

# OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Maureen O'Connor  
Chair

David J. Diroll  
Executive Director

**Minutes  
of the  
OHIO CRIMINAL SENTENCING COMMISSION  
and the  
CRIMINAL SENTENCING ADVISORY COMMITTEE  
March 15, 2012**

**MEMBERS PRESENT**

Municipal Judge David Gormley, Vice Chair  
Victim Representative Chrystal Alexander  
Common Pleas Judge Janet Burnside  
Prosecuting Attorney Laina Fetherolf  
Municipal Judge Fritz Hany  
Craig Jaquith, representing State Public Defender Tim Young  
Prosecuting Attorney Joseph Macejko  
Common Pleas Judge Steve McIntosh  
Common Pleas Judge Thomas Marcelain  
Jason Pappas, Fraternal Order of Police  
Municipal Judge Kenneth Spanagel  
Steve VanDine, representing Rehabilitation and Correction  
Director Gary Mohr  
State Representative Roland Winburn

**ADVISORY COMMITTEE**

Eugene Gallo, Executive Director Eastern Ohio Correctional Center  
Lynn Grimshaw, Ohio Community Correction Association  
Lora Manon, Bureau of Motor Vehicles  
Joanna Saul, Director, Correctional Institution Inspection Committee  
Gary Yates, Chief Probation Officers' Association

**STAFF PRESENT**

David Diroll, Executive Director  
Cynthia, Administrative Assistant

**GUESTS PRESENT**

Sara Andrews, Rehabilitation and Correction  
JoEllen Cline, legislative counsel, Supreme court of Ohio  
Erich Bittner, legislative aide to Sen. Obhof  
Jim Brady, interested citizen  
Monda DeWeese, SEPTA Correctional Facility  
Chris Galli, Rehabilitation and Correction  
Lusanne Green, Ohio Community Corrections Association  
Andre Imbrogno, Rehabilitation and Correction  
Christina Madriguera, Ohio Judicial Conference  
Alan Ohman, legislative aide to Sen. Shirley Smith  
Kristopher Steele, Ohio Judicial College  
Paul Teasley, Hannah News Network  
Lisa Valentine, policy aide to Speaker William Batchelder

Portia Watkins, legislative aide to Rep. Roland Winburn  
Marjorie Yano, LSC Fellow

The March 15, 2012, meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was called to order at 9:43 a.m. by Vice-Chair Municipal Judge David Gormley.

#### **DIRECTOR'S REPORT**

Executive Director David Diroll reported that Sen. Larry Obhof has talked with LSC about the Sentencing Commission's OVI recommendations and he hopes to see it move quickly through the legislature.

He added that the agenda topic of "Tampering With Evidence" would be postponed until the next meeting.

Dir. Diroll next mentioned that Christina Madriguera, from the Ohio Judicial Conference, had spoken with Rep. Butler about developing a work center program that would be available to both felony and misdemeanor offenders.

#### **IMPLEMENTATION of H.B. 86**

Since H.B. 86 has been in effect six months, Dir. Diroll asked Andre Imbrogno, staff counsel for the Department of Rehabilitation and Correction, DRC Deputy Director Sara Andrews, and Chris Galli of the DRC's Bureau of Community Sanctions to offer a summary of some of the administrative rules and other policies put into place to administer the provisions and changes offered by the bill.

Risk Reduction Sentencing. This new type of sentence can be recommended by the judge at the time of sentencing, reported Atty. Imbrogno. The offender must agree to participate in an assessment of needs and risk of reoffending, and complete all programming and/or treatment recommended. If the offender completes, he may be released after serving all mandatory time and at least 80% of the remaining (non-mandatory) time. If risk reduction sentencing is chosen for the offender, then he is ineligible for earned credit, he added.

Once the results of the assessment are documented in ORAS (the state's risk assessment instrument), the unit management and program staff create and monitor a case plan for the inmate. The inmate's progress is assessed 60 days prior to the risk reduction release date and the court must be notified at least 30 days before release. The inmate is released to supervised release.

It appears to be popular, said Atty. Imbrogno, with 80 to 90 risk reduction sentences imposed and one inmate already released under it.

DRC Research Director Steve VanDine noted, however, that the number of 80 to 90 inmates being admitted under a risk reduction sentence is lower than the 10% originally projected.

