OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor
Chair

David J. Diroll
Executive Director

MEMBERS PRESENT
OHIO CRIMINAL SENTENCING COMMISSION
and the
CRIMINAL SENTENCINIG ADVISORY COMMITTEE
March 17, 2011

MEMBERS PRESENT
Municipal Judge David Gormley, Vice-Chair
Victim Representative Chrystal Alexander
Staff Lt. Anthony Bradshaw, representing State Highway Patrol Supt., Col. John Born
Defense Attorney Paula Brown
Common Pleas Judge Janet Burnside
Juvenile Judge Robert DeLamatre
Defense Attorney Kort Gatterdam
Municipal Judge Fritz Hany
Bob Lane, representing State Public Defender Tim Young
Common Pleas Judge Thomas Marcelain
Director Gary Mohr, Rehabilitation and Correction
Mayor Michael O'Brien, City of Warren
Jason Pappas, Fraternal Order of Police
State Representative Lynn Slaby
Municipal Judge Kenneth Spanagel

ADVISORY COMMITTEE MEMBERS PRESENT
Eugene Gallo, Executive Director Eastern Ohio Correctional Center
Lynn Grimshaw, Ohio Justice Alliance for Community Corrections
James Lawrence, Ohio Halfway House Association
Cynthia Mausser, Chairperson, Ohio Parole Board
Colleen O'Toole, Retired Appellate Court Judge
Joanna Saul, Correctional Institution Inspection Committee
Gary Yates, Chief Probation Officers' Association

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

GUESTS PRESENT
Sarah Andrews, Department of Rehabilitation and Correction
Jim Brady, interested citizen
Dan Cade, Child Support Enforcement Agency
Monda DeWeese, SEPTA Correctional Facility
Lusanne Green, Ohio Community Corrections Association
Alicia Handwerk, Chief, Bureau of Community Sanctions, DRC
Alton Howard, Lighthouse Youth Services, Director – REAL Dads Program
Andre Imbrogno, Department of Rehabilitation and Correction
Linda Janes, Assistant Director, Rehabilitation and Correction
Bob Mecum, President, Lighthouse Youth Services
Scott Neeley, Department of Rehabilitation and Correction

Michael Patton, Child Support Enforcement Agency
Mike Schweikert, Director, Ohio Judicial Conference
Ed Stockhausen, legislative aide to Senator Shirley Smith
Angelo Thompson, Lighthouse Youth Services
Lisa Valentine, policy aide to Speaker William Batchelder
Steve VanDine, Research Chief, Rehabilitation and Correction
Marjorie Yano, Legislative Service Commission Fellow

The March 17, 2011 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was called to order at 9:50 a.m. by Municipal Court Judge David Gormley, who was recently appointed as Vice-Chair.

Dir. Diroll welcomed newly appointed Common Pleas Judges Janet Burnside and Thomas Marcelain, and Staff Lt. Anthony Bradshaw who will serve as designee for the State Highway Patrol's Superintendent, Col. John Born.

Joanna Saul, Director of the Correctional Institution Inspection Committee, offered a copy of the results of the group sessions at the previous meeting and asked anyone with questions to contact her.

PRISONS AND THE BIENNIAL BUDGET

Gary Mohr, Director of Rehabilitation and Correction remarked that the proposed state budget is a stabilizing budget. DRC's part of the budget, he stressed, is dependent on sentencing reform. He wants the input of the Sentencing Commission on these issues. Sentencing reform, he noted, is prospective, meaning it will take time for the changes to have full effect.

DRC has already recommended some reforms that are included in the Governor's budget bill for FY 12-13. These include earned credit provisions that increase from 1 to 5 days per month but cap at 8% and exclude all sex offenders and most F-1s and F-2s; the CSG sentencing recommendations contained in S.B. 10/H.B. 86; DRC's proposed language to reverse the impact of the 2006 *Foster* case; and completion of an empirical study by DRC of assaults by inmates on staff and other inmates. DRC has also proposed some additional provisions in S.B. 10/H.B. 86 that could save prison beds. The hope is that these would also be included into the Executive budget. They include petitioning for the judicial release of inmates sentenced to more than one year and who have served 85% of their sentence, with the exception of repeat violent offenders; increasing the theft threshold to $1,000; equalizing crack and powder cocaine penalties; reducing the mandatory terms for trafficking in or the possession of marihuana and hashish; and sentencing nonsupport offenders to alternative community facilities.

