislative Budget Office
Steve VanDine, Department of Rehabilitation And Correction

STAFF PRESENT

Scott Anderson, Juvenile Coordinator
David Diroll, Executive Director
Rick Dove, Supreme Court Liaison
Fritz Rauschenberg, Research Coordinator
Cynthia Ward, Administrative Assistant

The December 14, 2000, meeting of the Ohio Criminal Sentencing Commission was called to order by its Vice Chair, Appellate Judge John Patton at 10:10 a.m.

Chief Justice Moyer and Director David Diroll expressed appreciation to Judge Patton for his service to the Commission as he prepares to retire from the judiciary. Chief Justice Moyer noted that Judge Patton was one of the original members of the Commission and has rarely missed a meeting during his nearly 10 years on the Commission. He also announced that Judge Patton plans to continue serving as needed as a visiting judge.

DIRECTOR'S REPORT

Mr. Diroll reviewed the contents of the meeting packets, which included: recent news articles and editorials about the juvenile sentencing bill, S.B. 176; copies of responses from Rep. Ann Womer-Benjamin and Mr. Diroll to some editorials; and minutes from the last meeting.

THE COMMISSION'S PROPOSALS IN THE GENERAL ASSEMBLY: RECAP AND DISCUSSION

Mr. Diroll then recapped the progress of various Commission proposals during the 123rd General Assembly.

Juveniles--S.B. 179. S.B. 179 was based on the Commission's juvenile sentencing proposals. It was recently approved by the Ohio House and concurred in by Ohio Senate, Mr. Diroll announced, on a largely party-line vote. There is no word as to when the Governor intends to sign the bill.

The most controversial issues were concerns about the bill's costs to State and local governments, dropping the DYS's minimum commitment age from 12 to 10, and anxieties about disparate racial impact. Mr. Diroll noted that many of the Commission's core proposals were well-received, including: expanding the purposes of juvenile sentencing, creating the new blended sentencing option, and allowing a traffic violations bureau to handle certain first time juvenile traffic offenders.

There are hopes, said Mr. Diroll, to revive two issues that were dropped from the package: competency and direct sentencing to detention centers. Both were dropped because of cost concerns.

The bill allows a year to train judges, prosecutors, defense attorneys, court personnel, and others before the bulk of it goes into effect on January 1, 2002. Although the Commission does not have a grant to cover printing a manual, something will be available for training, said Mr. Diroll.

Juvenile Judge Sylvia Hendon wondered why Governor Bob Taft has been slow to sign the bill. If his hesitation involves the 10-year old issue, she is willing to contact him and explain that it does not mandate sending 10 year olds to DYS, but merely offers it as another option available to judges.

Rep. Ann Womer-Benjamin, said Mr. Diroll, was open to many compromises as the bill worked its way through the House. She also has defended the bill against journalistic attacks.

Bad Time. Mr. Diroll said the bad time proposals are on hold to next session. Some legislators prefer a separate bill, rather than amend the ideas into an existing bill. The likely sponsor is Rep. James Hughes of Columbus.

Felony Appeals--H.B. 331. H.B. 331, sponsored by Rep. Dean DePiero, was adjusted based on recommendations from the Commission. It clarified the standard of review for appellate courts that hear S.B. 2 felony appeals.

Felony Refinements--S.B. 107--S.B. 107 cleaned up many areas of felony sentencing. Yet, only the repeal of the penalty for dueling received much media coverage, said Mr. Diroll. The bill made key changes regarding vehicular homicide and involuntary manslaughter, treatment in lieu of conviction, boot camp vetoes, heroin penalties, and certain factors in sentencing.

Failures. The Commission's efforts came up short in several other areas, said Mr. Diroll. Some other juvenile revisions fell short, such as bindover reform and the push for juvenile competency statutes. He said he was disappointed that juvenile advocates rallied on the rather narrow 12 to 10 issue, but missed the must more important bindover reforms. Also, the traffic bill (below) stalled in the Senate.

Judge Hendon remarked that the Hamilton County court's legislative liaison said it might be productive to wait one year after S.B. 179 goes into effect before again trying to change bindover laws. That would allow a track record to develop which could provide more data to verify the value of reforming the list of mandatory bindovers and using blended sentencing more in its place. It should be easier to sell then, she declared.

Traffic. Mr. Diroll said the traffic bill (S.B. 176) "is stuck on the side of the road with the hood up." He feels that it is possible to get the problems fixed and get it running again. He noted that the "refusal" issue, regarding refusal of sobriety tests for allegedly driving while intoxicated, is still out there and still controversial.

