OHIO CRIMINAL SENTENCING COMMISSION

513 East Rich Street, Suite 100 Columbus, Ohio 43215 (614) 466-1833 Fax (614) 728-4703

Chief Justice Thomas J. Moyer
Chairman

David Diroll
Executive Director

Minutes of the
OHI CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCING ADVISORY COMMITTEE
January 23, 2003

SENTENCING COMMISSION MEMBERS PRESENT

Chief Justice Thomas Moyer, Chair
Common Pleas Court Judge H.J. Bressler, Vice-Chair
Capt. John Born, representing State Highway Patrol Supt.,
Col. Paul McClellan
Victim Representative Sharon Boyer
Juvenile Court Judge Robert DeLamatre
Defense Attorney William Gallagher
Common Pleas Judge Burt Griffin
OSBA Delegate Max Kravitz
Bob Lane, representing State Public Defender David Bodiker
Municipal Prosecutor Steve McIntosh
Common Pleas Judge John D. Schmitt
Steve VanDine, representing Rehabilitation and Correction
Director Reggie Wilkinson
Public Defender Yeura Venters
Prosecuting Attorney Don White

ADVISORY COMMITTEE MEMBERS PRESENT

Jim Lawrence, Ohio Halfway House Association
John Madigan, Senior Attorney, City of Toledo
Gary Yates, Ohio Chief Probation Officers Association

GUESTS PRESENT

Judge Robert Christiansen, Lucas County Common Pleas Court
Judge James DeWeese, Richland County Common Pleas and Reentry Court
Mark DeZarn, Montgomery County Assistant Prosecutor
Lusanne Green, Ohio Community Corrections Association
Jim Guy, Rehabilitation and Correction
Sharon Haines, Rehabilitation and Correction
Leigh Johnson, student, Cleveland-Marshall Law School
Judge Richard Knepper, Sixth District Court of Appeals
Dave Leitenberg, Richland County Probation Officer
Christina Madriguera, Judicial Conference
Candy Peters, Office of Criminal Justice Services
Fritz Rauschenberg, Department of Alcohol and Drug Addiction Services
Ed Rhine, Rehabilitation and Correction
Corey Schaal, Judicial Conference

STAFF PRESENT

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

Chief Justice Thomas Moyer, Chairman, called the January 23, 2003 meeting of the Criminal Sentencing Commission to order at 9:51 a.m.

DIRECTOR'S REPORT

Rebecca Herner. Director David Diroll reported that budget cuts meant the end of Becky Herner's position at the State Public Defender's Office. He reported that Ms. Herner left early, trading her long commute for time with her young children. Mr. Diroll complimented Ms. Herner for her willingness to "serve and vote in the minority on practically every committee". He said he will also miss her working knowledge of the system coupled with steadfast devotion to the rights of accused persons. PD veteran Bob Lane will replace Ms. Herner as State Public Defender David Bodiker's envoy to the Commission.

Meeting Packets. Mr. Diroll reviewed the meeting packets which included: a section-by-section summary of H.B. 490; a draft "Monitoring Sentencing Reform" report; the penultimate Forfeiture Draft; the latest Reentry proposal, and minutes from the November meeting.

Governor Signs H.B. 490. H.B. 490, based on the Commission's misdemeanor plan, was signed by Governor Bob Taft January 2, 2003, said Mr. Diroll. He reported that the most significant change from the Commission's original recommendations was rejection of the proposal to allow felony sentences run consecutively to misdemeanor sentences. Opposition from county commissioners and sheriffs scuttled that.

He noted there were a couple late amendments made to the bill. One was to change the effective date to January 1, 2004, so that it would dovetail with Sen. Scott Oelslager's traffic bill (S.B. 123), also based on the Commission's proposals. This should help practitioners.

Another amendment involved jury trials. H.B. 490 increases the minor misdemeanor cap to $150. The Commission's recommendation was to give the right to a jury trial anytime a person faces incarceration. The catch, Mr. Diroll noted, is that some "fine only" offenses carry large penalties, especially regarding environmental and securities regulation. Some of these can result in fines of $1,000 per day, up to $10,000. It seemed unfair not to permit a jury trial when the defendant faced a $10,000 fine, he opined. The bill was amended to allow jury trials if the fine for a regulatory (fine only) offense exceeds $1,000.

