

OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor
Chair

Sara Andrews
Director

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

January 15, 2015

MEMBERS PRESENT

David Gormley, Vice-Chair, Municipal Judge
Paula Brown, OSBA Representative
Ronald Burkitt, Police Officer
Derek DeVine, Prosecuting Attorney
Kathleen Hamm, Public Defender
Jaquith, Craig, representing State Public Defender Tim Young
Thomas Marcelain, Common Pleas Judge
Ed Mejia, Staff Lt., representing State Highway Patrol
Superintendent Paul Pride
Steve McIntosh, Common Pleas Judge
Aaron Montz, Mayor, City of Tiffin
Jason Pappas, Fraternal Order of Police
Bob Proud, County Commissioner
Harvey Reed, Director, Dept. of Youth Services
Albert Rodenberg, Sheriff
Steve VanDine, representative Rehabilitation and Correction
Director Gary Mohr

ADVISORY COMMITTEE

Eugene Gallo, Eastern Ohio Correctional Center
David Landefeld, OJACC
Cynthia Mausser, Chair, Ohio Parole Board
David Picken, Attorney General's Office

STAFF PRESENT

Sara Andrews, Director
Cynthia Ward, Administrative Assistant

GUESTS

Michael Buenger, Administrative Director, Supreme Court of Ohio
Jo Ellen Cline, Criminal Justice Counsel, Supreme Court of Ohio
David Diroll, Past Director, Ohio Criminal Sentencing Commission
Ryan Dolan, Rehabilitation and Correction
Lusanne Green, OCCA
Stephen Hardwick, State Public Defender's Office
Andre Imbrogno, Ohio Parole Board
Linda Janes, Asst. Dir., Dept. of Youth Services
Paige Melton, student, Miami University
Elizabeth Miller, State Public Defender's Office
Marta Mudri, Ohio Judicial Conference

Scott Neely, Rehabilitation and Correction
Whitney Pesek, Correctional Institution Inspection Committee
Kyle Petty, Dept. of Youth Services
Mark Schweikert, Director, Ohio Judicial Conference
Josh Williams, Ohio Judicial Conference

The January 15, 2015 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was opened by the new Director Sara Andrews at 9:30 a.m.

DIRECTOR'S REPORT

Director Sara Andrews introduced Jo Ellen Cline as the Criminal Justice Counsel for the Supreme Court of Ohio, who will be working closely with the Sentencing Commission on criminal justice issues and particularly legislative issues.

Dir. Andrews reported that her first focus is to fill the vacancies that exist on the Commission. She will also be sending out letters to Commission members seeking confirmation on their interest to continue their current terms. She has already sent letters to the Speaker of the House and Senate President seeking appointments of the respective members of the General Assembly. She intends to constructively confront any critics of the Commission's work to persuade them that the Commission will continue to be a voice at the table.

She is considering sending materials for future meetings to Commission and Advisory Committee members electronically, rather than continuing with the usual hard copy meeting packets. Sheriff Rodenberg would like to consider conference call meetings so that it is not always necessary to make the long drives to participate. Part of that will depend on requirements established by the Sunshine Law.

Noting that some people have questioned her continued loyalty to DRC since taking the position of Director of the Sentencing Commission, she explained that she will continue to work with DRC on some issues. In relation to that, she was appointed by the Governor to serve as a State Commissioner of the Interstate Compact for Adult Offender Supervision and was elected in August to serve as Chair of the national level of the Interstate Commerce. She will continue to serve on the Justice Reinvestment Advisory Committee, which will be useful to the work of the Sentencing Commission. She also participates in a judicial think tank which shares ideas and input and has been asked by Chief Justice O'Connor to serve on the Governor's Task Force on Community Police Relations. She hopes to utilize her seat on the Attorney General's Ohio Law Enforcement Gateway Steering Committee and Advisory Board to gain good data from a variety of sources that will be beneficial to the work of the Sentencing Commission. She will also participate in the Heroin Demonstration Project, which is a multi-agency effort to address heroin addiction. In the short time she has been director of the Commission she has attempted to establish opportunities for a multi agency resource discussion and some academic collaboration. Most importantly, she wants to hear from Commission members and other representatives on topics that the Commission should consider addressing.