John Madigan, Senior Attorney for the City of Toledo, asked how legislators feel about the "refusal" issue.

The Commission's ultimate recommendation, Mr. Diroll noted, was a hard penalty for refusal and .17 penalties for a conviction after a refusal. Some legislators, he said, were enthusiastic about it, while others felt it would need to be re-examined in the year 2001 anyway, in light of new Federal legislation (prodding the states to adopt a .08% BAC). Other proposals regarding refusals are also being considered by the legislators.

Misdemeanors. The Commission's misdemeanor proposals were not introduced, largely because of the size of, and time needed to work through, the Commission's juvenile and traffic proposals. Issues with the misdemeanor draft, said Mr. Diroll, narrowed down to: 1) serving misdemeanor sentences concurrently instead of consecutively; 2) 18 month cap on consecutive misdemeanor sentencing to jail; and 3) unclassified misdemeanors.

Some legislators feared that by classifying the unclassified misdemeanors, some of the penalties were being reduced. Perhaps, said Mr. Diroll, the classification issue could be separated from sentencing issues.

Fines & Costs. Left hanging, he noted, are the Commission's recommendations on redistribution of fines and costs. He wondered if the Commission should ask legislators to revisit this issue.

WHAT SHOULD BE DONE?

Juvenile Competency. According to Mr. Diroll, the General Assembly committed itself, through a rare statement of legislative intent, to look at juvenile competency during the next legislative session. Rep. Womer Benjamin and Sen. Bob Latta, who moves to the House in January, expressed interest in the issue, he noted. He asked how the Commission should approach the issue in 2001.

Becky Herner, representing the State Public Defender's Office, encouraged strong support for the plan, since legislators promised to address the issue.

Acknowledging the fiscal issues are toughest, Judge Hendon remarked that family court judges continue to insist that the issue be addressed. They want a standard and training developed for competency evaluation.

Research Coordinator Fritz Rauschenberg noted that S.B. 179 includes the right for juveniles eligible for SYO dispositions to raise the issue of competency under the adult competency provision.

It is meaningless to address this issue, said Asst. Pros. Jim Cole, unless there is a facility available to restore or treat juveniles found incompetent to stand trial.

According to Mr. Rauschenberg, the Governor's Office does not oppose it, but is shy about the costs involved.

Sandra Cannon, representing the Department of Mental Health, remarked that, even if the adult standard of competency is used, a facility will be needed to serve these children. ODMH, she said, has reduced its projection of cost needs as low as possible. Most of this was accomplished by finding a building that could be renovated to accommodate the need, rather than building a new one.

Mr. Diroll wondered if it would be necessary to wait until the next capital budget to seek funds for a facility.

Judge Hendon remarked that she recently served on a panel with Dr. Michael Hogan, Director of the Department of Mental Health, who suggested contracting out for services until a budget could be developed to fund a State facility. She added that Talbert House in Cincinnati is interested in providing a contract facility to address this need.

It would be much quicker and easier to handle these children at one statewide facility than to do it regionally, Ms. Cannon said, noting that competency is a specialized area.

Atty. Herner does not believe the matter would have to wait for another capital bill.

Mr. Diroll noted DYS would benefit from pursuing a facility because some of the youth who would go to a competency-restoration facility are currently "dumped" on DYS.

It is a tougher sell to the Department of Children and Family Services, said Mr. Rauschenberg, because they believe these incompetent children will be "dumped" on their department.

The project would be more likely to get tax dollars if an appropriate existing building can be renovated to accommodate the need, rather than striving for a brand new facility, said Atty. Herner.

Legislation would have to come before funding, noted Mr. Rauschenberg.

According to Asst. Pros. Cole, it is not just the facility, but also the costs of handling evaluations.

Ms. Cannon pointed that ODMH presented a scaled down proposal in hopes of getting some movement on this matter.

Consensus was reached to pursue the competency plan as proposed by the Commission and ODMH, with the amendments that came from the Administration.

The competency proposal included a list of factors to be considered by the judge when determining competency, said Mr. Rauschenberg. In addition, it included another list of factors to be considered in applying those standards. The Prosecuting Attorneys' Association said the factors were too prominent and feared they would become part of the standard. To alleviate these fears, Mr. Rauschenberg suggested that the list of factors could be moved down or made part of the examiner's report.

Consensus was reached to reintroduce the competency proposal to legislature.