A third amendment involved a request from Juvenile Court judges. In S.B. 123, the Commission broadened limited driving privileges for juveniles. Under current law, a second moving violation afforded no driving privileges, but privileges could be granted on a third violation. The bill was amended to allow limited driving privileges for the second moving violation *and* to accelerate the effective date of the provision to 90 days after the Governor signed the bill.

A fourth amendment dealt with the Supreme Court striking down the "harmful to juveniles" provisions. The House Majority Caucus asked the Senate for clarification to make the language constitutional.

Monitoring Report. The Commission has a duty to monitor sentencing reforms enacted as a result of the Commission's proposals and report every two years to the General Assembly. Monitoring involves reviewing how the reforms work in practice and assessing sentencing data.

To date, four major sentencing bills have been enacted based on the Commission's proposals: S.B. 2 regarding adult felons; S.B. 179 regarding juvenile offenders; S.B. 123 which addresses traffic offenses; and H.B. 490 involving adult misdemeanants.

S.B. 123 and H.B. 490 do not take effect until 2004. S.B. 179 just took effect in 2002, leaving few results to monitor. Hence, the latest report focuses on S.B. 2.

The report notes that certain S.B. 2 goals have been achieved, said Mr. Diroll, particularly in the ability to better predict prison population. S.B. 2 also resulted in more repeat offenders being imprisoned and low level felons being steered into community sanctions. However, two "record" years of prison intake (2001 & 2002) with a spike of 20-21,000 new inmates will merit closer scrutiny. Generally, S.B. 2 helped to flatten growth in the prison population, as predicted by the Commission in 1995.

Common Pleas Court Judge Burt Griffin believes that collection of data on felony convictions would be a more accurate measure of S.B. 2's effectiveness than prison intake. According to Mr. Diroll, many factors were considered, including common pleas court filings.

More reliable indicators, said Judge Griffin, might be common pleas court filings and the impact of drug testing. This, he said, would get to the violators who go to prison.

DRC Research Director Steve VanDine said the Department attempts to get a snapshot of the types of violators affected by S.B. 2. To do so, his staff looked at the characteristics of low level, drug, or property offenders. He noted that the portion of those who were incarcerated because of failing probation went from 30% to about 55%.

Monitoring results also reveal that there seems to be greater certainty, fairness, and similarity in offenders in the post-S.B. 2 prison cohort, said Mr. Diroll. The data reveals that offender history and offenses go a long way in predicting prison intake. The good news is that illegitimate factors, like race, do not.

According to a study by Case Western Reserve University sociologist William Sabol, which compared Ohio's prison population in 1990 to 1998, there has been a dramatic increase in the number of violent offenders going to prison and a decrease in the number of non-violent offenders admitted. This, he determined, could be attributed to S.B. 2. Mr. Diroll added that it fits S.B. 2's aim of prioritizing prison space for the most violent offenders.

Mr. Diroll credited erstwhile Commission Research Coordinator Fritz Rauschenberg for the report's data analysis. He said Mr. Rauschenberg is willing to answer questions about the data.

Mr. Diroll say two areas where S.B. 2 has not worked as anticipated. S.B. 2 replaced "shock probation" with "judicial release". Judicial release has not been used as much as shock probation.

Common Pleas Court Judge John Schmitt was surprised that Mr. Diroll would find this surprising. The neglect of judicial release as a sentencing option demonstrates that judges bought into S.B. 2's determinate "truth in sentencing" sentencing model. The S.B. 2 package, he said, was sold to judges on the notion that prison means prison.

The second surprise, said Mr. Diroll, is the "repeat violent offender" (RVO) enhancement. Under the pre-S.B. 2 law, high-level repeat offenders faced long mandatory terms for "aggravated felonies". In simplifying felony levels, S.B. 2 replaced aggravated felonies with the RVO enhancement. Mr. Diroll was surprised that the RVO enhancement is rarely used, even as a plea bargaining tool.

FORFEITURES

Mr. Diroll said the latest forfeiture draft attempts to faithfully reproduce the decisions made at the last meeting and attempts to streamline forfeiture provisions.

