

**Minutes of the
OHIO CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCING ADVISORY COMMITTEE
April 16, 2009**

MEMBERS PRESENT

Common Pleas Judge Jhan Corzine, Vice-Chair
Paula Brown, Ohio State Bar Association Delegate
Municipal Judge David Gormley
Mayor Michael O'Brien, City of Wooster
Appellate Judge Colleen O'Toole
Municipal Judge Kenneth Spanagel
Sheriff Dave Westrick
Steve VanDine, representing Rehabilitation and Corrections
Director Terry Collins
Timothy Young, Ohio Public Defender

ADVISORY COMMITTEE MEMBERS PRESENT

Eugene Gallo, Executive Director, Eastern Ohio Correctional Center
Lynn Grimshaw, Ohio Justice Alliance for Community Corrections
Shirley Pope, Correctional Institution Inspection Committee
Jim Slagle, Attorney General's Office

STAFF PRESENT

Courtney Cunningham, Legal Extern
David Diroll, Executive Director
Megan Tonner, Legal Extern
Cynthia Ward, Administrative Assistant
Shawn Welch, Legal Intern

GUESTS PRESENT

Chrystal Alexander, Office of Criminal Justice Services
Sara Andrews, Dept. of Rehabilitation and Correction
Jim Brady, concerned citizen
Brad DeCamp, Dept. of Alcohol and Drug Addiction Services
Monda DeWeese, SEPTA Correctional Facility
Jim Guy, Dept. of Rehabilitation and Correction
Bob Lane, State Public Defender's Office
Irene Lyons, Dept. of Rehabilitation and Correction
Jewel Neeley, Deputy Director, Dept. of Alcohol and
Drug Addiction Services
Scott Neeley, Dept. of Rehabilitation and Correction
Phil Nunes, Ohio Community Corrections Association
Paul Teasley, Hannah News Network
Melissa Wheeler, Dept. of Alcohol and Drug Addiction Services

Common Pleas Court Judge W. Jhan Corzine, Vice-Chair, called the April 16, 2009, meeting of the Ohio Criminal Sentencing Commission to order at 10:10 a.m.

DIRECTOR'S REPORT

Executive Director David Diroll reviewed the meeting packets, which included: a memo from him to the House Finance subcommittee regarding earned credits and other sentencing topics; a final report from extern Andrea Clark on the use of "technocorrections" in the courts; new judicial and legislative updates; and minutes from the March meeting.

As Director of the Correctional Institution Inspection Committee, Shirley Pope was welcomed as the newest member of the Criminal Sentencing Advisory Committee.

We know that eventually H.B. 1—the biennial budget bill—will become law, said Director Diroll. The issue is whether substance abuse and prison issues will be moved to another bill or set aside for study. Sen. Seitz's bill, S.B. 22, might become the vehicle for these things. S.B. 22 includes earned credit and changes in nonsupport law. It recommends raising the felony theft threshold from \$500 to \$750 but may raise it to \$1,000. Dir. Diroll added that this would help ease the prison population, but may concern local jails and retail merchants.

SEXTING

Legal intern Shawn Welch reported that H.B. 132 was introduced Monday to address "sexting," which could result in felony dispositions for teens and force them to register as sex offenders. Several cases have been reported across the nation in which teens send nude photos of themselves to friends. Sometimes the photos are forwarded to others. A few teens in Pennsylvania and New Jersey face prosecution and an 18-year old in Florida already received a felony conviction and must register as a sex offender for 25 years. Each state handles the situation differently. Mr. Welch distributed copies of the bill. He explained that it only covers minor-to-minor "sexting" and would reduce the level of the dissemination to a misdemeanor.

The bill creates a status offense, said Dir. Diroll. Thus, an adult who forwards the photos still comes under the current felony offense.

Judge Corzine pointed out that the bill includes "receiving" such a photo as a misdemeanor.

This raised concern for Defense Attorney Paula Brown since a person generally does not know what is included in a text message until it is opened. This could lead to many innocent teens being charged for an action they did not knowingly commit.

