

OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor
Chair

David J. Diroll
Executive Director

**Meeting of the
OHIO CRIMINAL SENTENCING COMMISSION
and the
SENTENCING ADVISORY COMMITTEE**

September 18, 2014

MEMBERS PRESENT

David Gormley, Vice-Chair, Municipal Judge
Ron Burkitt, Police Officer
Craig Jaquith, representing State Public Defender Tim Young
Kathy Hamm, Public Defender
Fritz Hany, Municipal Judge
Chad McGinty, Captain, representing State Highway Patrol
Superintendent, Col. Paul Pride
Thomas Marcelain, Common Pleas Judge
Gary Mohr, Director, Rehabilitation and Correction
Aaron Montz, Mayor, City of Tiffin
Jason Pappas, Fraternal Order of Police
Dorothy Pelanda, State Representative
Albert Rodenberg, Sheriff
Kenneth Spanagel, Municipal Judge

ADVISORY COMMITTEE

Eugene Gallo, Eastern Ohio Correctional Center
David Landefeld, OJACC
Gary Yates, Ohio Chief Probation Officers' Association

STAFF PRESENT

David Diroll, Executive Director
Cynthia Ward, Administrative Assistant

GUESTS PRESENT

Sara Andrews, Deputy Director, Rehabilitation and Correction
Trevor Clark, Rehabilitation and Correction
JoEllen Cline, Counsel, Supreme Court of Ohio
Garrett Crane, Legislative Service Commission
Bret Crow, Director, Public Information, Supreme Court of Ohio
Lisa Dodge, CORJUS
Ryan Dolan, Rehabilitation and Correction
Sean Gallagher, Appellate Judge
Steve Gray, Chief Counsel, Rehabilitation and Correction
Irene Lyons, Legislative Liaison, Rehabilitation and Correction
Ed Mejia, State Highway Patrol
Marta Mudri, Ohio Judicial Conference
Scott Neely, Legislative Liaison, Rehabilitation and Correction
Whitney Pesek, Correctional Institution Inspection Committee
Joellen Smith, Rehabilitation and Correction

Paul Teasley, Hanna News Network
Gary Tyack, Appellate Judge
Steve VanDine, Research Director, Rehabilitation and Correction
Brian Wittrup, Rehabilitation and Correction
Maggie Wolniewicz, Legislative Service Commission

The September 18, 2014 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was opened by Vice-Chair Municipal Judge David Gormley at 9:45 a.m.

Judge Gormley reported on the hiring process for retiring David Diroll's successor as Executive Director of the Ohio Criminal Sentencing Commission. The applications received were narrowed to a field of forty-eight qualified applicants, of which eight will be selected for interviews. The process is expected to remain open until the position is filled.

Dir. Diroll introduced Bret Crow as the new Public Information Director for the Supreme Court of Ohio.

DRC DIRECTOR ON "INVESTING IN PEOPLE NOT BRICKS AND MORTAR"

Escape. In response to a recent escape at one of the Department of Rehabilitation and Correction's facilities, Director Gary Mohr reported that he has asked two former deputy directors and two current ones to look at DRC's classification system and protective patrol process. He believes it is time to reevaluate some of the processes that have been in place for many years.

Reluctance to Build. One reason Dir. Mohr returned to DRC after leaving for 3½ years, he notes, was to find solutions for rehabilitating felons rather than building more prisons to house them. Although some question why DRC isn't building more prisons in response to the increase of mentally ill, nonviolent and drug addicted offenders, he does not believe construction is the answer. Dir. Mohr expressed serious concern about having another director come in and start building more prisons.

Recidivism. Although there is an increase of some types of offenders, he pointed out that they are not necessarily repeat offenders. Ohio's rate for offenders returning to prison within three years after release is now 27.1%, which is a record low for the state. The national rate is 49.7%. If Ohio had the same rate as the rest of the nation, it would mean 4,400 more inmates per year. He believes the improvement can be attributed to relationships that DRC established with communities. 78 of the 88 counties in Ohio now have reentry coalitions. This helps an offender's transition back to the community upon release from prison.

He noted that rural counties tend to have higher recidivism rates than urban counties. This is likely due to resources that enable the urban counties to put more comprehensive and robust sanctioning in place.

Recent Intake. During Fiscal Year 2014 there have been 20,120 total prison commitments. 26.23% of those are for drug offenses. Nearly 25% are probation/community control violators (almost all F-4s and F-5s). This reflects efforts of judges to place low offenders in community sanctions before resorting to imprisonment, Dir. Mohr noted.