Peculiar Provisions Not in New Chapter. He noted that some things will not be placed in the new forfeiture chapter, because they are peculiar to particular offenses. For example, civil remedies independent of forfeiture will remain in corrupt activity law (these include a large fine, triple damages, etc.) Nor does the draft does not rewrite any elements of criminal offenses such as engaging in corrupt activity, participating in a criminal gang, Medicaid fraud, *etc.*

Mobile Instrumentalities. He noted that the "mobile instrumentalities" definition was retained for purposes of faster hardship release provisions. However, there would be no distinction between mobile instrumentalities and other instrumentalities in the standards used for forfeiture (substantial connection and proportionality).

Connecting Connection Guidance. At the last meeting, the Commission opted for guiding language, rather than a definition, to help courts determine a "substantial connection" between an instrumentality and an offense. In so doing, the Commission voted to connect the guiding clauses (proposed §2981.02(B)) by "or". A goal was to clarify that "any or all" of the guidelines could be used.

Mr. Diroll reported that using "and" or "or" between clauses in a list is discouraged by the Legislative Service Commission's style manual. If the intention is "and", then the clauses should be introduced with "all of the following". If the intention is "or", then the clauses should be introduced with "any of the following". If the intention is "and/or", then the clauses are to be introduced with "any or all of the following". He suggested striking the "or" between each clause and being more precise about what is intended.

Prosecutor Don White favored leaving the ors in the proposal and OSBA Representative Max Kravitz agreed. By acclamation, the Commission agreed to leave the language as drafted.

Authority to Seize Instrumentalities. Mr. Diroll asked what to do with current §2933.43(A)(1). In particular, does law enforcement need authority to seize an instrumentality, since it would be defined as property otherwise lawful to possess?

Also, §2933.43(A)(1) has a rebuttable presumption that watercraft, vehicles, aircraft, or personal property can be seized if used in the commission of a felony. Mr. Diroll asked if this should be retained.

According to Atty. Kravitz, CAFRA eliminated a "shifting of burdens" approach as is listed in the presumption. The existing presumption, he argued, is not rational in many cases. Possessing contraband in a vehicle does not necessarily mean that the vehicle is being used to convey it. The defendant's intent cannot be inferred from the bare presence of contraband in the vehicle.

He declared this is a problem statute that should be eliminated, particularly since it is not in racketeering and other provisions. Keeping the presumption, he declared, will generate a body of case law that is unnecessary. He also feels that it undermines the work done in adopting a "substantial connection" nexus.

Although he disapproves of the existing presumption, Atty. Kravitz acknowledged that there should be some type of mechanism that gives the officer the authority to seize the instrumentality on arrest.

By acclamation, the Commission agreed to:

> **Make clear that law enforcement has the right to seize an instrumentality at the time of arrest. However, the presumption in current §2933.43(A)(1) should be eliminated.**

Surrendering Property. Mr. Diroll said that proposed §2981.06(A) tells the owner or offender to turn over property once forfeiture is ordered. It also says that "the court shall deliver the order to the person or send a copy of it by certified mail." He asked, is this necessary?

Judge Schmitt assumed that a court would do this automatically.

It might help people volunteer to return the forfeited property, said Atty. Kravitz.

Judge Bressler suggested that the provision be amended to take the direct notice burden off the court. He requested language such as, "The court shall cause the order to be delivered . . ."

Judge Griffin questioned the need for the language, fearing a paperwork increase because of it. He assumes that the prosecutor can take the judge's order and deliver notice. The prosecutor, not the court, he said, should send notice and get property, because the prosecutor is seeking the order to have the property forfeited.

Judge Bressler asked how notice could be verified by the court.

Since the language reads "if necessary", Atty. Kravitz wondered if it applies only in atypical cases.

It applies when the person still has the property, Mr. Diroll replied.

Concern was raised by Atty. Kravitz that disputes over proper guidance regarding notice might generate civil cases to turn over property.

The burden of executing the order should rest on the person seeking the order, not a court clerk, said Judge Griffin.

This raises another level of bureaucracy and issues that do not need to be raised, Judge Bressler contended. The forfeiture order, he said, will contain an order of execution.

Atty. Kravitz suggested eliminating §2981.06(A) and adding something to the civil forfeiture order under §2981.05(C) permitting a court to make any other appropriate order necessary to execute the forfeiture.