Lynn Grimshaw, representing the Ohio Justice Alliance for Community Corrections, reminded everyone that the *mens rea* standard of recklessness would still have to be proved.

"Sexually explicit" is not defined in statute, said Dir. Diroll.

Representing the Ohio Attorney General's Office, Atty. Jim Slagle responded that statute defines "nudity" as a "graphic display of or

focus on the genitals". He argued that if the current law already covers adults for this offense, then it already covers juveniles as well because it specifically says "no person shall ...".

The question, said Dir. Diroll, boils down to whether these juveniles should get a break because they are under the age of 18, resulting in a reduced penalty, or, more broadly, whether it should be a crime at all.

OHIO DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES

Overview. Deputy Director Jewel Neeley of the Ohio Department of Alcohol and Drug Addiction Services offered to address the impact of alcohol and other drugs on Ohio's criminal population. She said the mission of ODADS is to provide statewide leadership in establishing a high quality of alcohol and drug addiction prevention and treatment and recovery services for all Ohioans.

ODADAS was established in 1989. It is one of only four alcohol and drug addiction cabinet level departments in the nation. ODADAS works with local drug and alcohol mental health services boards, service provider agencies, state associations, support systems, and others.

There is at least one certified service provider in each county, she noted. In FY 2007, 99,314 Ohioans received publicly funded treatment services. Of them, 11,092 were adolescents. Drugs for which people received treatment included alcohol, marijuana, crack cocaine, and heroin. She said the use of heroin is on the rise. Among adolescents, drugs of choice include marijuana, alcohol, crack cocaine, and heroin. She emphasized the need to continue services once they leave.

ODADAS works closely with DYS, DRC, and the 79 drug courts throughout the state, helping to reduce recidivism rates, increase safety, foster family reunification, and make reentry a reality, she claimed.

She noted that there are two therapeutic communities. The men's program at Mansfield serves 250 annually and has a low recidivism rate of 14%.

ODADAS is the largest funding source for drug courts in the state, funding 23 of these specialty dockets. Approximately 1,500 clients were served by drug courts in FY 07.

The 17 TASC (Treatment Alternatives to Street Crime) programs served approximately 10,000 adult and 2,000 juvenile offenders in FY 07.

45% of the clients referred to treatment come from the criminal justice system. 2/3 of those in the treatment system are indigent and uninsured. Since ex-offenders do not qualify for Medicaid, and usually have no other insurance, they generally are at the end of the line for service. Those with Medicaid are helped first. The waiting list ranges from 2 weeks to 2 months. Since most offenders in prison are there because of alcohol and drug issues, ODADAS continues to work to expand services, particularly since drug treatment reduces drug use and crime.

Under a federal grant, ODADAS provided services to over 3,054 persons who would not have been served otherwise, due to lack of funding.

Addiction. Brad DeCamp reviewed the scientific aspects of addiction, noting that the growth in medical technology affords better information on the impact of drugs on the brain and the long term affects. Brain imaging reveals changes taking place due to drug use. He pointed out that all drugs have an impact on the brain's "reward center."

"Addiction" is defined as a chronic relapse of brain disease that is characterized by compulsive seeking and use, despite the harmful consequence. The compulsion to seek the item eventually outweighs the ability to make sound judgments and memory capabilities. The chemical of choice begins to interfere with the natural chemicals in the brain to the point of rewiring the brain and inhibiting the ability to make sound decisions. As the brain grows and develops through the teen years, a teen's use of illicit drugs interferes with this natural development, especially the prefrontal cortex which handles decision making and impulse control. The drugs stunt the natural growth.

Drugs increase dopamine, which induces pleasure and reward sensations, to the point of flooding the brain. When the drug floods the brain with dopamine, the brain responds by making an adjustment. The brain eventually reaches a level where it can no longer regulate the amount and begins to continuously crave more.

