

**Minutes of the
OHIO CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCING ADVISORY COMMITTEE
October 21, 2010**

MEMBERS PRESENT

Common Pleas Judge Jhan Corzine, Vice-Chair
Victim Representative Chrystal Alexander
Defense Attorney Paula Brown
State Representative Tim DeGeeter
Juvenile Judge Robert DeLamatre
Prosecuting Attorney Laina Fetherolf
Defense Attorney, Kort Gatterdam
Municipal Judge David Gormley
Public Defender Kathleen Hamm
Staff Lt. Kenneth Kocab, representing State Highway Patrol
Superintendent, Col. David Dicken
Bob Lane, representing State Public Defender Tim Young
Prosecuting Attorney Joseph Macejko
Mayor Michael O'Brien, City of Warren
Appellate Judge Colleen O'Toole
Director Ernie Moore, Rehabilitation and Correction
Appellate Judge Colleen O'Toole
Municipal Judge Kenneth Spanagel
State Representative Joseph Uecker

ADVISORY COMMITTEE MEMBERS PRESENT

Eugene Gallo, Executive Director, Eastern Ohio Correction Center
Cynthia Mausser, Chair, Ohio Parole Board
Joanna Saul, Correctional Institution Inspection Committee

STAFF PRESENT

David Diroll, Executive Director
Cynthia Ward, Administrative Assistant
Shawn Welch, Law Clerk

GUESTS PRESENT

Missy Adams, Chief, Bureau of Sentence Computation, DRC
Sara Andrews, Department of Rehabilitation and Correction (DRC)
Kenneth Black, Pickaway Correctional Institution (PCI)
William Blaney, Major, PCI
Brian Cook, Warden, PCI
Greg Geisler, Correctional PCI
Lusanne Green, Ohio Community Corrections Association
Karen Hargret, DRC
Carol Harris, Unit Management Administrator, PCI

Linda Janes, Asst. Director, DRC
Jenna Mann, Legislative Liaison to State Rep. Joseph Uecker
Scott Neeley, DRC
Steve Riffel, DRC
Roger Roddy, Deputy Warden, PCI
Ricky Seyfang, PCI
Paul Teasley, Hannah News Network
Greg Trout, Chief Counsel, DRC
Steve VanDine, Research Dir., Dept. of Rehabilitation and Correction
Ed Voorhies, PCI
Jenni Wessel, Deputy Warden, PCI

The October 21, 2010 meeting of the Ohio Criminal Sentencing Commission began at 10:15 a.m. with a tour of the Pickaway Correctional Institution (PCI) conducted by DRC Director Ernie Moore, Warden Brian Cook, and Ed Voorhies. They explained that PCI was a Level I & II Prison for low level offenders.

The residential buildings are set up dormitory style, with multiple bunks in large rooms. The medical facility currently houses 250 people, but has had as many as 315 people at one time. There currently are 56 inmates in wheelchairs. Twice, there have been inmates weighing over 700 pounds, requiring special accommodations. One inmate has cost as much as \$369,000 in medical care. The prison's kidney dialysis unit is the largest in the state and serves the entire prison system.

The building housing the therapeutic community (TC) drug and alcohol treatment programs holds 500 residents with 2 officers, 1 supervisor, 1 "float", 1 sergeant, and 1 additional officer. The Oasis therapeutic program is a 9 to 12 month program, boasting a low recidivism rate of 13 to 18%.

The facility includes a culinary arts program, farm, print shop, meat processing plant, and beverage processing center, allowing the inmates to earn \$3 to \$7 per day.

The average stay for a resident at this facility is 2.83 years. Placement is based on risk.

DRC TODAY

After the tour and a welcome to the Sentencing Commission and Advisory Committee, DRC Director Ernie Moore provided an overview, noting that there are currently 31 prisons in Ohio's system. The current prison population is 51,166, which puts the Ohio prison system at 133.28% of capacity. With a budget of \$1.7 billion for FY 2011, that amounts to about \$66 a day per inmate.