Common Pleas Judge Janet Burnside remarked that this is the first she has heard that she needs to do something at the time of sentencing to make a person eligible for this option.

Noting that an offender considered for this option is not to be someone that a judge would consider for judicial release, Common Pleas Judge Steve McIntosh remarked that it will take some time for judges to discern the difference.

Although he has not yet used this option, Common Pleas Judge Thomas Marcelain said the he has had one person ask for it.

If released under post release control, Mr. VanDine pointed out, an offender can be returned to DRC to serve the rest of their sentence for a violation.

Because getting into DRC programs can take time, the Department tries to move those qualified for early release under risk reduction to the head of the line. The statute excludes the more serious offenders from eligibility.

Ms. Andrews reported that DRC Director Gary Mohr is committed to creating and expanding programs.

Judge Burnside expressed an interest in knowing more about the risk reduction option so that she could use it more. Having a list of the types of programs available would be especially helpful, she said.

Representing the Chief Probation Officers' Association, Gary Yates remarked that, in Butler County, the risk reduction option is used as a plea bargaining tool.

Judge Marcelain asked about how a judge can get access to information on an offender's suitability for the risk assessment option.

There are five or seven different tools available for assessing an offender's needs, said Ms. Andrews, plus quality assurance tools.

Mr. VanDine added that court staff will have access into the ORAS system to look at the various scores for the offender.

Probation Improvement and Incentive Grants. Some new Probation Improvement and Incentive Grants have been made available, said Atty. Imbrogno, as part of concept on Justice Reinvestment. They have just finished issuing the first round of grants. The grants are available to common pleas court probation departments that supervise felony offenders. They are not available to municipal probation departments. However, proposals that include cooperation between the applicant county and municipal courts are encouraged.

There are two types of grants available. Probation "Improvement" Grants provide funding to adopt and implement policies that will improve a county's probation department, resulting in a reduction in the number of felons who violate conditions of probation supervision. Probation "Incentive" Grants provide a "performance-based" level of funding for reducing the number of felony offenders for whom the terms of supervision are revoked and the offender is returned to prison.

Applicants for these grants must comply with all statutory requirements for probation departments, including training of probation officers and using ORAS.

Among recent applications were requests to fund tasers, body armor and vehicles, but these were deemed inappropriate, commented Atty. Imbrogno. Among those that were approved there was a multi-county cognitive, behavioral improvement program, and an aftercare program.

If you get an improvement grant, said Atty. Imbrogno, there is potential for an incentive grant. Individual performance measures are specified in the initial agreement.

He noted that there will also be a limited amount of technology and training money available for a short term to help some counties who still need the necessary case management software and ability to communicate electronically with other probation department or state entities. This will help to foster broad-based participation.

Currently, these grants are not available to municipal probation departments, which is something DRC wants to change by statute.

To address this issue with the first round of grant applications, DRC encouraged applicants to coordinate with municipal probation departments in their county and submit a unified proposal.

The Technology Grants focus on a 12 month period, while the Incentive Grants cover an 18-month period, because they take longer to implement.

To date, said Atty. Imbrogno, 36 grants have been awarded in 25 jurisdictions. About two-thirds of the applicants were successful.

Since the Adult Probation Authority provides probation supervision in many counties, Dir. Diroll asked if they were eligible for these grants.

As Deputy Director of Parole and Community Service, Ms. Andrews responded that they did not consider applications from the APA.

Municipal Court Judge Ken Spanagel asked if misdemeanor courts could apply.

The grants are intended for common pleas courts, Atty. Imbrogno replied.

Risk-Based Admissions to Residential Community Sanctions and Intensive Probation. According to the Council on State Governments, the most intensive and extensive community correction programs in Ohio are being used for offenders whose felony levels and risk levels make them inappropriate candidates for those sanctions. Studies show that placing low level offenders in these programs can sometimes increase their chance of reoffending due to a greater disruption of work and family patterns.

H.B. 86 instructed DRC to set criteria for how to make more offenders candidates for less restrictive sanctions. It requires DRC to tie the level of funding of these sanctions to the degree of compliance with DRC admissions standards. Atty. Imbrogno said DRC is currently developing several administrative rules allowing a certain amount of

deviation for accepting more offenders into halfway houses, CBCFs, and intensive supervision probation (ISP).