The problem, said Mr. Diroll, is that §2981.06 applies to both civil and criminal cases.

Atty. Kravitz suggested placing the notice provision within the civil forfeiture order provision of §2981.05(D)(3). He suggested stating what the basis of the order to satisfy the judgment of forfeiture.

So long as the language makes any order to give effect to the forfeiture order, said Judge Bressler, it would ease his concerns.

Of course, forfeiture in a criminal case is part of sentencing, said Atty. Kravitz. So the criminal forfeiture statute should say that, as a part of sentencing, the judge can do what is necessary in the orders, subject to the adjudication of third party claims.

By acclamation, the Commission agreed to:

> **Remove the parts of proposed §2981.06(A) dealing with forfeiture notice (2nd and 3rd sentences) and add language to §2981.05(D)(3) so that the judgment of forfeiture is satisfied.**

Replevin, *Etc.* Attention next turned to §2981.03(C) regarding replevin, conversion, etc. The draft attempts to distill when replevin and conversion are available. Those remedies would not be available when the property is subject to forfeiture, and would be stayed until resolution of a criminal case or pending a hearing on third-party claims in civil forfeiture cases. The intent, said Mr. Diroll, is to clarify that forfeiture law takes precedence.

If the property is specified in an indictment or forfeiture case is filed, those remedies might no longer be applicable, said Atty. Kravitz. He asked how it would work if you lost the forfeiture and won the conversion action. He doesn't think the remedies are relevant once a forfeiture case is filed.

If the forfeiture case is not justified, he continued, there are damages for a conversion action. He asked if those would be litigated

at the conclusion in a separate law suit. He acknowledged that you cannot automatically say that conversion and replevin are irrelevant because of a forfeiture case, nonetheless, they don't mesh with the adjudication of the forfeiture case.

With a limited definition of contraband and proceeds, said staff attorney Scott Anderson, the offender never had a right to them, so the offender is not going to prevail in a replevin action. If forfeiture action is pursued, then the offender has to wait until a judgment is reached before replevin or conversion can be addressed. This section, he noted, is an effort to provide some order to the process.

According to Atty. Kravitz there is a good faith owner defense to *some* proceeds, yet §2981.03(C)(1) makes civil actions unavailable.

Mr. Anderson suggested that the language "shall not be released unless good faith owner basis is provided" could be added to (C)(1).

Atty. Kravitz preferred to strike (C)(1).

Atty. Bill Gallagher agreed that (C)(1) is unnecessary because (2) and (3) will suffice. The stay until the resolution of forfeiture is most likely going to resolve any attempt at conversion.

More often than not, it will be subject to a summary judgment motion by one side or the other, said Atty. Kravitz.

By acclamation, the Commission agreed to:

> **Rewrite the language on replevin, conversion, and other civil remedies in proposed §2981.03(C) as follows: Any such action brought concerning property subject to criminal or civil forfeiture under this chapter shall be stayed until the forfeiture case is resolved.**

Hardship Release of Records. At the last meeting, said Mr. Diroll, the Commission agreed that the general rule under §2981.03(D)(3) would be if property is not claimed in 15 days the defendant can seek hardship release of the property. It is accelerated to 7 days for mobile instrumentality.

Atty. Gallagher had suggested having a faster time for release of a computer used in business, or at least its files. Mr. Diroll said this is addressed in new §2981.03(D)(5).

It is a rare case, said Atty. Kravitz, where a claimant would be unable to copy computer files, with the exception of files that constitute contraband (such as obscene material). He believes that access to files should be allowed, except for contraband, in order to prevent a complete loss of business in some cases.

It takes time to determine what is contraband, said State Highway Patrol Capt. John Born. Some people try to destroy the files before that determination can be made.

Judge Griffin feels it should be expanded to cover all business records, *e.g.*, Food Stamp cases.

Atty. Gallagher cautioned against making the provision too burdensome.

Capt. Born suggested a time frame of "as soon as practicable".

In 99% of the cases, said Atty. Kravitz, the defendant is able to meet with an attorney and figure out a way to copy necessary files. He has never seen a need to run to court for this access. He noted that there is a burden on law enforcement to get it done quickly. Besides, he said, it is necessary to have the records to charge the offense. He feels the provision should also include non-computer business records.