Dir. Diroll noted that the Sentencing Commission has already been working on recommendations regarding drug offenses and other issues that might affect the budget. S.B. 10 includes language recommending that judges consider community sanctions instead of prison for nonsupport. A representative from a custody nonpayment program is scheduled to offer some information later in the day's agenda. He agreed to focus on some of the other recommendations soon.

On the issue of privatizing prisons, recommended by Gov. Kasich, Dir. Diroll noted that a private company must show a savings of at least 5%. Gov. Kasich has suggested selling specific prisons, he added.

Dir. Mohr reported that DRC is currently in the process of selling five prisons in three packages to willing buyers. The first package is the Grafton/North Coast property with a management training facility; the second is Lake Erie property; and the third package is the North Central property which is next to the vacant Marion juvenile facility. He believes that the sale of these properties will allow DRC to gain a competitive edge and save costs.

Dir. Diroll asked whether the private operators would get prisons at 131% of capacity. He also asked about rules governing the sold prisons.

Dir. Mohr replied that some accommodation would be made on the population levels. But he noted that the operators of any private prison will be trained at a DRC academy and the management will mirror DRC operations as much as possible.

Monda DeWeese asked if there will be time for people to respond before the budget hearing.

Director Diroll answered in the affirmative.

***FOSTER* FIX**

The Commission's biennial monitoring report, titled *Prison Crowding: The Long View, With Suggestions* was distributed to legislators, judges, prosecutors, public offenders, and others during the past two weeks, said Dir. Diroll.

The report notes that two things drive the prison population – intake and length of stay. Intake has been decreasing over the past few years. Typically that would result in a reduction in the prison population. When that doesn't occur, said Dir. Diroll, the length of stay is the driving force. The recent surge is due to an increase in the length of stay for many felons.

In the 1970's the Parole Board released people in high numbers. In 1996, S.B. 2 got tougher on the worst offenders but there were trade-offs. These included three guidelines designed to address an offender's length-of-stay in prison: a) A preference for the minimum term for offenders who had not been to prison before; b) Discouraging the maximum term unless it involves the worst form of the offense or worst offender; and c) Discouraging consecutive terms, since S.B. 2 removed the cap on consecutive sentences. Each of these required the judge to make certain findings to justify the choice, and were subject to a new type of appellate review.

These provisions contributed to the fairly level prison population between 1997 and 2006. S.B. 2, said Dir. Diroll, was not a crash diet for the prison population. It was weight management.

Some U.S. Supreme Court decisions (*Apprendi, Blakely, and Booker*) raised issues with judicial fact finding under the Sixth Amendment. In response, the Ohio Supreme Court felt it had little choice but to strike the judicial findings required by S.B. 2 in the 2006 *Foster* case. These included the default to the minimum on first commitment to prison, saving the maximum for the worst forms of the offense and the

worst offenders, and the findings used to justify consecutive sentences. Even though the kind of findings required in S.B. 2 were not as elemental as those addressed in the U.S. Supreme Court cases, the S.B. 2 findings were struck.

The ruling in the *Foster* case has resulted in judges imposing sentences that are 4 to 5 months longer. This has impacted the current prison population by 4,000 to 5,000 beds and could go up to 8,000 or 9,000 more beds than would otherwise be needed. That subtle impact is having a greater effect than any other suggestions being proposed.

Options. Dir. Diroll said that, in an effort to find a suitable solution that is not too onerous or unconstitutional, he drafted language that tightropes between what *Foster* found to be unconstitutional and what DRC needs to offset the case's impact.

Guidance Toward the Minimum Sentence. For guidance toward the minimum sentence, Dir. Diroll recommended encouraging judges to sentence prison bound offenders, who have served no prior prison time, to the minimum term, unless the shortest term isn't consistent with basic sentencing principles. He believes this simple change would effectively skirt *Blakely/Foster* because it avoids the stated findings and separate appellate review. Meanwhile, it would help DRC by reviving state policy favoring the minimum.

Judge Burnside and Judge Marcelain agreed that the standard of appellate review would be abuse of discretion.

Retired appellate judge Colleen O'Toole wondered whether it was the discipline or fear of reversal that triggered the reaction to *Foster.*

According to Judge Burnside, most judges assume a case will go up on review.