To keep control in a prison system, he stressed, it is important to give inmates something to hope for, such as more space, family visits, etc. This is difficult to do when the system is crowded. It also impacts the way you manage the facilities. DRC expects over 53,000 inmates by 2013 and over 55,000 by 2019.

Dir. Moore noted that California's prison system is at 137.5% capacity and has been ordered by a federal court to reduce its prison population by 46,000.

Upon arrival to DRC, 46% of the males and 60% of the females are to serve 12 months or less.

Currently, 52% of the commitments made to prison are for F4 and F5 offenses. The top six felony offenses for which people are being committed to DRC are largely nonviolent: drug possession, drug trafficking, burglary, theft, robbery, and forgery.

The goal of S.B. 2 had been to divert non-violent offenders to community sanctions and reserve the space at DRC for violent offenders. A truly non-violent offender is recognized as someone who has no violent current conviction or indictment offense, no prior felony or misdemeanor conviction for a violent (except F2 or F3 burglary) or sex offense, and no weapon involvement in the current offense. Truly non-violent offenders made up 44.6% of the prison population in 1992 and 1996. That has dropped since passage of S.B. 2 to a level of 29.1% in 2009.

There has been much discussion about the impact of the *Foster* decision on the prison population since it has resulted in an increase in the length of time to be served by many offenders, particularly at the F-4 and F-5 levels. Dir. Moore reported that without the *Foster* decision, it is estimated that DRC's current population would be between 46,000 and 47,000. That is a difference of 4,000 to 5,000 people less than the current level.

PRE-S.B. 2 AND POST-S.B. 2 INMATES

There has been speculation about the comparison of inmates serving time under the determinate sentencing of post-S.B. 2 and those under the indeterminate sentencing of pre-S.B. 2. Dir. Moore noted that 9.6% of the prison population constitutes pre-S.B. 2 cases, or approximately 5,000 offenders. 2,700 of those offenders are indefinite S.B. 2 cases serving time for violent offenses such as murder, child rape, etc. The *Foster* decision is having a greater impact on the prison population than the remaining inmates still serving indeterminate sentences under pre-S.B. 2 law, he added.

As the prison population gradually gets more crowded, DRC is seeing an increase in violent rule infractions that involves fighting more than gang activity. Violent disturbances involving four or more inmates are showing a significant increase over the last 3 years. The average age of those involved is 25.

On a positive note, Dir. Moore expressed pride in the fact that Ohio is making progress in reducing its rate of recidivism. He noted that California's recidivism rate is over 70% while Ohio's is 36%, which is well below than the national average of 54%. He credits this to Ohio's focus on rehabilitation and reentry needs as opposed to merely locking up and feeding the inmates.

DRC INTAKE AND POPULATION PATTERNS

As Chief of DRC's Bureau of Research and Evaluation, Steve VanDine offered additional insight into changes in the state's prison population. He noted that Ohio's prison population was 7,700 in 1973 and is now over 51,000. In 1983, S.B. 199 caused an increase in sentences causing a gradual increase in the prison population over the next 15 years. As the impact of these longer sentences was being felt, the Parole Board was also getting tougher during the 1980's and early 1990's. The result was an increase in the population from 40,784 in 1994 to 49,029 in 1998. That record high held for 7 years.

As S.B. 2 went into effect in 1996 and low level felons were directed toward community sanctions, the results started showing in 1999. The Parole Board soon changed their guidelines and started allowing the release of some lower and middle level felons. Together, this resulted in a drop to 44,050 by 2004. It started increasing again to 51,233 by 2009 and 2010.

New commitments from the courts dropped to 17,681 by 1998 as more low level felons were being sentenced to community sanctions rather than prison. This number increased to 29,069 by 2007; however as people were being sentenced for new offenses that were not previously categorized as felonies, such as drunk driving offenses, domestic violence, and others. It has finally started to decrease again with only 24,023 commitments from the courts in 2010.