Direct Sentencing to Detention Centers. The Governor's juvenile truancy bill (S.B. 181) originally included a provision for direct sentencing to detention centers for misdemeanors *and* felonies, said Mr. Diroll, while the Commission's juvenile bill (S.B. 179) originally allowed direct sentencing to detention centers for misdemeanors only.

Former County Commissioners' representative Mike Toman reported that S.B. 245 provides $5 million and the capital bill adds $7 million, for a total of $12 million to be used for detention centers. Two more centers are scheduled to come on line soon. In addition, there was a proposal for an additional $8 or $9 million for detention centers.

Mr. Diroll wondered if the Commission must dove-tail the direct sentencing proposal with the capital budget. He added that, if the proposal simply makes honest the terms of juveniles now held in detention for "assessment", then it should not add much additional cost.

The draw back, said Judge Bressler, is that if the judge chooses to sentence the juvenile directly to the detention center, he then loses the option of putting that juvenile offender on probation for up to three years.

Some counties have no access to detention centers, said Judge Hendon, so the option would be impractical for them anyway. She feels that direct sentencing to detention centers would make it difficult to work out numerous issues.

Judge Bressler suggested placing this issue on a back shelf for awhile. Others concurred.

Sexual Predators. Atty. Herner encouraged pushing the Commission's version of sexual predator notification for juveniles. S.B. 148 takes H.B. 180 (for adults) and applies it to juveniles. The Commission's bill at least limited which juveniles would receive the "sexual predator" label and how long they would have it. She does not want to see S.B. 148 resurrected as it was originally written.

The Commission's recommendation limited eligibility for the "sexual predator" label to juveniles who qualified for blended sentences and allowed the court time, until the juvenile disposition terminates, to determine whether rehabilitation was achieved or whether the juvenile deserves the sexual predator label, said Mr. Diroll.

Judge Hendon reported that she recently talked to the new Deputy Majority Leader, Rep. Patricia Clancy, about this bill. Considering Rep. Clancy's background as a former adult probation officer, Judge Hendon feels that she would be a good avenue for encouraging the Commission's proposal.

According to Judge Bressler, common pleas judges have concerns as well.

Mr. Toman mentioned that some of his clients at Success Group has concerns about the bill as well. He agrees that the Commission's proposal is a better option. He reported that they would like to see the status designation placed at the end of the process, after treatment, because of serious concerns regarding the status of the predator label.

Before attaching a label, the court is supposed to determine the offender's risk of re-offending, Atty. Herner declared. She has heard that this issue is a priority for the next legislative session, so it will be essential for the Commission to get its proposal to the legislators quickly.

Consensus was reached to push the Commission's sexual predator proposal.

Traffic. Issues surrounding sobriety test refusals proposals created the most controversy for the Commission's traffic plan (S.B. 176), said Mr. Diroll. In addition, the State Highway Patrol had concerns about the physical control issue. Mr. Diroll asked how the Commission wanted these proposals handled.

Asst. Prosecutor Steve McIntosh asked what other parts were regarded as controversial or cumbersome.

The Commission also reclassified suspensions in an effort to simplify them. Some legislators, said Mr. Diroll, suspected that the Commission was actually trying to reduce the penalties for those offenses.

Municipal Court Judge Fritz Hany remarked on issues regarding refusals and the new super drunk driving hierarchy limits. If the driver tests at .17 or more, he is often charged with an (A)(5),(6), or (7) violation in addition to the (A)(1) violation. If a first time offender pleads no contest or guilty to the (A)(1) case, many municipal court judges are apprehensive as to whether to sentence immediately when the defendant might then plead not guilty to the (A)(5), (6), or (7). Although he acknowledged that the court has the option to impose the higher penalty, he noted that this is an everyday issue for municipal judges. He wondered if these circumstances were ever discussed when refusal issues were addressed by the Commission or legislators. He remarked that judges favor streamlining the Ohio Revised Code and suspensions, but need help addressing the issue of permitting the defendant to plead guilty on the refusal charge and not guilty on related drunk driving charges.

Since many new legislators will be installed in January, Capt. J.P. Allen, representing the State Highway Patrol, noted that education will be needed on the traffic proposals. He suggested having the Traffic Committee reconvene to discuss these issues and update the bill for presentation to the Legislature. In addition, he suggested keeping the refusal recommendation in the traffic bill and not a DUI bill, noting that it would improve its chance of passage.

Judge Hany and Asst. Pros. McIntosh offered to serve on the Traffic Committee.