Representing the State Public Defender's Office, Bob Lane doesn't think the problem was a matter of the judge putting his findings on record. He believes it was that the jury determination gave the judge a range and to go above that range the judge had to make findings. He suggested asking the judge to state on the record what he was considering in order to sentence outside of the range. It would be like §2953.21, he said, where the judge makes findings of fact, or where the judge makes findings when deciding a motion to suppress.

Other proposals have been considered, said Dir. Diroll, including one that suggested, instead of saying "judge", just say "trier of fact". The problem with that is you would have juries making decisions based on the experience of one case.

DRC's proposal would be to simply bring back what was taken away by *Foster*, but that would not be constitutional under *Foster*, he opined.

If there were to be a presumption against prison for all F-4 and F-5 offenses then Judge Gormley believes a lot of judges would wonder why some offenses are felonies instead of misdemeanors if there is no intention of a prison sentence.

The issue, in part, Dir. Diroll responded, is that the guidance against prison for low level felons was not worded as a formal presumption.

Atty. O'Toole remarked that, when she served as an appellate court judge, they got a lot of appeals on the issue of whether or not the findings were on a judgment entry versus whether or not the judge stated them on the record. There seemed to be difficulty getting them in both places.

The problem, said Defense Attorney Kort Gatterdam, is that the defendant should hear it from the judge. When the judge is imposing a sentence, he needs to make sure that the defendant is presented with the findings.

When asked if a *Foster* solution is expected to be included in S.B. 10, Dir. Diroll pointed out that S.B. 10 is expected to become law in some form; the solution could appear there or in the Budget Bill.

Mark Schweikert, Director of the Ohio Judicial Conference, remarked that S.B. 10 addresses nonsupport cases and introduces judicial legislation recommending that a judge cannot send a person to prison for the first offense of nonsupport. It uses the language that for a first offender, "the judge shall first consider _____". He feels the language presented by Dir. Diroll for S.B. 10 is a good compromise because it refers to it as being a preference not a presumption.

From a strategic view, said Atty. O'Toole, judges need protection from letting the wrong offender back on the street and checks and balances give the judge some of that protection.

Judge Burnside declared that most judges do not want anything that tells them what they have to say.

When Judge Gormley asked for a motion on the proposal, Linda Janes, Asst. Director of Rehabilitation and Correction, remarked that she is not convinced that this proposal solves DRC's problem. She insisted that a compromise is needed because something will be passed by the General Assembly.

Atty. Lane contended that the appellate section needs to be worked on before a vote is taken. The problem has gotten worse because of *Foster* but he doesn't believe *Foster* caused the problem. He believes the real problem predated *Foster* by allowing some misdemeanors to be made into felonies.

Municipal Judge Fritz Hany favors restoring the pre-*Foster* language.

Atty. Lane likes Dir. Diroll's proposal because it does not require an extra box that the judge has to get to. He contended, however, that it still needs an appellate aspect to it.

Wondering how much the judge would be required to say, Atty. Gatterdam feels if the judge says " X months is not enough time to punish you", then that should be enough to prevent a reversal.

§2929.12(B)&(C) already say that the judge shall consider these things, Atty. Lane pointed out. He asked what else is needed if the judge is

already required to consider these things. The goal is to have appropriate punishment for the defendant and the crime.

Atty. Gatterdam suggested looking at the other two issues and see if they might help in solving how to address this one.

Dir. Diroll said that a decision should be reached soon to make it into pending legislation, even if the appellate aspects are unresolved.

Guidance Away From the Maximum Sentence. For the pre-*Foster* guidance away from the maximum sentence, Dir. Diroll again opted to direct the judge to reserve the maximum for use only when consistent with the purposes and principles. As a non-mandatory "shall", the court would not have to make specific findings or state them at the sentencing hearing. In addition, the decision would not be subject to appellate review.

Since both options reference the purposes and principles of sentencing, it may be necessary to mention crowded facilities in the principles. A partial solution would be to move language already found in current §2929.13(A) stating "The sentence shall not impose an unnecessary burden on state or local government resources." To give the clause even more specific meaning, Dir. Diroll said the Commission could consider a more controversial addition: "The court shall consider the level of crowding in state and local correctional facilities before imposing a prison or jail term on a non-violent offender." Either sentence would be added to the end of §2929.11(B), thereby including it in the basic sentencing principles that judges must keep in mind.