Crowding Level and Foster. Mr. VanDine said that the average stay for an inmate during calendar year 2005 was 22.36 months. Because the *Foster* decision allows judges to sentence an offender more easily to a term that extends beyond the sentencing range, many judges are imposing longer sentences. At first glance, adding on just a few extra months may not seem like much, but the result is that the average stay for an inmate during fiscal year 2010 is 27.26 months, which is an increase of 21.9%. The prison population intake has decreased by 17.4% from FY07 to FY10 but the length of stay is longer, which, in effect, adds to prison crowding. It is estimated that DRC's current population would only be between 46,000 and 47,000, if not for the *Foster* decision. He emphasized that *Foster's* impact is not over. An additional 8,000 increase is anticipated due to *Foster*.

Growth in Some Crimes 1993-2008. It is important to note, said Mr. VanDine, that there has also been an impact from the growth in certain crimes since 1993. Some of these are crimes that were not recognized as felonies before 1993 and some of the growth is due to some shifting from one felony level to another. Some of the newer felony level offenses include domestic violence, non-support, duty to register or failure to register as a sex offender, and OVI.

There has also been a shift in the level of crimes being committed. In the year 2000, 40% of the crimes causing commitment to DRC were at the F-5 level. That decreased to 28.4% in 2006, while F-3 crimes have increased from 16.4% to 24.5%, during the same time period.

Part of the 12% decrease in low level felons can be attributed to courts that have come up with some better alternatives for lower level offenders. DRC expects a growth of over 4,500 inmates over the next 9 years, due mostly to the *Foster* changes.

6.8%, or 3,443 of the inmates, serve at least 15 years. The remaining 93.2%, or 47,437 inmates, serve less than 15 years, Mr. VanDine added.

Ohio Uniform Crime Rate: 1960-2009. In 1960 Ohio's crime rate was 1,558.8 per population of 100,000. That grew to a high of 5,447.4 by 1981 but has since decreased to 3,603 in 2009.

During the 60's, said Mr. VanDine, there was never more than 4,000 offenders entering Ohio's prison system. The increase in the prison population began in the mid 1970's. In 12 of the 20 years between 1972 and 1992 both the crime rate and prison population increased. In contrast, 3 of the 7 years from 1999 to 2006 showed a decrease in both the crime rate and prison population.

STANDARDIZED JOURNAL ENTRY; JAIL TIME CREDIT; PRC

Greg Trout, Chief Counsel for DRC, reported that there are inmates in Ohio's prison system serving time under five different sentencing codes. These range from H.B. 511, which went into effect in January 1974 and to the current S.B. 2, which went into effect in July, 1996. This creates a need for standardized language in journal entries that would compile all of the necessary information to calculate the inmate's potential release date.

Approximately 759 journal entries are calculated each week including sentence modifications, added charges, and additional jail credit calculated. These are in addition to the average 450 new admissions processed each week. There are approximately 6 inmates per week released on the day they arrive due to jail time credit mailed in after admission.

Missy Adams, Chief of the Bureau of Sentence Computation, reported that every week there are about 455 new commitments to DRC from the courts. In addition, there is an average of 38 inmates per week returning for violation of parole, post-release control, appeal bond, or judicial release. The most difficult part of computing an inmate's sentence, she noted, is in tracking down jail time credit, especially if the inmate is serving time under multiple case numbers. This challenge increases since each judge tends to have his own way of determining jail time credit.

According to Atty. Trout, information from the sheriff's departments can be inconsistent, complicating matters. He suggested an endorsement of standard language and standards for compiling jail time credit. He believes that everyone would benefit from the standardization.