DEPARTMENT OF YOUTH SERVICES

The last time that the Department of Youth Services presented an overview of their department and programs was two years ago, so Dir. Andrews asked them for an update.

DYS Director Harvey Reed reported that the Department's mission is now more reflective of its vision. They don't just work with youth, they also work with their families. The goal is to send the youth back to their communities with the tools needed to move forward.

DYS now has three facilities in Cuyahoga Hills, Circleville, and the Indian River facility in Massillon. The facility in Scioto, which was specifically for girls, was closed this past year due to its shrinking population. The population of girls also had more serious mental health issues than the staff was able to address, so the department changes the focus by sending them to a community correctional facility with a more suitable treatment program. They now have more alternative placements available for the females. The bulk of their work is now in the communities as they get the youth transitioned back into the community and closer to ongoing continued treatment.

Felony adjudications have reduced by 20.8% within three years. The average length of stay is 11 months. In spite of a budget for DYS that has shrunken along with the facilities and population, all youth exit with some type of supervision unless they have reached the age of 21. Most are on parole supervision for an average of one year.

The number of juvenile bindovers to adult court has declined since 2009. Dir. Reed attributes this to the increased efforts to address the youth's needs at the local level by offering more direct treatment opportunities. DYS continues to emphasize to the youth that where they are does not determine who they are and who they will be.

The five largest counties by population, Cuyahoga, Franklin, Hamilton, Lorain, and Montgomery, continue to provide the largest portion of the youth entering the system. 60.5% of the admissions to DYS are black, while 30.1% are white. 92.7% of the admissions are male. The majority are within the 15-18 years age range - especially 17 years old. Maturity seems to start kicking in at the ages of 18 and 19.

Admissions by Offense. Most youth tend to enter DYS with a history of abuse and neglect and many have family members who are incarcerated. Many of them have mental health issues. Many enter with fourth and fifth grade reading and math levels. The department works hard to help them achieve success in their educational efforts.

Through Restorative Justice efforts, they encourage the youth to send letters to the victim of their crime and try to arrange a meeting between them and the victim at some point so that they can understand the pain that was caused by their crime. They found that this helps the youth understand that they have the ability to become a better citizen.

Serious Youthful Offender. DYS Assistant Director Linda Janes explained that a juvenile classified as a Serious Youthful Offender (SYO) is generally a youth who is kept in the juvenile system but the judge felt

the offense was serious enough to warrant the addition of an adult portion to the sentence as well. The invocation of the adult portion is dependent upon the youth's behavior while in the juvenile system. The intention is to grant the youth every possible opportunity at rehabilitation. However, the commission of a heinous act equivalent to a felony while in YS, will trigger the invocation of the adult portion of the adjudication. By having a blended sentence, she noted, they have the right to a jury trial.

The highest number of youth committed as SYO was in year of 2003. That number was down to 19 in 2014. There were 8 and 9 youth invoked to the adult system, respectively, during 2008 and 2009.

Mandatory Sentencing Asst. Dir. Janes reported that 163, or 35%, of the current DYS population are serving mandatory sentences and the most are for gun specs that run from 1 to 3 years. 133 of those youth currently in DYS received the mandatory time for merely displaying or brandishing a firearm. After a youth has served at least one year of the mandatory sentence, the judge reviews the case for consideration for early judicial release.

Early Releases. A juvenile sentence can range from 6 months up to 21 years of age. Every youth is released to either parole or probation. If half of the sentence has been met, the youth is released to conditional parole and if less than half of the sentence is met, the youth is released to probation. During 2014 there were 95 youth granted judicial release to parole and 37 youth were granted judicial release to probation. Overall, 75% of the youth in DYS released during 2014 were released based on the standard release authority while 25% were granted early judicial release.

Challenges and Strategies. There is a lot of diversity among the youth in DYS, she reported. She noted that more than half the youth have mental health diagnosis and there is even a broader range of education needs. This makes it necessary to individualize the services to meet the needs of each youth. This involves conducting needs and risk assessments.