Capt. Born recommended deleting the language "within the thirty day period" and retaining "as soon as practicable" in §2981.03(D)(5).

By acclamation, the Commission agreed to:

> **Authorize within proposed §2981.03(D)(5) an opportunity for a person to recover non-contraband business, personal, and governmental records "as soon as practical".**

S.B. 2 ISSUES

Consistency. Noting that several judges are concerned about some issues regarding the implementation and application of S.B. 2, Chief Justice Moyer introduced Sixth District Appellate Court Judge Richard Knepper.

Judge Knepper reported that he and Lucas County Common Pleas Court Judge Robert Christiansen were appointed by the Common Pleas Judges Association and Court of Appeals Judges Association to co-chair a committee to review any problems that have crept up in applying and implementing S.B. 2.

He said that the two judges intend to make recommendations to the associations. The associations, in turn, will determine whether to adopt a resolution. He pointed out that, at this time, there is no direct recommendation from either association.

The primary issue, he noted, involves §2929.11(B) regarding consistent sentencing and, more specifically, the last line of the paragraph which states that a sentence must be "consistent with sentences posed for similar crimes by similar offenders". The statute does not explain whether this consistency is to be with other sentences within the same county, same district, or entire state.

As a result, the November 2000 case of *State v Williams* created turmoil in his district. In it, the Sixth District Appellate Court said that sentences from each Common Pleas court in the district must be consistent with sentences from other courts in the district.

Judge Knepper feels the consistency principle is superfluous and recommends eliminating it. He noted that the rest of S.B. 2 spells out requirements when needed and even step-by-step procedures for the judge to follow in determining a sentence, except in this area. If sentencing is expected to be consistent, then someone must determine if that is to

be with other sentences within the county, district, or state. Once that determination is made, he asked, how are the judges to get the necessary information to know if the sentence is consistent? He believes that, since consistency is clearly one of the goals of the Revised Code, it will be achieved by sentencing judges following the Revised Code. His recommendation to the Court of Appeals Judges Association will be to delete that portion of §2929.11(B).

Judge Christiansen, reported that, under the direction of Bob Ringland, President of the Common Pleas Judges' Association, the Association members are examining the matter but do not yet have a formal recommendation to offer. They welcome any feedback from the Commission.

It would help to get an opinion from the Judges' Associations, said Chief Justice Moyer, if they want assistance from the Commission to recommend a change in language to the legislature.

The Judges' Associations are just opening up dialogue with the Commission at this point, said Judge Knepper. This topic is scheduled to be on the agenda for the March meeting of the Common Pleas Judges' Association, said Judge Christiansen.

Atty. Kravitz asked if the disagreement was basically over the universe of cases to be compared for consistency.

Judge Knepper responded that, at least in the Sixth District, there is disagreement regarding the universe of cases to be compared. He personally believes that, if judges are expected to follow State guidelines in sentencing, then those sentences should be compared statewide. He feels that, if all judges are following the same guidelines, it should result in statewide consistency.

Consistency does not mean uniformity, said Mr. Diroll. He asked if the judges wanted more guidance as to what consistency means.

Judge Griffin remarked that there have been very few cases on the consistency issue statewide.

On a similar note, he remarked that Mr. Rauschenberg, was working on a pilot project in Cuyahoga County to develop a database for comparing sentences and for better enabling courts to sentence with consistency.

The cases are just starting to come forth, said Judge Christiansen.

Mr. VanDine reported that, when he has been asked about what consistent sentences are for certain crimes, he responds that there is no database available to explain that. He pointed out that sentences will differ among districts because judges in rural areas will generally sentence differently than those in the cities.

Judges Knepper and Christiansen agreed to continue working toward a solution and recommendation.

Specific Prison Term Warning. Corey Schaal, representing the Judicial Conference, reported that Judge Schweikert of Cincinnati has asked if a judge is to give a specific sentence for violating community control, or if a range can be stated.