All drugs of abuse target the brain's award system by flooding it with dopamine. When stimulants, such amphetamines or cocaine, flood the system they interfere with the normal recycling of natural chemicals within the brain. Marijuana and heroin tend to mimic neurotransmitters and create sequences that fool the brain into doing things it would not ordinarily do when the regular balance of chemicals is maintained.

Over the long term use the drugs change the balance of cravings and tolerance levels of dopamine and glutamate, resulting in a significant loss of memory over time.

Effective Treatment. Because most addicts tend to enter the system with multiple problems, treatment programs must have a multi-disciplinary approach to be effective. The average client will have social, medical, vocational, and legal needs in addition to the addiction needs.

A successful program, said Mr. DeCamp, will have a cognitive behavioral approach to treatment services in order to identify what the triggers are in that person's life. The successful program should also include motivational incentives, to provide positive reinforcement as the client makes progress, and motivational interviewing which helps to build rapport between the client and therapist. He noted that the outcome of treatment often depends heavily on the trust between the client and therapist. Group therapy is a valuable tool to include since it helps with accountability. He claimed that successful drug treatment programs cut the rate of drug abuse in half and arrests by 64%.

Many people assume that, if a drug abuser completes treatment then is later found to be using again, it denotes failure. Relapse, he declared, is generally expected but will gradually diminish.

Assessment, he said, is a key piece of the treatment process, particularly since most clients use multiple drugs. It is necessary to find out the full range of drugs being used so that treatment is not

limited to only the most obvious drug of choice. The assessment also provides an opportunity to find out other issues in the client's life that need to be addressed, such as housing or family issues.

Judge Corzine asked if the programs are required to provide recidivism statistics as part of the certification process.

The programs, Mr. DeCamp responded, are certified through a 3-year process using numerous measures, including outcome data, abstinence, legal involvement, housing and vocational measures.

Appellate Court Judge Colleen O'Toole asked how often a recovering drug abuser should be expected to relapse.

Deputy Director Neeley responded that the longer the treatment program, the better the chance the client will not relapse. Making sure the client has access to an extended recovery support system after release makes a huge difference. This is why it is important to assist the user in getting socially reconnected, while also addressing housing and vocational needs and keeping a viable recovery support system in place.

It might be time for the court to consider more than a dirty urine test, said Judge O'Toole, to warrant imposing additional prison time for a probation violation by a drug abuser.

Mr. DeCamp pointed out that brain imaging reveals that, although long term abstinence offers some return of lost brain function, the brain never totally returns to what it was before

State Public Defender Tim Young asked about how many people need treatment and don't get it, and the average cost of treatment.

According to Mr. DeCamp, of roughly 250,000 people needing treatment in 2007, ODADAS was able to treat more than 99,000. He noted, in tracking recidivism, ODADAS looks at the client's legal involvement in a 30-day context, so it is not very far past discharge. The average cost was \$1,500 per person treated.

Since the numbers of rearrests and recommitment to prison differ, precise measures of recidivism are important, said Dir. Diroll.

Warren Mayor Michael O'Brien asked if there is any source that groups data from all treatment agencies, public or private, including pain management services. He expressed concern about emerging drug trends that reveal an increase in abuse of certain prescription medications.

ODADAS tracks referral sources, nothing beyond that, Mr. DeCamp said.

The research department of ODADAS, said Deputy Dir. Neeley, has begun to look at the increased overuse of prescribed medicines.

Oxycotin addiction led to armed robberies of pharmacies, said Mayor O'Brien, and it is not always the result of illegitimate use. Sometimes it stems from use that began with a prescription and led to addiction.

Airlines, the military, numerous businesses, and health care programs offer various types of preventive programs, said Atty. Grimshaw. He

wondered what is available to prevent teens from trying drugs in the first place. Other than spending millions to make treatment programs available after a person reaches addiction, he would like to know what is available to prevent the first step toward that addiction.

Judge Corzine remarked that you can predict which kids are most likely to use drugs by looking at who is smoking cigarettes at an early age.