DYS has had a high violence level among the youth and even against staff but they are getting it under control. In the past, long-term seclusion was often used as a major tool for discipline. They now are holding youth accountable without so much seclusion. Short-term Seclusion is now used more for immediate disciplinary control but not long term discipline. Instead they take away privileges, increase meaningful activities, and keep them busy with little idle time. Contrary to expectations, as the rate of seclusion has decreased, so has the level of violence. This has resulted in safer facilities.

In the effort to prepare the youth for their return to the community and productive futures, DYS has recognized the value of education, career tests, and apprenticeships to prepare them to provide for themselves and live independently once they reach the age of 18. During FY 2014, the DYS Buckeye educational program served 727 students. 86 of those youth received GEDs and 26 youth obtained high school diplomas. In addition, 346 career certificates were awarded.

DYS was recently certified for apprenticeships. They now offer a culinary and cook apprenticeship along with apprenticeships in building maintenance, building management, landscaping, and dog training. Since the average stay for a youth in DHS is only 11 months, arrangements are made through local parole officers to enable them to complete their apprenticeships back in their respective communities.

Public Defender Kathleen Hamm asked if DHS offers any assistance or resources to local communities

Asst. Dir. Janes was proud to report that \$76 million was provided last year. That, coupled with \$3.8 million in RECLAIM money, helps to divert youth to local resources rather than DHS, and provide services in the community. To apply for that money, an agency must simply submit a grant application. A Behavioral Health Juvenile Justice (BHJJ) initiative is also available, with money going to mental health and addiction agencies. Ryan Gies, she said, would be the contact person for that.

Recidivism. Concern was raised by David Landefeld, representing OJACC, about juveniles who leave DHS and end up in the adult system after reoffending. He asked if anyone tracked the rate of recidivism.

A recidivism report is available each year, said Asst. Dir. Janes. Last year, the 1 year rate of recidivism was 26% who ended up either back in DHS or in DRC after committing another felony. The 3 year rate (committing another felony within 3 years of release) was 45%.

When asked about the recidivism rate for those in the RECLAIM programs, Asst. Dir. Janes responded that the University of Cincinnati conducted a study on some of that in 2014. Like most studies, it has generally been found that if you can keep the youth out of a residential setting and do out-patient or intensive home-based treatment instead, they achieve greater success and have less chance of returning to the correctional system. The best performing programs tend to be the RECLAIM programs.

Transition at the Age of 21. Elizabeth Miller, from the State Public Defender's Office, asked what happens when a youth approaches the age of 21. She wondered how they are prepared for reentry into the community and what is provided.

It is easy, said Asst. Dir. Janes, for the high risk youth at this point to fall through the cracks because, legally, DHS can no longer provide services, Child & Family Services declares them emancipated, and, since they have not yet had any contact with DRC, there is no assistance from that direction either. Since no one wants these youth to be left in limbo, DHS does work together with other agencies to help the youth prepare for the transition and make sure that they have mental health and housing needs met.

On the day of intake the youth is assigned to a parole office, said Dir. Reed, so that helps to put them on the parole officer's radar at the time of release. DHS also assists them with getting their student ID changed to a state ID.

Representing OCCA, Phil Nunes credited Dir. Reed with transforming the juvenile system. He agrees with the need to offer more attention to the youth who are aging out of the system, noting that they are even having an impact on the homeless community. He suggested that it might be an area where DRC could direct some funding for diversionary prevention. Since it appears to involve legal issues related to the age factor, he encourages placing that as a priority for possible legislative changes.

According to Atty. Hamm, ODRC has started bootstrapping juveniles to some of the reentry coalitions to help with their transition back to the communities. She has noticed that some of the local service providers have started receiving additional money for transitional youth as well. She asked about the use of detention centers for juvenile delinquents.

Local detention centers are utilized by the courts as short term facilities, said Asst. Dir. Janes. They are individually run by the juvenile courts and are usually locally staffed by people with little training on how to deal with long term issues or needs. DYS is, however, seeking proposals for other local facilities for boys and is including detention centers as an option for that.