Guidance on Consecutive Sentences. There's more latitude in this area, said Dir. Diroll. In *Oregon v. Ice*, decided after *Foster*, the U.S. Supreme Court made clear that states were allowed to have judges make findings before imposing consecutive sentences. The Ohio Supreme Court then issued the *Hodge* decision last December, that allows the General Assembly to reinstitute judicial findings before imposing consecutive terms, added Dir. Diroll.

In short, Dir. Diroll suggests developing something that both streamlines S.B. 2 and makes it more direct. The proposed phrasing would bring back the presumption of concurrence, which was part of Ohio law long before S.B. 2, but removed by *Foster*. And it would restore the findings and appellate review in a new way. It revives language to make concurrent sentences the default, encourages judges to make findings before imposing discretionary consecutive terms, and makes the findings specific to the offender and offenses, rather than repeating "magic words." He noted that the cap on consecutive sentences predates S.B. 2. S.B. 2 removed the cap and replaced it with appellate review.

He proposed language stating that the court may require consecutive sentences "only if the court finds, in language specific to the offender and the offenses, that consecutive terms are necessary because they are proportionate to the seriousness of the offender's conduct and to the danger of future crime…."

DRC recommends reinstating the S.B. 2 language to offer a quick remedy in hopes of alleviating some of the immediate effects of the broader sentences. The hope is that any appeals would take time to reach the

Supreme Court for further adjustment, thus providing the time needed to develop a more suitable solution.

Just by nature of the process, Judge Gormley noted, it would take a lot longer to wait on the Supreme Court to do something since it relates to a decision they've already made.

Dir. Diroll feels the Commission could come up with a solution for the consecutive sentences. For the minimum and maximum issue, however, it doesn't make sense to confront the Supreme Court in the manner of the DRC proposal. He added that the General Assembly wants something to work with to address the *Foster* impact.

After considerable discussion, the Commission unanimously approved the outline of what Dir. Diroll drafted, in a motion offered by Judge Marcelain and seconded by Judge Spanagel:

To recommend the following changes to the General Assembly to address *Foster* issues in a constitutional manner:

§2929.11 – Purposes and Principles of Sentencing
(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.
(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders. The sentence shall not impose an unnecessary burden on state or local government resources. [*Moved from current §2929.13(A).*]
(C) A court that imposes a sentence upon an offender for a felony shall not unfairly base the sentence upon the race, ethnic background, gender, or religion of the offender.

§2929.14 Prison Sentences

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(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (D)(7), (D)(8), (G), (I), (J), or (L) of this section, in section 2907.02, 2907.05, or 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, ~~if~~ the court imposing a prison sentence upon an offender ~~for a felony elects or is required to impose a prison term on the offender, the court~~, who has not served, or is not serving, a prison term, shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, ~~unless one or more of the following applies: (1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term. (2) The court finds on the record that~~ if the shortest ~~prison~~ term ~~will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or~~

~~others~~ is consistent with the purposes and principles of sentencing under section 2929.11 of the Revised Code.

(C) Except as provided in division (D)(7), (D)(8), (G), or (L) of this section, in section 2919.25 of the Revised code, or in Chapter 2925. of the Revised Code, the court imposing a prison sentence upon an offender ~~for a felony may~~ shall impose the longest prison term authorized for the offense pursuant to division (A) of this section only ~~offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crime, upon~~ if the longest term is consistent with the purposes and principles of sentencing under section 2929.11 of the Revised Code or upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

* * *

(E)(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court shall first consider imposing concurrent sentences. The court may require the offender to serve the prison terms consecutively only if the court finds, in language specific to the offender and the offenses, that ~~the~~ consecutive ~~service is~~ terms are necessary ~~to protect the public from future crime or to punish the offender and that consecutive sentences~~ because they are ~~not disproportionate~~ proportionate to the seriousness of the offender's conduct and to the danger of future crime that the offender poses to the public~~, and if the court finds any of the following:~~

~~(a) The offender committed one or more of the multiple offenses while … awaiting trial or sentencing, …under a [community control] sanction …, or was under post-release control for a prior offense.~~

~~(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by [them] … was so great or unusual that no single prison term … adequately reflects the seriousness of the offender's conduct.~~

~~(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender~~.