Referring to the information about ODADAS clients, CBCF director Eugene Gallo noted that alcohol appears to be the drug of choice for 19% of the adolescents and marijuana is the choice for 53%. Arguing that the war on drugs was lost long ago, he wondered if it might be helpful to look at other countries that have decriminalized some drugs.

Atty. Young declared that addiction rates are largely independent of drug laws, education, increased penalties, *etc.*

Judge Corzine stressed that addiction differs from first time use. Addiction is a hard-wiring in the brain. Any treatment program will have a higher success rate for users than addicts. You can't legislate a reconfiguration of someone's brain chemistry.

Atty. Brown asked about how genetic components are addressed, such as a family history of addiction. She stressed that addicts need to be recognized as having a disease and relapse should be expected as part of the healing process before expecting them to be substance free. She asked if any one substance has more relapse than another. She had been told by one facility that over a 5-year period the relapse rate can be as high as 90%. She had expected it to be more like 50%.

There is no real good answer, Mr. DeCamp said. He noted that often, in an attempt to come off one drug, the person turns to another to cope.

Judge Corzine said that he had been told that with successful treatment for cocaine and heroin addicts, the relapse is generally 30% to 38%.

A lot depends on the support system and the family environment as well, said Deputy Dir. Neeley.

Noting that drug treatment programs differ greatly throughout the state, Phil Nunes asked if ODADAS treatment programs mandate the incorporation of a cognitive behavior track or holistic approach to case management and linking services.

Most of those are already used, Mr. DeCamp declared. He pointed out that a thorough assessment includes looking at the different domains, such as the user's living situation. That provides a better picture of the triggers in the user's life and what skills are needed to cope.

Mr. Nunes praised the "Access To Recovery" program, which provides treatment and recovery services to adults who re-enter communities from prison. He recommends mandating baseline standards for those who deal with the criminal justice population. He asked if ratcheting up or reducing sanctions has an effect on deterring drug use.

The key, said ODADAS Legislative Liaison Melissa Wheeler, is whether they're getting access to treatment. That leads to the question of

whether they will have greater access to treatment with a longer prison sentence or with a community sanction.

Is there any way genetically, asked Judge O'Toole, to identify a person's potential for substance abuse?

That capability is not yet available, Mr. DeCamp responded. He pointed out that drug users are often using multiple substances so the challenge includes how those drugs interact with each other as well as how they affect the individual's chemistry within the brain.

DRC Research Director Steve VanDine remarked that DRC would like to see more opportunities for intervention in lieu of conviction. He noted that DRC pushed for an expansion to make more people eligible. ODADAS, however, seems to be uncomfortable with that unless more money is made available for treatment. As a rule, courts won't shift an offender to community control if there isn't a slot available for treatment.

The community-based system is overburdened and over capacity, just like the DRC system, said Ms. Wheeler. Increasing the programs does not assure that there will be enough additional slots open to accommodate those from DRC. Most people in ODADAS programs are indigent and do not have Medicaid eligibility, so they get put to the back of the line

Atty. Bob Lane, from the State Public Defender's Office, declared that \$1,500 for community-based treatment through ODADAS compared to \$25,000 for incarceration implies that treatment in lieu has the capability to save the state a significant amount of money.

If there are no treatment programs available in the community for the drug offender, then Judge Corzine acknowledged that he, like most judges, will send the offender to prison. He argued that it does not cost \$25,000 for everyone person in DRC, however.

Atty. Lane would like to see the Sentencing Commission advocate for more effective in-community treatment programs.

F-4 and F-5 drug offenders, said Mr. VanDine, serve an average of 220 days in prison.

Mr. Nunes contended that we cannot let the issue of money deter efforts to try. He contended that the General Assembly doesn't consider money to be an issue when it passes laws getting tougher on crime and increasing the prison population.

Mr. VanDine countered that many bills don't pass because of cost.

DRC has asked for an extra \$10 million for community corrections in the new budget, said DRC Legislative Liaison Scott Neeley.