County Commissioner Bob Proud declared that RECLAIM is the only state funded nonmandate that exists.

In response to Municipal Judge David Gormley's question on whether there has been a decrease in juvenile crime, Asst. Dir. Janes acknowledged that crime is down both in Ohio and nationally. She attributes some of this to the fact that counties are making great strides by getting to youth sooner to help meet their needs before they end up in the criminal justice system. She noted that both the number of juvenile arrests and the number of juveniles adjudicated for felonies have declined. In 2007 there were 48,000 juvenile arrests, but only 32,000 juvenile arrests in 2011. The decline is greater for youth arrests than for adults.

When asked about release authority and whether very many youth are held beyond their time because of not completing programs, Asst. Dir. Janes explained that they are released at the earliest minimum date unless there are extenuating circumstances.

With so much emphasis on the rate of recidivism, Eugene Gallo, Director of the Eastern Ohio Correctional Center, remarked that there is a huge dividend for the communities for youth that benefit from the variety of RECLAIM programs. It is particularly beneficial when the judges are offered a wide variety of programs from which to choose the most appropriate treatment for a juvenile's particular needs.

Asst. Dir. Janes credited the extensive success of programs offered through RECLAIM with limiting the need for DYS facilities to the high risk juveniles for whom local programs are inadequate. DYS facilities are now reserved for the toughest youth with the greatest needs.

When questioned about reported incidents involving young men in DYS exposing themselves, Dir. Reed admitted that the action had increased in frequency. In fact, he noted that the staff had become so numb to the existence of that type of behavior that they didn't report it. The

first step to rectifying the problem was to hold everyone accountable. This included changing the mindset of the staff to prevent any further negative behavior from becoming status quo and changing the whole mindset of everyone. The key focus now is to hold the youth accountable.

JUVENILE LIFE WITHOUT PAROLE

Last year Sen. Bill Seitz sent an inquiry regarding California law S.B. 260 which addresses life without parole for juvenile offenders, said Dir. Andrews, and asked whether Ohio should consider something similar. She invited Assistant Public Defender Steve Hardwick from the Office of the Ohio Public Defender to frame the issues involved and how this relates to juvenile law in Ohio.

Atty. Hardwick noted that he has been handling life without parole (LWOP) cases for 5 to 7 years. He explained that there are three main bodies of thought regarding the application of LWOP for juveniles. *Roper v. Simmons* says that the death penalty cannot be imposed on children. *Graham v. Florida* says that LWOP cannot be imposed on juvenile non-homicide offenders because they must have a "meaningful opportunity for release." *Miller v. Alabama* says that LWOP for child homicide offenders cannot be mandated. *State v. Long* in Ohio utilizes the trilogy of arguments by declaring that courts must consider the "mitigating qualities of youth" before sentencing a child to discretionary LWOP for aggravated murder.

Issues in Litigation. There are some additional issues related to LWOP that area currently in litigation. *Toca v. Louisiana* addresses whether the ruling in the *Miller* case should apply retroactively. *State v. Moore* argues whether *Graham* bans only sentences labeled "life without parole", or applies to other life-long sentences that offer no meaningful opportunity for release. Many of the arguments center around questions related to the meanings of non-homicide, attempted murder, complicity, and felony murder.

In the *State v. Moore* case it has been argued that a 100 year sentence would be acceptable for a juvenile but not life without parole. Atty. Hardwick expressed dismay over that logic since a sentence of 100 years offers no meaningful opportunity for release. There are also arguments over the meaning of "nonhomicide", whether that refers to the intent to kill or not to kill. Defense argues that to get LWOP the youth would have to kill with the intent to kill.

Theory Behind The Cases. The basic theory behind the cases is that children are different. The part of the brain that controls judgment and risk assessment is not fully developed until the age of 25. This tends to cause a propensity for children to succumb more easily to pressure from peers and adults. It also causes them to act without thinking about the consequences or feel remorse. More importantly, children still have the potential to change. The arguments in the *Miller* case allow for that.