LICENSE SUSPENSIONS UNDER §2921.331 Failure to Comply

After lunch, Judge Spanagel brought attention to a problem resulting from an unintended error in the enactment of revisions of H.B. 490 and S.B. 123 in 2004. This particular issue concerns a need to modify the license suspension for a misdemeanor violation of §2921.331, failure to comply with a peace officer's signal.

He explained that this statute encompasses both felony and misdemeanor failure to comply with the order or signal of a police officer. A violation is either an M-1 or F-4 or F-3, depending on the egregiousness of the conduct ((C)(4) and (C)(5)). "High speed pursuits" and "criminal pursuits" are worthy of felony status. A misdemeanor conviction, however, can arise from not responding quickly enough to an officer directing traffic during rush hour, with little or no egregious conduct. The problem is division (E), regarding the resulting license suspensions. This section provides that for all convictions, whether felony or misdemeanor, the defendant gets a mandatory Class Two license suspension (three years to life), with a mandatory three years hard

time (i.e., no limited driving privileges). While this is appropriate for a felony defendant, Judge Spanagel argued that this clearly was not the intent for a misdemeanor violation when S.B. 123 was enacted. Dir. Diroll agreed that the language didn't follow the Commission's recommendations, which undergirded S.B. 123. He characterized the result as inadvertent.

Judge Spanagel contended that it is the consensus of the Municipal and County Court Judges Association Trustees that an appropriate sanction would be a Class Five Suspension, which would be from a range of six months to three years, with a mandatory Class Five suspension for a misdemeanor conviction and limited driving privileges allowed.

The Commission members unanimously approved the motion offered by Judge Hany, seconded by defense attorney Paula Brown:

> **To recommend that the General Assembly modify §2921.331 (failure to comply with a law enforcement officer's signal) to place the mandatory license suspension for the offense in Class Five (6 months to 3 years), with limited driving privileges available in the judge's discretion.**

Atty. Brown urged future discussion at some point of possible expungement for this offense at the misdemeanor level.

LIGHTHOUSE YOUTH SERVICES – R.E.A.L. DADS PROGRAM

Dir. Diroll introduced Bob Mecum, President of Lighthouse Youth Services in Cincinnati. The agency developed a program called REAL Dads that deals specifically with men who face legal problems for failure to pay child support. He noted that the Council of State Governments and others recommend that judges consider alternative community sanctions for felony nonsupport offenders.

Mr. Mecum noted that the common denominator for 80% of the boys and girls in the programs at Lighthouse Youth Services is the lack of a father who is actively involved in their lives. This brought to light the importance of breaking the cycle and helping the young men in the programs recognize the importance of fatherhood. Over the past 5-6 years they established the program of REAL (Responsible, Effective, Accountable, and Loving) Dads.

The REAL Dads program, he noted is a collaborative effort along with Hamilton County Job and Family Services and the Child Support Enforcement Agency. The program addresses deficits in parenting, employment, and life skills for non-custodial parents.

As Legal Section Chief of the Child Support Enforcement Agency, Dan Cade remarked that the child support program affects over 1 million children, with over $2 billion of child support collected in Ohio. Ohio ranks in the top 3 nationwide for performance in regards to collection of child support. He pointed out that the work also tries to do what is right for families and children. After establishing paternity, income withholding of child support becomes mandatory. The agency now has additional administrative tools available such as back accounts, tax refunds, liens on assets, reports to credit agencies and suspension of driver's licenses.

As of December, 2010, there are 588 men serving time as nonsupport offenders. Seeking an indictment for nonsupport is the last resort. If the man is imprisoned, he can't get a job, then upon release he can't get a job. If he can't get a job, then he can't pay child support.

He noted that, as of January 2011, nearly $600,000 has been collected since October 2007 through the Lighthouse Youth Services REAL Dads program, from about 486 fathers.

Director of the REAL Dads program, Alton Howard, reiterated that the program works with the CSEA and has goals that go beyond merely collecting support. The program also addresses parenting, employment, and life skills. It teaches the participants to be more responsible and accountable as adults and parents and more loving towards their children. The combination helps them to become more nurturing and effective as parents.

Participants in the program are young men between the ages of 17 and 24 who have become parents and who have a child support order but are in arrears in that support. There have been 600 to 700 young men come through the program since its inception in 2006.