Judge McIntosh remarked that he checks the offender's PSI report and ORAS and compares these with the CBCF assessment to determine whether to impose a sanction. He asked about the amount of deviation allowed.

The CBCF assessment determines eligibility, said Judge Burnside, so she simply relies on that report.

The courts, said Atty. Imbrogno, are given great latitude.

Gene Gallo, Executive Director of the Eastern Ohio Correctional Center, argued that the judge needs to make the decision based on what is best for the community. If they feel there is a deviation gap problem, then they need to address it. He pointed out that a DUI offender is a high risk offender, but won't score that way on a typical risk assessment.

The Revised Code is more inflexible than the Administrative Code, said Lusanne Green, representing the Ohio Community Correction Association, so her group would prefer not to have deviation restrictions in the Revised Code.

It seems to work best, said Atty. Imbrogno, to start at the higher deviation level and can gradually make adjustments.

In response to an inquiry on ORAS training, Ms. Andrews answered that thousands have been trained so far.

Dir. Diroll asked what would happen if a municipal court judge wants an ORAS assessment, but there is no one available who is trained to do so.

The intent, said Ms. Andrews, is to share resources to fill that gap.

80% Judicial Release. The current judicial release procedure is court driven, said Atty. Imbrogno, while the new judicial release procedure under §2967.19 is driven by DRC, for eligible inmates. No releases are being implemented under this option yet, he added, because DRC wants a few statutory refinements first.

DRC has some amendments, said Atty. Imbrogno, to make the process a little less formal and they hope those will be done by fall. DRC also wants to look at prison conduct and programming. He noted that there is more to come on this process.

Judge Burnside suggested processing these inmates through risk reduction, but Mr. VanDine remarked that this provision offers an option for those that did not qualify for risk reduction at sentencing.

Atty. Imbrogno noted that this would be a tool for DRC to maintain institutional control. He added that H.B. 86 says if a hearing is conducted the offender can have counsel present.

Mr. Yates noted that these releasees would be supervised by the court probation department, not the APA.

The Council on State Governments, said Mr. VanDine, brought the risk reduction concept from Wisconsin where it has reduced the prison population by 20%. They were hoping it would do the same here.

Earned Credit. Earned credit provides a deduction from an inmate's sentence for each full month the inmate productively participates in academic, vocational, substance abuse, sex offender, or mental health programs while incarcerated. Under S.B. 2, an inmate could earn one day of credit per month after July 1, 1996. H.B. 86 increases the number of days that an offender may potentially earn each month, but only with respect to sentences imposed for offenses committed on or after September 30, 2011. Those inmates can earn one or five days of credit per month, depending upon the most serious offense for which the offender is incarcerated. The earned credit may total no more than 8% of the inmate's sentence.

It gets complicated, said Atty. Imbrogno, to tally up multiple credits at different rates, especially for consecutive or concurrent sentences. If the offender is serving multiple sentences concurrently, earned credit is calculated separately for each sentence. In the case of consecutive sentences, the controlling sentence at any given time is determined under Rule 5120-2-03.2. For different types of earned credit tied to the offense date, it gets even more confusing. Dir. Mohr would like to see it equalized.

If it doesn't change within the next two months, said Mr. VanDine, it won't matter because most offenders under the old earned credit type will be out by then.

One intent behind the concept of earned credit is to ease tensions within the prisons, said Dir. Diroll, but H.B. 86 might increase tensions when some get a certain amount of credit different from that earned by the person sitting next to him or her in the same program.

According to Mr. VanDine the risk reduction option can save more beds for DRC so those offenders would be given priority for getting into the programs that qualify for earned credit. Earned credit can only get a sentence reduced to 92%, whereas risk reduction can get it reduced to 80%, so it is a better option from the Department's perspective.

F-4 and F-5 Sentencing. Under this provision, certain F-4 and F-5 offenders are supposed to get community sanctions on first offense. If one isn't available, in the judge's estimation, the court must give DRC 45 days to suggest one. Atty. Imbrogno remarked that DRC can offer a list of available sanctions to the courts and can get requests turned around in 10 days. There are likely to be some adjustments made to this provision, he added.