Of the total commitments, 49.16% of those were from the six largest counties in 2012, but decreased to 42.78% in 2014. This again reflects progress made in the use of community sanctions.

Although only 26% of offenders enter prison for drug offenses, 70 to 80% of the inmates have documented substance abuse history. In fact, the number of offenders involved in opiates and heroin use has increased 415% since 2000. DRC has doubled the number of therapeutic communities for drug treatment, which is now resulting in a substantial decrease in the recidivism rates for drug offenders.

DRC Research Director Steve VanDine reported that September and October are usually the biggest intake months, but the current rate is stable.

According to Common Pleas Judge Thomas Marcelain, this is likely attributed to the fact that most courts have vacations in June, July, and August, so they are catching up during September and October.

Female Offenders. Dir. Mohr reported that there has been a 10% increase in the intake of females from 2012 to 2013. In 1974, 80 out of 100,000 Ohioans were incarcerated and 5.3 of those, or 291, were women. Today, in 2014, 436 out of 100,000 Ohioans are incarcerated and 68.1 of those, or 4,200, are women. Female offenders are typically less violent than men, but generally have a higher mental health needs, and higher rates of substance addiction.

Mid-Biennial Review Funding. As part of Ohio's Mid-Biennial Budget Review, Dir. Mohr reported that DRC was allocated an additional \$4.2 million in FY 2014 and \$8.5 million in FY 2015 for halfway houses and community based correctional facilities (CBCFs) to add approximately 400 treatment beds and increase non-residential options. This gives judges more options to divert appropriate offenders to local settings.

Medicaid Expansion. Although not universally accepted, Dir. Mohr believes that Medicaid expansion has the potential to be the single greatest catalyst for positive change in corrections because it allows systems to connect together.

He noted that 90% of the people entering jails/detention centers are uninsured. Of DRC's current population, 10,000 are on a mental health caseload. 70-80% has a history of drug and/or alcohol abuse and 90% of inmates from DRC will be eligible for Medicaid when released.

DRC releases 8,500 inmates per year back into every county in Ohio. Many have the highest level of dependency on drugs or alcohol, and have spent less than a year in DRC, meaning there has not been enough time for serious treatment levels. Dir. Mohr believes that completion of treatment should extend into the inmates' return to the community. DRC is starting to get more aggressive toward this at admission.

He stressed the need to propose medication-assisted treatment before an offender is released and to assure continuity with providers and services in the community. A problem is that there aren't enough providers, although Medicaid is willing to work with them on that.

DRC is now training inmates on the options available for continued treatment on release. Constructive case management is being put to place for the seriously mentally ill and highest risk cases.

Drug Courts/HOPE Model. The HOPE Model of drug courts uses swift and sure responses to violations of community sanctions and treatment requirements. Currently, there are 33 counties with drug courts. He believes that every jurisdiction should have access to a drug court.

Deputy Director Sara Andrews reported that DRC received a \$370,000 BJA grant for pilot programs in Auglaize, Pike, and Jackson counties, which normally do not have many resources or treatment programs available. They target offenders placed on community control who are identified as having a higher risk or need in substance abuse. The project will implement variations of the HOPE model in the three counties in an effort to determine options that will reduce recidivism while increasing successful supervision. Studies have shown that swift and certain response is vital but the question is whether the type of response is more important. Each county will implement a different sanction of electronic monitoring, residential placement, or jail placement, which will vary depending on the severity level of the violation. The pilot programs will run 15 months, she added.

Prison as Treatment Option. Since DRC has a structured setting, some people suggest it's a good place for drug offenders to get treatment, said Dir. Diroll.

Dir. Mohr responded that the Washington Policy Institute Journal conducted a study of evidence based programs and the types of settings used for those programs. It found that when the exact same program is used in both a prison setting and a community setting, the one in the community proves to be twice as effective.

Reintegration Centers. Three years ago, Dir. Mohr had introduced a three-tier system to DRC, with the top tier focusing on Reintegration Centers where the goal is to prepare inmates for reentering the community as a positively contributing member of society.

Reintegration centers keep inmates productively and socially occupied 8-10 hours per day. This focuses on evidence-based job training, self-development, atmospheres that closely resemble general society, and the inmate's transition back to the community, including contributing to the community through community service. The reintegration process involves a commitment by the inmate in 12 areas, including pro-social programming, educational programming, recovery, veteran's support, community service, residency adjustments, vocational development, understanding of victim's issues and restitution, faith based needs, family connections, and wellness issues. Since they expect the inmate to act as they would in the community, family members are included so that various adjustments can be addressed.