The first issue, said Judge Griffin, is that the judge must tell the person what sentence he/she is being given at the time of any plea and at the time he/she is placed on community control. The second issue is that, when the judge tells the person, at the time the offender is placed on community control, what the sentence *could* be, and must justify it. It is best, he said, to state the maximum possible and the possible consequences if they violate. The statute is clear, he contended, but some judges are not reading it and getting reversed.

A judge needs to be consistent in what is stated on record at the time of sentencing and what is done later, said Judge Bressler.

Atty. Kravitz expressed concern about a judge stating that he could impose the maximum for a violation of community control when he is about to put them on community control instead of jail.

If the offender violates community control, Judge Bressler declared, then that offender is no longer before the judge as a first time offender. The judge has to justify the sentence when it is actually imposed, not when it is a warning.

In S.B. 2 training, said Atty. Gallagher, everyone was told that there would no longer be suspended sentences, but this sounds very similar to suspended sentences.

Chief Justice Moyer suggested having a committee examine these issues regarding judges not following statute on violations of post-release control. Judge Griffin, Bob Lane, and Pros. Don White offered to serve on the committee.

H.B. 327 Issue. DRC Staff Attorney Jim Guy addressed the Commission about some concerns regarding portions of H.B. 327, which adjusted S.B. 2 language. He said that S.B. 2 contained a provision that allowed a judge to impose an additional prison sentence for a post-release control violation in addition to a new sentence for the new felony that might have been the violation. The provision was buried in post-release control statute and so rarely used that it was decided, through H.B. 327, to move the provision into sentencing statute under §2929.141.

In an effort to clarify the language, H.B. 327 deleted language for those on parole. The General Assembly reinserted that language. As a result, the judge has the power to revoke parole, but provides no guidance on what can be given for violation of parole. He feels it will be challenged on appeal (based on separation of powers). DRC wants to head that off before it happens.

According to Judge Griffin, judges like the change. It makes the judges' job easier.

The additional parole time is being used as a plea bargaining tool, said Judge Bressler.

Victim Representative Sharon Boyer asked how this would affect domestic violence, wondering if the offenders would receive any extra time.

The domestic violence offender will be held accountable either way, Atty. Guy responded.

Under new law, said Mr. Diroll, a felony domestic violence offender has a greater chance of serving more time, for both the new felony and for violation of parole.

The issue, said Judge Griffin, is who handles the parole violator.

FORFEITURE REVISITED

Prohibition Against Diminishing Property. At the previous meeting, the Commission discussed whether there should be a sliding scale of penalties instead of a flat F-3 for destroying, hiding, or diminishing the value of property subject to forfeiture.

In response, Mr. Diroll drafted indexed penalties, using the sliding scale in theft law, when the property is diminished. But he left the F-3 (based on the penalty for tampering with evidence) when the offender interfered with government's attempt to take custody. He asked whether the sliding scale penalty should be indexed to the value of the property or the amount by which its values was reduced.

Atty. Gallagher thought the value of property as a whole would be used to determine how harsh the penalty should be, just like a theft offense. However, he felt that the sliding scale should apply not only to diminishing, but to the interference prong of the offense too.

According to Mr. Anderson, the parts dealing with intentionally impeding government officials to prevent seizure of the property, were seen differently than diminishing.

Atty. Kravitz warned that defendants need to be provided notice that this statute exists.

The interfering and diminishing aspects were originally put together, said Mr. Anderson, based on Federal law (CAFRA). The 5 years under CAFRA tracks to our F-3 penalties.

Atty. Kravitz declared that, if the radio of a car is damaged, it is not fair to treat it the same as $50,000 damage to the car.

The value of property is easier to find and easier to prove, Capt. Born contended, rather than the value the property was diminished.

After being seconded by Public Defender Yeura Venters, the Commission unanimously approved the resulting motion offered by Atty. Gallagher.

By acclamation, the Commission agreed to two motions to:

> **Based on the value of the forfeitable property, set penalties for any violation of proposed §2981.07 (the offense of interfering with, or diminishing, forfeitable property) on a sliding scale tied to the theft statutes.**

Right to Jury Trial. If the defendant exercises the right to a jury trial, but decides to waive the jury after a finding of guilt, Mr.

Diroll noted that Pros. White earlier asked if the prosecutor could then object to the waiver.

It is usually handled at the same time, said Judge Bressler.

According to Atty. Kravitz, this issue will only apply if cases are bifurcated.