When asked about the status of the H.B. 86 Work Group's recommendations, JoEllen Cline reported that it has gone to the legislature and a bill has been drafted.

Erich Bittner, legislative aide to Sen. Obhof, remarked that eight more weeks of legislative sessions are expected before taking time off.

State Representative Roland Winburn added that sessions will likely continue through mid-June.

Justice Reinvestment. Ms. Andrews reported that the purpose of the Justice Reinvestment Officers is to provide credible information to the common pleas courts to identify suitable offenders for supervised release under judicial release, transitional control, and provisions within H.B. 86. There are currently eight JROs serving six regions.

They are working with Chief Probation Officers so as not to overstep on current procedures but rather to coordinate with them. The goal is to help get the right people in the right programs at the right time. She pointed out that they are not advocating for peoples' release. They just want to provide information that might be helpful. Ms. Andrews feels it will be more helpful than the Institutional Summary Report.

Rep. Winburn asked if other people outside the APA or DRC background were considered for these positions to prevent a possible bias.

That option was not available at this point, Ms. Andrews explained, adding that they are Parole Officers and paid through APA funding. She noted, however, that they would like feedback on how best to use these officers.

#### **JAIL TIME CREDIT**

Dir. Diroll remarked that, months ago, the Sentencing Commission had a split vote on the jail time credit issue. But the impasse between the State Public Defender and the Judicial Conference was broken in later meetings. He asked Ms. Madriguera to comment.

Ms. Madriguera reported that proposed legislation will put into statute that a determination will be made at sentencing, while retaining discretion for the judge to make adjustments or corrections if necessary later, allowing removal of the contentious special hearing requirement.

Atty. Cline noted that this proposal made it onto the list that went to the House of Representatives.

#### **PROBATION TRAINING STANDARDS**

Chris Galli of DRC's Bureau of Community Sanctions offered a summary of the draft standards for probation officer training. He explained that it is not all-encompassing because of how varied the duties of probation officer are in municipal, county, and common pleas courts.

It sets criteria for newly hired probation officers that they must complete within the first year of employment. Some of the necessary information is being made available through online modules. The evidence-based practices will require face-to-face interaction time.

There will be annual training reviews and a continuing education standard of 20 hours per year.

Victims' representative Chrystal Alexander asked if there is a victim component to the training.

Mr. Galli admitted that there is not at this time.

Kristopher Steele, from the Ohio Judicial College, who worked on the standards and will provide training, believes victims will be covered in the introduction of court and criminal justice system and training.

Restitution is another area where the probation officer has interaction with the victim, said Prosecuting Attorney Laina Fetherolf. She stressed that, from the victim's perspective, this is very important. She fostered including this training for juvenile probation officers.

Right now, said Mr. Steele, this only applies to the adult side but is likely to transcend to the juvenile side as well. It may be necessary to consider a training academy for juvenile probation officers.

Rep. Winburn suggested that the group consider how to apply this to juveniles in the adult system.

Judge Gormley asked about who approves the classes taken as meeting the 20 hours requirement and what standards are set.

A concern raised by Judge Hany was whether there are liability issues if a court doesn't comply.

Mr. Yates remarked that some probation departments have already been sued for failure to train their officers.

Another concern raised by Judge Hany was the costs of training and the time lost to 20 hours of training.

Mr. Steele responded that they are trying to be accommodating by putting courses online so that training can be an hour here or there rather than whole days at a time. The 20 hour requirement isn't as restrictive as mandates for others in the court system. The programs will be job related. Eventually, they hope to see colleges start teaching to some of these standards. Most classes taught at colleges do not deal with the practical aspects of the criminal justice system.

Lynn Grimshaw suggested requiring 12 hours rather than 20 hours of training each year.

Judge Hany favored reducing the number of hours required. He finds it difficult for courts to afford the cost of training and the time away to take courses for everyone required to do so.

At the close of the meeting, Mr. VanDine announced a probation experiment out of Hawaii called Project HOPE. A representative from the project will be offering a presentation on the program at the Moyer Judicial Center.

#### **FUTURE MEETINGS**

Future meetings of the Ohio Criminal Sentencing Commission are tentatively scheduled for April 12, May 17, June 21, July 19, August 16, September 20, October 18, November 15, and December 20, 2012.

The meeting adjourned at 1:10 p.m.