Adults are more blame worthy than children and a judge cannot know if a violent remorseless 15 year old child will still be violent and remorseless at the age of 30. The child must be given a chance to prove he can mature and change. Another factor is that life without parole

for a youth is obviously longer than life without parole for an adult, which means that LWOP punishes a youth more for the same offense. In addition, people who go to prison don't live as long as someone who does not go to prison.

Atty. Hardwick argued that it is useless to use life expectancy tables to determine the potential length of a life sentence for a youth. Prisoners do not live as long as the general public. Most die before the age of 55. This does not even take into account the lifespan of an inmate who entered prison as a child.

As of 2010-2011 there were 86 inmates admitted to the adult system of DRC before the age of 18 with a minimum sentence of 20 years or longer. 42 were admitted with a minimum sentence of 30 years or longer. 18 were admitted with a minimum sentence of 40 years or longer and 6 inmates were admitted with a sentence of 60 years or longer. This does not include youth admitted after the age of 18 and does not include potential SYO invocations. He noted that H.B. 86 has reduced some of these sentences by half. There are currently less than 10 in Ohio with a sentence of life without parole. In comparison, Pennsylvania has 500 youth incarcerated with a functional sentence of life without parole.

Problem With Ohio Statutes and Rules. Currently, Ohio permits juvenile LWOP for certain rape offenses and functional LWOP for all offenses. Ohio law does not have any sentencing standards that comply with *Miller* for juvenile homicide offenses. There also is no procedural mechanism to bring challenges to non-death sentences based on new, retroactively applicable decisions of the U.S. Supreme Court. Ohio only allows a collateral challenge if the sentence is death.

There are also no standards for counsel and procedure in juvenile aggravated murder cases. Finally, there is almost no programming available for juveniles serving life without parole in DRC. With no hope and no programming they have great difficulty in adjusting and end up making very bad decisions.

Possible Solutions. Atty. Hardwick recommends offering automatic parole or judicial release eligibility with periodic review. He noted that, last year, West Virginia enacted retroactive parole eligibility after 15 years. He would like to see Ohio offer, at the very least, the possibility of release by the age of 40.

He encouraged Ohio to set standards for counsel and sentencing hearings in juvenile homicide cases. If life without parole for juveniles was put back into the capitol aggravated murder process, they could get counsel and trial by jury. He stressed that *Graham* requires a meaningful opportunity for release, not just a theoretical possibility of release. He is very thankful that Sen. Seitz is bringing this issue out into the open.

As Chair of the Ohio Parole Board, Cynthia Mausser remarked that, when DRC was contacted about California's solution to this issue, she was asked to take a look at it. In addressing the issue of a youth under the age of 18 receiving a sentence of life without parole, She noticed that California has recommended the option of two different tracks. The first would allow the Department of Corrections to petition the court within the 15th year of the youth's incarceration to resentence the

youth with a lesser sentence. The second option would allow the youth to advance to the parole hearing.

At that point, California has a sliding scale. If the offender has a definite, they would receive an early parole hearing at 15 years. If he has a sentence with a minimum of less than 20 years to life, he would get a hearing at 20 years.

Since the commission of crimes tends to start decreasing at the age of 40, that might be a good age to start evaluating an offender who has an extensive LWOP or sentence of more than 100 years.

Current statute §2971.04 allows a review for a sexually violent predator at the minimum point of their sentence to determine whether to relinquish control of that sentence and send them back to the sentencing court for a determination of whether to release them. This is also applied to enhanced penalties for sex offenses involving a child victim.

The current thought is to consider a review at the age of 40, under a standard of whether the offender would pose a substantive risk of harm, to determine whether to expedite the offender for possible early release.

According to Dir. Andrews, Sen. Seitz would like there to be an additional mechanism other than just a Parole Board recommendation to allow early release for a juvenile with an extended sentence of more than 100 years or a sentence of life without parole.