In response to a question from Dir. Diroll, Ms. Wheeler said General Revenue Funds account for 20% of the overall ODADAS budget. 40% of the money used for treatment comes from federal block grants. In pending H.B. 1, the ODADAS budget has a 1% overall reduction from the FY 09 actual. The FY 11 budget will have a 2½% increase over FY 09 actual because of an additional \$2.9 million in federal stimulus money. She said there has been an 18% reduction during this current biennium.

Deputy Dir. Neeley reported that ODADAS is attempting to bring in more federal money to address criminal drug issues in Ohio.

Recognizing that many drug offenders get relatively short prison terms and the difficulty that presents in getting them into treatment programs, Dir. Diroll asked about the length of the waiting list and how many people are getting into the prison programs.

DRC receives approximately 6,400 F-4 and F-5 drug offenders per year that average about 62% of a year in prison. He admitted that most are not getting into any meaningful treatment program. Offenders with the longest sentences have the best chance of getting into a program.

Judge Corzine argued that cognitive therapy tends to be more effective than therapeutic communities favored by ODADAS.

According to Mr. DeCamp, many of the therapeutic communities include cognitive based intervention.

The average length of stay in therapeutic communities, said Deputy Dir. Neeley, is 12 months for men and 15 months for women.

The most effective will include 90 days in an intensive program and 90 days in a halfway house, said Mr. DeCamp. The longer they are in the program, the more effective the results. 12 months seems optimal.

DRC is trying to come up with better programs for the short term inmates, said Mr. VanDine.

In prison you have a captive audience, said Atty. Slagle, so it is easier to get them to the program.

If drug abusers return to the community with no treatment then it is still a drain on resources because of recidivism, Mr. Nunes contended.

If intervention in lieu of conviction were to be expanded, Dir. Diroll asked it there might also be money diverted to follow those people into the community, since it save the expense of housing them in prison.

According to Mr. VanDine, if all F-3, F-4, and F-5 drug offenders were diverted to treatment outside of DRC, it would only reduce the prison population by about 4 or 5%, providing only marginal savings for DRC.

Of the \$10 million requested by DRC for community programs in the new budget, Mr. Nunes understands that \$3 million will go to CBCFs, which will free more DRC beds. He remarked that there are jail and prison diversion funds that will be allocated for more treatment at the local level. If the new budget is approved, there will be additional funds to help absorb large numbers of people into treatment programs.

After lunch, the Commission approved the March minutes after correcting an error to identify Judge Gormley as a municipal court judge, not a common pleas court judge.

DRC's APPROACH TO DRUG VIOLATORS

Sara Andrews summarized how DRC determines the appropriate level of response to violations of supervision while on parole or post-release control supervision. She explained that a sanction grid is used which takes into account the risk of the offender and the severity level of the violation. Violations involving weapons, physical bodily harm, sexual misconduct, and leaving the state without permission result in mandatory hearings and are not addressed on the sanction grid. Other violations are classified as high severity or low severity violations.

The sanction grid is based on 4 graduated levels of sanctions: 1) The Unit Sanction that may be imposed by the APA Unit under which the offender is currently on supervision; 2) A summons to the Parole Board is a new sanction developed to keep the Parole Board involved in the offenders' lives after release; 3) The out-of-custody hearing, which is a formal violation hearing, used for non-violent violations that occur outside of a jail or prison; and 4) The in-custody hearing, which is typically the last step on the grid used for offenders who have committed a serious or violent violation, and/or have exhausted all possible community resources.

She explained that the premise behind the sanction grid is to keep offenders who are have non-violent violations in the community as long as possible to assist their reentry to society. It also brings the Parole Board back into the lives of offenders who were released by the Board in a non-threatening manner but in a way that reinforces the rules the offender is expected to live by. She contended that offenders who present a high risk to the community and commit high level violations are given very few opportunities before a prison sanction is imposed, while offenders who are a very low risk to the community and who commit low level violations will be given many chances to correct their behavior with the assistance of Adult Parole Authority staff.