Pros. White said he would set the issue aside for now.

Municipal Forfeiture Ordnances. Toledo has municipal forfeiture ordnances, said Atty. Madigan. He suggested that an anti-preemption statement is needed so that those do not get overlooked.

Vote on the Package. The Commission unanimously approved Judge Schmitt's motion, seconded by Judge Griffin:

> **To adopt the Forfeiture Proposal as amended and send it to the General Assembly.**

REENTRY

Mr. Rauschenberg introduced some of the people who have been active on the Reentry Committee. He then explained that the latest Reentry draft is designed to allow judges, who choose to participate, to get more involved in post release control. It intends to gain access to sanctions which are available to judges, but not to the Adult Parole Authority (APA), such as CBCFs.

The Committee, he noted, has been examining many reentry issues, including constitutional issues, how to use transitional control as a step-down mechanism to fit within the model, and how to make risk and needs screening instruments and assessments available earlier in the process for use by courts at sentencing. Another concern involves barriers to reentry for offenders, such as voting, holding office, serving on juries, restrictions of occupational licenses, etc.

§2967.131, in current parole law, allows a judge to be involved in parole release conditions, including supervision and violation, but not release decisions.

The Committees is looking at having the court handle the parole violation in the same manner as the Parole Board handles them.

The meat of the Committee's proposal to date, said Mr. Rauschenberg, deals with the post-release control statute from S.B. 2 (§2967.28). There are two types of PRC now, he said: mandatory PRC and discretionary PRC (decided by agency rule). If discretionary PRC is chosen, the court would have 21 days to respond if it wanted to be actively involved in reentry. He noted that the rules on who gets on post release control are separated from the conditions.

Common Pleas Judge James DeWeese noted that S.B. 2 gives judges and the community an opportunity to develop and use various program resources.

Mr. Rauschenberg reported that DRC has worked closely with the Reentry Committee on this.

According to DRC's Ed Rhine, new language may be needed to make clear the relative roles of the court and the Adult Parole Authority.

Representing the Chief Probation Officers' Association, Gary Yates remarked that Richland County has a unique set up to track an offender through the reentry process, particularly since offenders are kept in nearby prisons. He feels this may be difficult for other jurisdictions.

Candy Peters, representing the Office of Criminal Justice Services, said that the Committee is struggling with how to set it up without having a new Reentry Court specified in state statute.

Judge Griffin wondered about the impact of judicial involvement on public safety.

For Richland County, said Judge DeWeese, it has meant a serious reduction in recidivism, from around 40% to 4%. He believes that this is because the offenders know they have to appear before the judge on a regular basis. Plus, by reporting to a court, it provides an additional opportunity for the system to address special needs of the offender. He noted that the community and media have been strongly supportive of the program because of the results they see.

Ed Rhine proudly noted that DRC and the Richland County Court of Common Pleas share decision making around case management. That combined leverage and reinforcement along side shared conditions of supervision has been instrumental in producing some very significant outcomes.

Noting that Judge Griffin sentences about 700 people per year in Cuyahoga County, Atty. Kravitz asked Judge DeWeese about his docket size, particularly since the reentry program can be time intensive.

Judge DeWeese said he sentences 400 to 450 people per year. He pointed out, however, that Cuyahoga County has a 35 judge court while Richland County only has 2 Common Pleas judges and less support services.

That is why the Committee recommends allowing the courts to elect whether to use the reentry format, said Mr. Rauschenberg. It would also allow the courts to focus on types of offenses or issues such as drug addiction or mental health issues.

Judge Schmitt asked about resources. Are they available, and, if not, how can they be set up and funded?

The intent, Mr. Rauschenberg responded, is to use resources that already exist.

Ms. Peters pointed out that, regardless of whether the offender is released under post-release control or parole, the APA would still do the supervision.

Mr. Rauschenberg said that the Reentry Committee will continue to meet on this while it also addresses other issues.

FUTURE MEETINGS

Future meeting dates for the Commission have tentatively been set for March 20, April 17, and May 15.

The Reentry Committee is scheduled to meet at 2 p.m. on February 6 at the Office of Criminal Justice Services in Columbus.

The meeting adjourned at 1:45 p.m.