One problem with the sexually violent predator process, Atty. Hardwick declared, is that the only way the offender gets release is if the judge is retires. Noting that parole eligibility does not actually trigger release, he suggested beginning the parole eligibility process sooner than the age of 40 in order to start getting them prepared. It is very rare that a person gets released on their first parole hearing. If reviewed at the age of 40, the earliest likely release would be at the age of 45 or 50. For someone with an indefinite sentencing, it would at least offer some hope of a meaningful opportunity for release. He contended that, if a legislative solution is not created, it may be necessary to resort to a judicial solution, which might be worse.

The understanding of brain development research needs to be included in the discussion as well, Mr. Nunes contended, since it relates to the mindset of the offender at the time of the commission of the crime when he was a juvenile.

Expressing gratitude for raising these issues, OSBA Representative Paula Brown asked who the key decision makers would be. She would hate to see a viable solution get proposed but nothing actually implemented.

That is always the risk regardless of who the decision makers are, Atty. Hardwick responded. If the decision is handled judicially, there could be constitutional issues related to discretion and proof of offering the offender a meaningful opportunity for release. If handled legislatively through the Parole Board it would likely offer more consistency.

Since it would still require notice to victims, said Chairperson Mausser, that aspect needs to be included at the table.

Dir. Andrews suggested asking the Judicial Conference to run this by their committee. In the meantime she offered to pass word along to Sen. Seitz that the Sentencing Commission has not voiced any objection to considering the type of proposal utilized in California for juvenile offenders with sentences of life without parole.

THE POSITION OF VICE CHAIR

On behalf of Chief Justice O'Connor, Dir. Andrews expressed her appreciation for Judge Gormley's service to the Sentencing Commission as Vice Chairman.

Having won his race for Common Pleas Court judge, Judge Gormley acknowledge that he would be moving on to the Delaware Court of Common Pleas, which brings to an end his term of representing the municipal court on the Sentencing Commission. He thanked the Commission for the opportunity to serve as Vice-Chair and assist with the search and interview process of selecting a new director.

As a follow-up, Dir. Andrews suggested Judge Marcelain be considered as the replacement for the position of Vice-Chair of the Sentencing Commission.

After being seconded by Atty. Brown, Mr. Vandine's motion was unanimously approved:

To nominate Common Pleas Judge Tomas Marcelain as the new Vice-Chair for the Ohio Criminal Sentencing Commission, effective at the conclusion of the current meeting.

APPELLATE ISSUES

Former Dir. Diroll has been shepherding a subcommittee on issues brought to the Sentencing Commission's attention by appellate judges. Most of these are centered around appeals of the lengths of sentences. Dir. Andrews asked him to provide an update on the current status of that subcommittee and its goal for conclusion.

Dir. Diroll briefly explained that before S.B. 2 was enacted in 1996, there was no mechanism to appeal a felony sentence. S.B. 2 created a limited right to appeal which was based on various areas of guidance involving the duration of sentences. In 2006 the *Foster* case took away some elements of the appeal and guidance on consecutive sentencing was also affected. H.B. 86 later retooled some of the statutes to reflect the *Foster* case. Over the last few years, the appellate courts have been dealing with repercussions from all of this.

As a result of the numerous changes, it has become necessary to further determine the scope and standards of appeals and review. Although the appeal was never meant to be a catchall, it has become one. Abuse of discretion is a tough standard to use but contrary to law sounds rather generic for applying an appeal.

§2953.08 authorizes the felony sentence review in criminal cases. In a plea deal there is already an agreement among the offender, prosecutor, defense counsel, and judge, so it cannot be appealed.

In meetings with Appellate Judges Gallagher, Tyack, and Hendon on the issues Atty. Diroll said they have removed a lot of statutory clutter. *Foster* had taken away some of the guidance for the length of a sentence, particularly involving a minimum sentence or maximum sentence. The subcommittee, in response, has put together some introductory language to establish the scope of the statute. They also developed a definition of 'contrary to law'.

Although details have not yet been worked out, the group has agreed on the need for some kind of review of extended and consecutive sentences. This is in response to cases such as the *Hairston* case, which involved several victims including an elderly couple in German Village, and resulted in one of the offenders receiving multiple terms which piled up to 134 years. He noted that, although the case was appealed as cruel and unusual punishment, it was upheld by the Supreme Court.