DRC now has 3,500 inmates in 11 reintegration centers. He believes this has the potential to possibly reduce an inmate's length of stay as the inmate demonstrates growth and contributes service to the community.

Dir. Mohr presented a video about DRC's reintegration centers. They provide institutional programs that include educational and vocation opportunities. These include horticulture, welding, machine trades, and mechanics to prepare participants for the job market. By teaming with Ashland University and an array of internships, a center has offered guidance in victim awareness and even a Braille shop.

The intention is to help residents prepare for potential release and add value to the communities to which they return, he summarized. The community service projects let them begin to give back. Training through a toy shop, tailor shop, and media studio help the offender to return with new skills, more education, and a new outlook on life, as well as a greater sense of the impact on their own lives, the lives of their families and communities.

The truck driving program has been particularly successful, said Dir. Mohr, with 70% of the participants obtaining jobs after release. This is one example of assistance from the private sector. Many joint efforts have led to direct employment for offenders on release.

Q & A. Given the low recidivism rate reported, Judge Marcelain assumed this would eventually affect the overall prison population.

The challenge, said Dir. Mohr, is to continue it. According to Mr. VanDine, it already appears to be having an impact since intake has dropped from 29,000 to 21,000.

Dir. Mohr said he is encouraged when CBCFs have waiting lists because judges want to use the programs. If judges send more offenders to the programs, they are seeing good results, he opined.

Public Kathy Defender Hamm asked how DRC is developing collaboration with judges. She wants to encourage more judges from her jurisdiction to participate.

A lot of progress has been developed through joint efforts by DRC and the Common Pleas Judges' Association, Dir. Mohr noted.

Reflecting on Dir. Mohr's desire to resist additional prisons, Eastern Ohio Correctional Center Director Gene Gallo declared that, when Reggie Wilkinson was DRC Director, he recognized that it is not a prison overcrowding problem, but a public safety problem, best addressed through rehabilitation. He appreciates Dir. Mohr's vision and success in reducing recidivism and preparing inmates for return to society.

Judge Gormley asked if DRC has been able to quantify the impact of Medicaid expansion on the budget for DRC.

Dir. Mohr responded that it has impacted their budget by approximately \$18 million. On any given day, there are about 20 DRC inmates incarcerated in the medical unit at the Ohio State University hospitals, so the Medicaid expansion has generated significant savings on hospital stays. He anticipates an additional \$2 million impact.

Regarding prison populations, Dir. Mohr remarked that a lot of states that had experienced decreases are now seeing renewed increases. Most of the increase tends to be opioid driven.

The national rate for incarceration per 100,000 is 417, said Mr. VanDine, and 448 per 100,000 in Ohio.

Greater community alternatives have helped reduce the number of F-4 and F-5 offenders in DRC, said Mr. VanDine. More targeted interventions and community policing in the urban areas have also helped.

For counties of 100,000 or less, DRC intake has doubled for female offenders, he added. The rate of women entering for a probation violation is twice that of men. The increase has also shifted regarding female offenders from urban to rural counties.

Representing the Chief Probation Officers' Association, Gary Yates remarked that, although violent crimes are down, offenders of nonviolent crimes seem to keep returning to court. This is even more evident in the rural counties and judges tire of seeing them.

INNOVATION GRANTS

DRC Deputy Director Andrews reported that, when DRC applied for federal funds to pilot a HOPE Model (swift and sure sanctions for drug-related supervision violators), it also applied for a grant through the Justice Reinvestment Initiative for a probation data depository. The hope is to get better data on those who do not go to prison. It is a statewide problem, so the information gathered will prove beneficial regarding a picture of the offender population as a whole.

She noted that DRC has received the first quarter of data from the probation improvement and incentive funding under H.B. 86 (2011). The goal of all grant participants is to reduce the number of F-4 and F-5 prison commitments and reduce community control violators.

DRC also rolled out SMART Ohio grants which grew out of the "Adult RECLAIM" discussion here and elsewhere last year. The plan originally was to offer formulary models of funding to help keep people out of prison. Instead, they created options and gave counties the ability to apply for a funding stream that would most fit their needs.

Three options were offered: 1) a formula model that provides funding for each successful probation completion; 2) a treatment services model (not formulary) that includes partnerships within the community; and 3) a model akin to the DYS RECLAIM formula, which rewards jurisdictions that do not use state facilities.

In the funded counties, the majority report that housing options are the second overall priority. Residential treatment and halfway houses are major issues. The biggest challenges facing probation services are opiates, transportation, housing, lack of staff, large caseloads, lack of resources, employment, methamphetamines, and aging infrastructure.