Ultimately, she said, once the offender has progressed through the system and the grid, the end result is a violation hearing that is conducted locally by a Parole Board Hearing Officer. That hearing is when prison sanction revocation can be imposed. Otherwise, at the unit level, a Unit Supervisor and Parole Officer have the ability to impose most any other sanction for a violation.

The state has seven regions, each with an average of 4,000 to 4,500 offenders under DRC supervision. DRC provides court/probation services to 53 counties. In some counties, DRC provides probation, parole, post-release control, and interstate contact supervision.

Ms. Andrews noted that APA uses methods similar to the treatment programs mentioned by Mr. DeCamp. These include how to employ supervision strategies and skills with a cognitive behavioral approach, motivational interviewing, positive incentives, and family involvement.

Regarding drug offenders specifically, there is generally a bit more leniency with drug users as opposed to drug sellers. She noted that some drug users may have a charge for drug trafficking that is based solely on the amount of drugs that was in their possession, which, in fact, may have been for personal use, not to sell. Drug sellers, she said, generally do not have a history of using hard drugs and rarely

test positive for substance abuse other than marijuana. These offenders are often under supervision for drug trafficking, having dealt in higher quantities of those drugs and were more organized in doing so. They also may have history of more violent offenses, such as felonious assault, robbery, and weapon possession or use.

There is greater effort toward getting drug users into treatment and working with them in the community. She noted that a dirty urine is not a high severity violation. The first usually means verbal admonishment.

Any time an offender is given an official response to a violation, the officer completes a sanction receipt. The officer goes over the violation with the offender, explains what the response to that violation will be, the offender acknowledges it and signs the receipt. If the offender fails to comply with the imposed conditions, he must progress through the grid again.

In addition to parole and probation supervision staff, each region has Offender Services Network staff. Those positions advise the field staff. These include chemical dependency specialist, reentry coordinators, regional service coordinators and others who make up the treatment team for that region and recommend appropriate programming.

When a low-risk offender is on his 7th sanction, Mr. Gallo asked what it means to get a Parole Board "out-of-custody" summons.

Ms. Andrews explained that a Parole Board summons is not the same as a Board hearing. An out-of-custody hearing is an administrative hearing, but a summons simply notifies the offender to report to the district office to meet with a Board staff person. It is not a hearing where revocation or prison sanction time can be imposed. It is more like a counseling session to express an interest in helping the offender to succeed under supervision. In-custody might involve placement in a county jail or reception center. An offender getting to 7 out-of-custody generally is off the grid.

A coordinated effort is made to incorporate supervision strategies that will help to reduce recidivism. Working with the program providers, referrals are made based on what they think the offender can get to while also accommodating the offender's work schedule. The offender's needs are prioritized in an attempt to address the most important needs first and progress through a more graduated approach.

Ms. Andrews noted that parole, post release control, and community control all have different circumstances, ranges, and the types of sanctions imposed. Community control is judge driven. In all efforts, the goal is to find the best means for reducing recidivism.

She stressed that the whole picture is taken into consideration, including case history, present circumstances, and program availability before deciding whether to send a violator back to prison.

Ms. Wheeler asked whether there is much interaction with Reentry Accountability Plans.

REAP is developed by case management staff, Ms. Andrews responded, at the beginning of an offender's prison term and updated when the inmate

is about to be released by formulating a Supervision Accountability Plan. The offender is given credit for participating in treatment programs in prison that had been identified as a need in the initial plan. Both plans recognize that the needs of the offender differ somewhat while in prison versus when he is released. On release, he will have additional needs related to finding a job, housing, reentering the community, and reentering an environment that may have assisted getting him into trouble in the first place. Ultimately, the Ohio Risk Assessment progresses with the offender through the system.

According to Mr. VanDine, there is evidence that for the more serious offender, if he has committed a serious violation of supervision and is moved into a program quicker, it lessens the chance of recidivism.

Ms. Andrews remarked that more information should be available soon on how sanctions are imposed at Parole Board hearings.