Without intervention, most of these men end up in jail or prison, resulting in the loss of their jobs and further reductions in child support. As the obligor's arrears continue to accumulate, they face the potential loss of housing, often resulting in no continued contact with the children and even suspension of their driver's license.

Participation in the REAL Dads program is monitored with an individual service plan developed for each client. Each program is accredited and focuses on evidence based practices. Each client has coaching with a life coach during their six month participation. They also have monthly meetings with a dedicated JFS Case Manager. The process includes custody hearings, modifications of support, visitation hearings and the additional goal of driver's license reinstatement.

He noted that the 13 week nurturing fathers program resulted in a significant reduction in recidivism rates of those clients who complete the program.

The cost of participation in REAL Dads is $24 per day as compared to the costs of incarceration at $65 per day. For 700 obligors, that is a potential savings of $10.4 million per day. Mr. Howard noted that the REAL Dads Child Support Arrears Collected increased from $25,051 in 2007 to $240,441 in 2010.

Goals for the program include fulfilling child support payments for a minimum of 3 months, employment, doctor or school visits with the child at least once a year, completion of the fatherhood class, and an increased "adult adolescent parenting inventory" score by at least 2 points. This results in a better parent financially, emotionally, and responsibly.

He noted that many participants have succeeded to the point of gaining more visitations with their children and some have even gained custody.

A participant in the REAL Dads program, Angelo Thompson, remarked that he grew up with no father around. The REAL Dads program has provided him with mentors and examples of good role models in how to be a dad. The focus is on how to be a nurturing father. He likened the fellowship of the program to a "positive barbershop" atmosphere where the men feel that they can talk about everything. Each participant is hooked up with a life coach who instructs them on how to be a nurturing father and responsible adult. He declared that the program gives him a reason to smile because he has learned how to help his child learn.

Section Chief with the Child Support Agency, Michael Patton remarked that, due to extensive budget and staff cuts, his staff doesn't have the luxury of time to get to know each person as well as they'd like. The staff of the REAL Dads program, he said, takes the time to listen and understand what each dad is facing, helping people with real problems. They help dads learn how to give their children emotional support, not just financial support. He has been amazed at the progress in the lives of the men served through this program.

Judge Gormley asked if the men were court ordered or how the program got men to participate. Mr. Howard responded that it is a voluntary program.

In most cases, said Mr. Cade, if a dad has a court date coming up and the judge knows the dad is in the REAL Dads program with a child, he usually will not impose a sentence. He recognizes that the program is helping the dad find a job, housing, *etc*.

When asked how the program was funded, Mr. Mecum explained that the program was recently awarded a $5.25 million grant.

Since it is somewhat like a presentence program, Judge Spanagel asked how it is regarded as voluntary.

According to Mr. Cade, nonsupport is regarded as civil contempt. From a criminal view it might be perceived as a diversion because if the person does not complete the program they still face a charge of contempt and a criminal record.

When asked about recidivism, Mr. Howard noted that the men are officially only in the program for 6 months. However, they are not banned from further participation. Since it naturally takes more than six months to learn how to deal with the numerous challenges of fatherhood, many of the men continue to participate on their own for fellowship and encouragement.

Mr. Mecum noted that LYS had been working with DYS for over 26 years before hooking up with DRC. Because of the current prison crowding and budgetary concerns they wanted the Sentencing Commission to be aware of this program as a possible alternative community sanction for nonsupport offenders.

S.B. 10 has language that would encourage judges to consider programs like this before sending someone to prison, said Dir. Diroll. Perhaps it could be suggested as intervention in lieu of conviction. He wondered how many similar programs were available throughout the state.

There are a few, said Mr. Howard, but none quite like this one.

Dir. Diroll noted that, according to a county by county survey by DRC, Clermont County has more people being sentenced to DRC for nonsupport than any other offense.

Representing the Chief Probation Officers' Association, Gary Yates declared that there are seven similar pilot programs available statewide. He believes that intervention programs are the best solution. He admires a man who wants to learn the skills to be a better father. The biggest problem is the man who doesn't want to pay support or be a dad.

With intervention in lieu, Judge Burnside pointed out, the offender cannot have had any previous felony.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission and Advisory Committee are tentatively scheduled for April 21, May 19, June 16, July 21, August 18, September 15, October 13, November 17, and December 15, 2011.

The meeting adjourned at 2:35 p.m.