Post-Release Control. There have been several cases evolving from 2004 to 2010 addressing various post-release control issues, said Atty. Trout. Under *State v. Jordan* in 2004, a judge is mandated to mention post-release control at the time of sentencing. Failure to comply necessitates a remand for further sentencing proceedings. Under *Hernandez v. Kelly* in 2006, a judge's failure to mention post release control in the journal entry now makes the PRC void. Legislation in 2006 attempted to cure the problem but an additional case in 2009 has further challenged the mandatory nature of PRC. He concluded by again emphasizing the need for standardized language for both jail time credit and post release control.

COMMUNITY CORRECTIONS ACCOUNTABILITY BASED FUNDING

After a welcome stretch, Sara Andrews, Deputy Director of the Division of Parole and Community Service, reported that in 2003 community corrections programs were evaluated for effectiveness and in 2004 new objectives were developed for further evaluation and monitored for performance as DRC's Accountability Based Funding (ABF) efforts were put into place. As the Department made hard decisions on terminating or cutting funding to underperforming programs, the Bureau of Community Corrections, in 2007, was allocated \$5 million "emergency" funds for community corrections.

The funding was distributed based on the implementation of permanent supportive housing for chronically homeless and high need offenders; expanding transitional control and special need halfway house beds; expanding female CBCF beds; implementing 7 Non-Support CCA prison diversion programs; increasing programming options for special needs offenders; and increasing jail diversions to free jail beds.

One of the most successful diversion programs, she noted, has been the Non-Support program for offenders admitted to prison for not paying child support. The program saw a 50% increase in child support payments in 1 year, which resulted in a significant decrease in prison beds.

In FY 2010 the full potential of ABF was reached, resulting in an additional \$12 million in funding to impact the prison population. As CBCFs open all available beds, and prison diversions are expanded the increase in programming and performance of the programs will continue to be measured. The Halfway House and CBCF programs are graded based on recidivism and successful completion rates. Program funding decisions and standards will be based on effective program characteristics.

WILDLY IMPORTANT GOAL (WIG)

DRC Assistant Director Linda Janes announced that Director Moore's Wildly Important Goal (WIG) is to reduce the prison population by more than 48,000 by July 1, 2013, while reducing recidivism. Strategies for accomplishing this will include: more targeted programming, increasing transitional control, and reducing the number of probation technical violators.

The focus on targeting programming should assure that inmates are placed in the most effective treatment programs with adequate evaluation and follow-up. This, coupled with using transitional control as the inmate returns to the community, should reduce recidivism by 12%. For some, that includes transitioning offenders to Halfway Houses to serve out the last months of their sentences.

She noted that there have generally been 5,000 technical violators returning to DRC per year. Among inmates released under supervision by the Adult Parole Authority, however, the rate is only 7.9%.

Everyone needs to recognize they have a role in making these three strategies work, she emphasized.

S.B. 22 AND JUSTICE REINVESTMENT

Pending S.B. 22, said Dir. Moore, has a series of initiatives that can assist the effort in reaching this goal. One initiative is an increase in earned credit from 1 day to 5 days per month. The bill would also increase the felony theft threshold from \$500 to \$1,000.

According to Mr. VanDine, the new earned credit, over time, could save 1,500 prison beds, with about 300-400 in the first year.

He noted that the Council of State Governments' Justice Reinvestment found that Ohio has three areas within the correctional system that need improvement. The first area of concern is the revolving door of property and drug offenders that are released back into the community with no supervision. Secondly, Ohio's community corrections programs have no clear criteria for determining the selection for diverting people from prison into community programs. Thirdly, the current probation system is too diversified and inconsistent because of a lack of clear standards.

Dir. Moore concluded by stating that S.B. 22 and the recommendations of the Council of State Governments, coupled with the objectives of his Wildly Important Goal should make a significant impact on Ohio's prison population and criminal justice system.

Sentencing Commission Director David Diroll thanked DRC and PCI for an efficient, informative, and enjoyable day.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for November 18 and December 16, 2010.

The meeting adjourned at 2 p.m.