Atty. Madigan wondered if there had been any effort made to track the number of refusals, particularly since the .17 limit has gone into effect

According to Mr. Diroll and Capt. J.P. Allen, the State Highway Patrol is attempting to do that, but it is a bit too soon to notice a difference yet between the number of refusals before the .17 limit and after the new limit.

Consensus was reached to have the Traffic Committee reconvene.

Judge Hany reported that, due to inconsistencies regarding adult DUI convictions and how to treat them procedurally post indictment, the Traffic Rules Committee recently determined that, once an indictment is handed down from the grand jury on a felony DUI conviction, then criminal rules should apply. That, he said, should eliminate the ambiguities.

Misdemeanors. A bill was drafted with the Commission's general misdemeanor recommendations but was never introduce, said Mr. Diroll. The most substantive concern about this draft involved concurrent versus consecutive sentencing for felonies and misdemeanors. The proposal would allow consecutive sentencing as opposed to automatically swallowing the misdemeanor within the felony, as now.

The Commission, said Mr. Rauschenberg, also proposed requiring mayor's courts to report to the Supreme Court. Several mayor's courts favored this proposal, thankful that someone had taken the initiative to implement it, although opponents declared it was an unfunded mandate. The Futures Commission, noted Mr. Diroll, recommended eliminating major's courts altogether.

Mr. Diroll asked whether any of this should be re-examined.

Consensus was reached to revisit some of the controversial topics related to misdemeanor sentencing before reintroducing them to the Legislature.

Cost and Fine Distribution. Originally, the misdemeanor package also included the Commission's fines and costs distribution proposal. This proposal was the result of an extensive study of misdemeanors where the primary penalty is monetary in nature and how those funds and court costs are distributed among the various jurisdictions and agencies. Mr. Rauschenberg reported that this was eventually handled separately from the major portion of the misdemeanor package because of the strong controversy involved.

Judge Hany remarked that municipal court judges would like to see the fines and costs proposals remain dormant.

Mr. Toman reported that the CCAO and Buckeye State Sheriffs' Association would like to see this proposal nudged forward. However, he noted, there is no real desire to pit county commissioners and municipal and township officials against each other while the annexation issue is being debated by the legislature. County commissioners would be more likely to push the proposal than sheriffs, he noted.

Consensus was reached to set aside cost and fine distribution for now.

Juvenile Traffic Rules. Judge Hany reported that the Supreme Court's Traffic Rules Committee will be reviewing the S.B. 179 suggestion that traffic bureaus be authorized in juvenile courts.

One thing that all juvenile court judges would like to see changed, said Judge Hendon, is removal of the 90-day suspension on the second moving violation for juveniles.

That is established by statute, said Mr. Diroll. The sponsor, Sen. Bruce Johnson, feels strongly about it, he added.

Bad Time. Rehabilitation and Correction Director Reggie Wilkinson acknowledged that DRC would like to have bad time or a similar hammer to maintain institutional control. The Commission's original bad time proposal, he said, is very close to being an acceptable workable tool.

POST RELEASE CONTROL

Mr. Diroll reported that parole officers remain frustrated with S.B. 2's limits on post release control violators. Generally, they would like greater flexibility in returning them to prison, he added.

Director Wilkinson said he understands the concerns, but is wary of increasing the prison population. He remarked that probation and parole officers tend to view themselves more as cops rather than persons who can intervene in someone's life to encourage positive behavioral changes. He noted that DRC is planning to make some significant changes that could affect this area, as they examine why offenders return to prison other than for a new crime.

Judge Griffin suggested that DRC should also look at the escape statute, particularly charging an offender with escape simply for not reporting to a parole officer.

Some violators are on monitored time rather than direct supervision, said Dir. Wilkinson. DRC, he said, is examining which method is best for them.

Judge Bressler noted that Hamilton County gets a significant number of escape cases, based on non-reporting.

In Cuyahoga County, said Judge Griffin, there is no point in doing anything with an overwhelming number of the cases. He feels that many of them should not be forced back through the court system.

Gary Yates, representing the Chief Probation Officers' Association, declared that the probation officer still needs to have those sanctions available.

According to Dir. Wilkinson, many prosecutors view them as nuisance cases and refuse to take them. He suggested tabling the topic of escape until the February or March meetings of the Commission.

According to Mr. Diroll, there is considerable discussion in Federal materials about re-entry court motions for violating sanctions. Some jurisdictions are even setting up specific re-entry programs or diversion programs within the courts, similar to the pilot program in Richland County.