Blended sentences imposed on juveniles, which involves a portion to be served in DYS and the final portion to be served at the adult level in DRC, are another area the might deserve review. There have been suggestions for juveniles who have been bound over to the adult system or who have an SYO classification to have their sentences reviewed after 15 or 20 years have been served.

As a caution, the subcommittee is diligently attempting to make sure they cover any potential constitutional issues. Considering the progress made by the subcommittee, he hopes to have something available soon for a vote by the full Commission.

Atty. Hamm requested an opportunity to see some of the drafts they have worked on.

Mr. VanDine remarked that he has been asked if there was a huge increase in appeals when this appellate review was first established.

There was concern about that at the time, said Atty. Diroll, so funding was made available to cushion the cost. However, the increase didn't happen so that money was returned to the General Assembly. The only increase based on sentencing appeals has occurred in the last few years.

Dir. Andrews acknowledged that the Commission members do not want to see the issue just die, but would like to see some eventual closure. She would like to see something ready for a vote by the Commission in May. Jo Ellen Cline has agreed to spearhead the continued meetings of the subcommittee until something is ready for a vote.

RECODIFICATION

Sen. Faber is developing a committee to work on recodification of Title 29 of the Ohio Revised Code. Since this is fitting with the original purpose for the Sentencing Commission's existence, Judge Marcelain would like to see the Sentencing Commission be a part of the effort. Former Dir. Diroll, he noted, had even developed an entire report on

ways to simplify the Code. He would like to find out how we might be of assistance to the new Recodification Committee.

As legislative liaison for DRC, Scott Neely reported that he met with some of the leadership of the General Assembly who acknowledged that appointments are currently being made to that committee.

DRC Counsel Ryan Dolan reported that DRC representatives are brainstorming on ideas to present to that committee. They also look forward to working closely with Sara and the Sentencing Commission on related issues.

Dir. Andrews reported that she sent a letter to Sen. Faber asking for appointments to the Sentencing Commission and offering assistance from the Commission on criminal justice issues. One of the objectives, she noted, is to try to get a seat on that Recodification Committee.

The Revised Code, said Mr. VanDine, has been revised periodically in 1953, 1973, 1983, and 1993, so, historically it is due for another revision.

It might be a good idea to start formulating ideas on recommendations for the Recodifications Committee, said Dir. Andrews, particularly if we get a seat at the table.

Mr. VanDine suggested that the recommendations developed by the Appellate Subcommittee would probably be appropriate for referral to the Recodification Committee.

Noting that Sen. Obhof has been interested in an OVI rewrite, Dir. Andrews asked what other topics need to be addressed by the Commission.

Mens rea is another area that the Sentencing Commission has actively discussed, said Mr. VanDine, and seems to fall into the purview of what the Recodification Committee hopes to focus on. He suggested pulling some of those recommendations together. Atty. Cline noted that some of that is already being addressed in a bill by the General Assembly.

At one time former Dir. Diroll had written some recommendations, said Pros. Dobson, involving prison overcrowding and possible solutions, including the issue of mandatory sentences, the *Foster* effect, and the possibility of moving some felonies down to the misdemeanor level. He suggested relooking at those recommendations.

Atty. Cline pointed out that the Recodification Committee is very legislative heavy because Sen. Faber wants it legislatively driven rather than a separate entity. The Sentencing Commission, however, could bring the viewpoint and interest of other parties.

Judge Gormley suggested inviting Sen. Faber to present any ideas to the Sentencing Commission that we might be able to assist with and give him a closer look at the diversity of the Commission's makeup.

Prosecuting Attorney Derek DeVine remarked that by having this group at the table could help the bill last longer since it represents such a diverse range of perspectives and interests.

Dir. Andrews agreed to promote the Commission's capability for adding value and input as she meets with legislators and seeks to fill the legislative vacancies on the Commission.

FUTURE MEETINGS

Future meetings of the Sentencing Commission are tentatively scheduled for February 19, March 19, April 23, May 14, June 18, July 16, August 20, September 17, October 15, November 19, and December 17.

The meeting adjourned at 1:05 p.m.