When assigning risk, Dir. Diroll wondered if the offender gets points in relation to the type of drug used.

The instrument used, said Mr. VanDine, does not take the type of drug use into account.

Regarding risk assessment tools, Ms. Andrews noted that the Level Service Inventory Revised (LSIR), which is a nationally known risk assessment tool, has been provided at the time of the PSI for the judges to consider at the time of sentencing. However, it does not seem to affect how the judges sentence the offenders.

Judge O'Toole believes judges would use it if instructed by statute.

Based on responses during the past several years, Mr. VanDine does not believe judges would want a statute to mandate the use of the LSIR or any other assessment tool in sentencing.

Atty. Slagle agreed that, although it is helpful as part of a PSI, it is no substitute for judicial discretion.

It is also necessary to take into account the educational factor of what those risk and needs scores mean, said Mr. Nunes. The needs score means the offender has many needs to address. People confuse that with a public safety factor. He claimed that many community correctional programs, halfway houses, and CBCFs have significantly higher recidivism rates of "low risk" offenders.

Mr. Gallo pointed out that risk doesn't always mean a risk of physical violence. He declared that sex offenders traditionally score "low risk" because they have a job, are not substance abusers, are considered reliable, and are involved in the community.

The sanction grid was implemented in 2005, said Ms. Andrews. Staff members are not necessarily happy with it but are compliant with it. Since its implementation, the high risk offenders have been able to move through the system, to where they need to be, more quickly.

Mr. VanDine presented numbers on the Adult Parole Authority's responses to substance abuse rule violations during the first year of

supervision. If the intent, he said, is to see gradually stiffer responses as substance abusers continue to misbehave, the data illustrate that. To compile the data, researchers went through the sanction grid study and pulled out people with multiple violations for substance abuse. These involve people who served prison time and, on release, were supervised through parole or post release control.

Low risk offenders with a first violation for a dirty urine received nothing more than a verbal reprimand 14% of the time and treatment referral 37.5% of the time. They only had 4.2% of a chance of ending up in a halfway house. As the offender approached a fourth violation, however, the possibility of a verbal reprimand dropped to 6%, while 18% were placed in a halfway house. By the fourth violation the rate almost doubled in terms of being placed in a program with restrictions added.

He compared this with data on F-4 and F-5 drug offenders who started under community control and ended up in prison because of a probation violation. Only 9% of the prison intake, 2,250 offenders, fit this category. They averaged 62/100ths of a year in prison. 60% entered with just the original charge and 25 entered with other drug charges. 61% had only one violation, usually mundane, such as failing to report.

Although many conditions of supervision may be imposed, it appears that no one violated more than five of them. Most violated only one rule.

As a former prosecutor, Atty. Slagle declared that most probation violators tend to get sent to prison with a stack of violations.

INTERVENTION IN LIEU OF CONVICTION & DRUG "EQUALIZATION"

When Dir. Diroll asked whether the Commission should pursue expanding intervention in lieu, Judge O'Toole and Atty. Lane recommended placing that topic at the top of the agenda for the next meeting.

Dir. Diroll noted that drug offender and nondrug offenders tend to be treated differently, not just in regard to mandatories. The general public treats nonviolent drug users less seriously than other felony offenders but the Revised Code tends to treat them more seriously at the same felony level. This, too, should be discussed.

When sending out the next meeting notice, Atty. Slagle suggested also sending out a summary of the key issues to be voted on.

Judge Spanagel asked for clarification on the bulk amount for different drugs. He suggested that perhaps the 5X, 10X, etc. of bulk should be revisited since that system was set up more than 30 years ago.

Some people look at drug abuse as a public health problem, said Judge Corzine. He noted that judges are under public pressure to do something quickly but public health officials are not under that kind of pressure. If all could admit that it is a public health problem then it should be treated as such so that judges can get on with their jobs.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for May 21 and June 18, 2009.

The meeting adjourned at 2:17 p.m.