Dept. Dir. Andrews remarked that SMART Ohio funding is expected to be the biggest catalyst for future funding models.

Mr. VanDine said that a DRC intern has been researching this funding model as compared to the RECLAIM approach. He began by asking each county what they would do with extra money. It appears that the smaller

counties don't tend to plans as much as larger counties. Counties that develop an plan tend to have a better sense of progress made. He added that some hadn't formalized plans because they hadn't anticipated getting funding on time. The schedule encouraged swifter action.

The intern plans to concentrate on option 2 counties since their plans involve the purchase of additional services and contracts. Over time, as more money is channeled to the probation departments and courts, they will arrange more ways to get resources on a per offender basis.

DRC is trying to collaborate more with other state agencies that provide funding to counties, said Dept. Dir. Andrews, so that all sources can be best utilized, without unnecessary duplication.

In defense of smaller counties, Judge Fritz Hany pointed out that they simply set different types of goals and objectives than do the larger counties. He noted that grants tend to become an opiate for some and have many conditions attached for compliance.

Most judges have responded, said Mr. VanDine, that SMART grants have had fewer conditions than any other grants they had received.

Admitting that past efforts had treated all courts identically, Dept. Dir. Andrews remarked that this project reveals a need for more sensitivity to courts' differences.

Noting that many felonies get bumped to the municipal courts and reduce the number going to prison, Atty. Hamm remarked that municipal courts in small counties could benefit from this funding stream. She asked whether resources could be combined or if it is earmarked.

If counties want to do that, said Dept. Dir. Andrews, they should let her know since DRC doesn't want to duplicate resources.

Since so much time is involved in maintaining grant compliance, Judge Hany expressed concern that some other very effective tools and procedures may not be receiving due recognition.

Judge Ken Spanagel asked if the majority of the money goes to counties where DRC already oversees the probation processes.

Dept. Dir. Andrews explained that there are only two counties in the state that do not receive community correction money. In addition to the community correction funds listed, there are also Adult Parole Authority funds available for probation services in about 45 counties.

LEGISLATIVE PROGRESS ON OPIATE ADDICTION ISSUES

State Representative Dorothy Pelanda reported that when the House of Representatives recesses, it often has committees work on certain topics. This year they have focused on the opioid surge. They have conducted four hearings throughout the state. The last one focused on the drug epidemic from the judicial perspective.

To address opioid issues, she agrees with others that it needs to be attacked dramatically, not piecemeal. There are currently 17 opioid bills sitting in the Senate.

The House will not meet again until November 10. Since the Speaker is term limited, the House will have new leadership in January, 2015. The Opioid Committee will develop a Memorandum of Understanding in hopes of establishing a focus for the 131st General Assembly in 2015. Due to term limits, Rep. Pelanda reported that there are more than 30 seats that may change in the House for 2015.

Rep. Pelanda noted that \$6.8 million has been included in the State's budget for mental health recovery services in recognition of the direct link between mental health and opiate issues.

Among issues discussed at the hearings, judges raised concerns about mandatory sentencing that binds their hands. Many criticized the mandatory suspension of the driver's license for drug offenses, but that's a federal mandate, not state. It affects an offender's ability to get or maintain a job, attend probationary hearings, and move on with their life. She added that Gov. Kasich is involved in this issue.

ADDITIONAL COMMENTS

Since the Commission will soon have a new director, Judge Gormley suggested that it may be helpful to have that person speak to the new legislature orientation as well as the new judge orientation. He added that jail reentry programs can be helpful to municipal courts if they know about them, so getting this included in the educational process can be beneficial. In regards to higher admissions to prison from small counties, he wondered if there is a connection to jail crowding.

Regarding meaningful options for judges, Dir. Diroll focused on Dir. Mohr's mention of drug courts. Since many small counties do not have access to drug courts, he wondered if a multi-jurisdictional approach should be considered and how it could be done constitutionally.

Att. Hamm suggested using the intervention in lieu statute to allow a sharing of resources for drug offender cases since judges have no individual control over the conditions of the intervention in lieu program. It might allow jointly coordinated programming and resources.

According to Mr. Gallo, services can cross county lines, but not jurisdictional lines.

OJACC representative David Landefeld asked if there is any constitutional prohibition against multiple judges appointing a single magistrate to administer a regional program.

Using a magistrate would require legislative action, replied Judge Marcelain.

FUTURE MEETINGS

Future meetings of the Sentencing Commission have been tentatively scheduled for October 23, November 20, and December 18, 2014.

The meeting adjourned at 1:00 p.m.