Chief Justice Moyer reported that there has been some discussion whether that should be considered on a larger scale in Ohio. Much of the discussion, he said, centered on dedicating some resources within the courts to address these recurring problems and how to keep them out of the justice system.

Dir. Wilkinson reported that there are eight pilot re-entry programs across the country funded by the U.S. Justice Department. DRC has adopted a plan to examine the effectiveness of Ohio's existing re-entry systems.

Chief Justice Moyer wondered if a committee should review this option.

Dir. Wilkinson remarked that he would rather do the shaping than have the option shaped for him. He would like to work together with the Commission on this proposal. His hope is to develop philosophy and educate the public rather than promoting or developing legislation.

Re-entry programs, similar to that developed by Judge James DeWeese in Richland County, look at inmates being released into the community and work with the parole staff to make a determination regarding the type of programming the inmate might receive, the extent of supervision necessary, etc. It encourages more judicial involvement in the control of inmates as they

re-enter the community, which has more impact than the parole officers' involvement alone, said Mr. VanDine.

Re-entry, said Dir. Wilkinson, should be a partnership between the judge, the probation officer, and the offender.

Judicial release is linked to this program as well, said Mr. Rauschenberg.

Dir. Wilkinson offered to get an outline of Judge DeWeese's program for the Commission to examine.

CBCF TIME CREDIT

After lunch, James Corfman, Director of the Northeast Ohio Community Alternative Program, reported on concerns raised by S.B. 107. The bill, he said, allows pre-sentence detention time to be credited against CBCF time, which drastically limits the amount of time for the offender to serve at the CBCF. In addition, the language of the bill made it more confusing regarding imposition of the least applicable sentence if the offender had no prior prison sentence. The directors of several CBCFs would like the Commission to give more attention to this matter because it inhibits the CBCFs from using the facilities as they deem necessary and causes problems regarding the offender's length of stay there. If desired, he said the CBCF managers and directors could formulate some suggestions for consideration.

Mr. Rauschenberg noted that the cap is the maximum in the range available. Mr. Diroll admitted that there tends to be some confusion about the wording, particularly for F-4 and F-5 cases.

Chief Justice Moyer asked Mr. Corfman to develop workable language so that the Commission can put it on a future agenda.

DUI FELONIES

When the Commission was set up, one of the mandates was to create consistency within the Revised Code and reduce the disparity in sentencing. Judge Griffin feels, however, that the legislature has begun to create new variations of S.B. 2 in some areas, resulting in confusion.

F-4 DUIs are more complicated, he said, where the judge can either sentence the offender directly to prison or to local incarceration. However, if the judge chooses local incarceration for the offender and the offender violates that sanction, the judge is not allowed to up the ante and send him to prison.

Another felony complication, said Judge Griffin, involves inconsistency within F-4 drug cases. Fourth degree felony cocaine cases have a presumption for prison, except for the F-4 "preparation for sale" cases, which do not have a presumption for prison.

A third area of concern involves failure to obey the order of a police officer. This statute, he said, was expanded from a single paragraph to a full column where part of it could result in a F-3 with a minimum prison sentence.

He declared that the changes in these three areas do not correspond or harmonize in any way with the general scheme that was set out in S.B. 2, based on the Commission's recommendations.

Mr. Diroll agreed that the Commission might need to take a look at some of these inconsistencies as well as others.

FORFEITURES

OSBA delegate Max Kravitz feels that forfeiture issues should be discussed by the full Commission rather than a subcommittee. He also worries that the Commission will be able to meet the July 1 deadline.

If the issue of forfeiture is moved to the full Commission for all discussion, then it will dramatically reduce attendance, said Steve VanDine, representing Rehabilitation and Correction, because several members have little direct connection with or concerns about that issue. Mr. Diroll acknowledged it is a focused group that is interested in the topic.

Most Supreme Court Justices agree there are some due process issues that need to be addressed in forfeiture cases, said Chief Justice Moyer.

Judge Griffin agreed that more could get accomplished in a smaller committee than with the whole Commission.

Atty. Kravitz fears a consensus will never be reached in subcommittee for simplification because some statutes are interpreted differently from county to county by prosecutors.

Judge Griffin suggested having the full Commission set some over-riding principles for how the subcommittee should proceed with objectives to achieve.

Recognizing that prosecutors and defense attorneys are on different ends of the spectrum on this issue, Asst. Pros. McIntosh suggested starting with an outline of the statutes for each type of forfeiture.

Atty. Kravitz explained, with some reservation, that he is not suggesting a change in penalties for property subject to forfeiture, but merely asking for a generic statute that will spell out what the defendant's rights are.

Perhaps the provisions could be consolidated, said Mr. Diroll, so that they are clearly spelled out, but with the different nuances highlighted.

Atty. Kravitz suggested developing a flow chart of both criminal and civil forfeitures to outline how and when things come into play. This, he feels, might help the Commission understand the process. He suggested that the flow chart might include the point where forfeitures come in for a criminal case, the spec and indictment, what happens after a conviction, the processes prior to sentencing, and how it all plays out both criminally and civilly.

OTHER FUTURE ISSUES

Mr. Diroll asked the Commission if there are other areas of law which the Commission needs to examine, such as jail and bail issues, or liquor law?

Judge Griffin felt uneasy with looking at other areas unless it is charged with that task by the General Assembly.

Judge Bressler feels the Commission has enough on its plate at present.

Dir. Wilkinson cautioned that focusing on too many narrow areas diminishes the function of the full Commission. He would like to use the Commission as a sounding board for changes DRC is contemplating regarding restorative justice and community justice initiatives. He feels the Commission would serve well as a forum for feedback.

Judge Griffin stressed the value of the Commission's role of data collection.

Mr. Rauschenberg said the Commission has a duty to monitor changes in law and disparity. He asked if there is interest in following the procedure of other states, which require routine forms providing detailed data on each sentence handed down. Judges have been reluctant to report this information claiming it adds too much to their workload. In addition, they fear it could become a dossier on judges.

Accurate data collection may be difficult but is desperately needed, said Judge Griffin.

If the data collection is not going to be accomplished, particularly that statutorily required on racial disparity, said Atty. Herner, then it should be removed from statute.

Whatever technique or method is used, Mr. Diroll would like to see it include additional information that could prove more valuable for the study of sentencing patterns. He admitted, however, that no satisfactory method or system has been found for getting courts to report the data systematically.

Judge Griffin would like to see the data used to provide an analysis of sentencing patterns, as is currently provided in a Cuyahoga County report on patterns of criminal nonsupport.

The question, said Mr. Diroll, is how to get good statewide data from which this information can be gleaned.

It would help to know what the local problems are, said Judge Griffin, which are often connected to the issue of local resources.

Juvenile courts have been analyzing disproportionate minority confinement information for years because if is tied to federal funding, said Public Defender Yeura Venters. He could not understand why this type of data collection causes such a problem at the adult level.

The problem, said Judge Griffin, is not merely statistical, it is analytical as well. How to interpret the numbers you find, including the age of the victim and age of the defendant, then figuring out exactly what happened in the case and how each case differs create the greater challenge for the researcher. Most federal governmental data collection reports do not include that type of information, he declared.

According to Atty. Kravitz, the State Public Defender's Office did a study on proportionality and catalogued every individual factor that could arise in a capital case.

Admitting that it might be impractical to expect a judge to report extensive data on all cases, Judge Griffin suggested that it might be more manageable to request data on cases involving issues that are extremely important.

Mr. Rauschenberg noted that it takes an exorbitant amount of time to conduct this extensive research and by the time a person finishes collecting the data, it is already old news. In addition, one can never anticipate all of the subtleties of information that will later be desired, he noted.

A mechanism is needed to set up routine sources of information for comparison purposes through time, said Mr. Diroll. Information from PSIs, he noted, helps, but they are not standard from county to county. Even at that, they still do not contain all of the information needed, such as actual sentences.

Mr. Corfman agreed that everyone is starving for good research. He remarked that the CCIS form might be a better instrument than a PSI for getting relevant data. The CCIS form is already in place with the Bureau of Community Sanctions at DRC. It includes basic demographics, prior treatment, prior criminal history, and family history.

The State, said Mr. VanDine, needs a reasonable automated data collection system that continually collects data from the courts. He encouraged the Commission to keep tabs on this issue and revisit it periodically.

According to Chief Justice Moyer, that is a goal of the Futures Commission and the Supreme Court.

With DNA sampling, fingerprinting, internet, etc., once a person gets into the criminal justice system, they are there forever, at least in the records, said Mr. VanDine. The Commission, he suggested, might also want to examine the possibility of expungement for offenders who reform and have little criminal activity history.

Future Commission meetings have been tentatively scheduled for January 18, February 22, and March 15.

The meeting adjourned at 2:15 p.m.