Minutes of the
CRIMINAL SENTENCING COMMISSION
And the
CRIMINAL SENTENCING ADVISORY COMMITTEE
October 5, 2006

SENTENCING COMMISSION MEMBERS PRESENT
Chief Justice Thomas Moyer, Chairman
Common Pleas Court Judge Reggie Routson, Vice Chairman
Maj. John Born, representing Public Safety Superintendent
Colonel Paul McClellan
Defense Attorney Bill Gallagher
Kim Kehl, representing Director of Youth Services Tom Stickrath
Bob Lane, representing State Public Defender David Bodiker
Prosecuting Attorney Steve McIntosh
Common Pleas Judge Andrew Nastoff
Municipal Court judge Jeff Payton
Steve VanDine, representing Rehabilitation and Correction
Director Terry Collins
Public Defender Yeura Venters
Prosecuting Attorney David Warren
Sheriff Dave Westrick
Juvenile Court Judge Stephanie Wyler

ADVISORY COMMITTEE MEMBERS PRESENT
Monda DeWeese, Community Alternative Programs
Lynn Grimshaw, Ohio Community Corrections Organization
Candy Peters, representing OCJS Director Karhlton Moore
Gary Yates, Chief Probation Officers' Association

STAFF PRESENT
Scott Anderson, Staff Attorney
David Diroll, Executive Director
Cynthia Ward, Administrative Assistant

GUESTS PRESENT
Dave Berenson, Department of Rehabilitation and Correction
Bill Breyer, Prosecuting Attorney
Jarrod Bottomley, legislative aide to Sen. Timothy Grendell
Jeff Clark, Ohio Attorney General's Office
Jhan Corzine, Common Pleas Court Judge
Dan Fitzpatrick, Dept. of Public Safety
James Guy, Attorney, Department of Rehabilitation and Correction
Deborah Hoffman, Fiscal, Legislative Service Commission
Stephanie Kaylor, legislative aide to Senator Steve Austria
Christina Madriguera, Ohio Judicial Conference
John Murphy, Exec. Director, Ohio Prosecuting Attorneys' Association
Scott Neely, Department of Rehabilitation and Correction

Phil Nunes, Ohio Justice Alliance for Community Corrections
Becki Park, Senate Republican Caucus
Erin Rosen, Ohio Attorney General's Office

Common Pleas Court Judge Reggie Routson, Vice Chairman, called the October 5, 2006, meeting of the Ohio Criminal Sentencing Commission to order at 9:15 a.m.

RAPE PENALTIES

Director David Diroll explained that the most recent draft of the Commission's proposal incorporates language discussed at the last meeting which, in turn, drew upon proposals from the Ohio Prosecuting Attorneys Association (OPAA). The goal now was to see if there is a consensus on the sentencing ranges put forward in that proposal.

Judge Routson asked John Murphy, Executive Director of the OPAA, how Sen. Steve Austria responded when they met to discuss the OPAA recommendations.

Atty. Murphy responded that Sen. Austria is firm on the penalties proposed in S.B. 260 on sex offenses committed against children but is amenable to discussion on the adult victim issues.

Atty. Murphy said that he is also trying to get more information about new federal legislation on sex offender penalties.

Jeff Clark, representing the Attorney General's Office, reported that the new federal legislation does change penalties but not funding.

Determinate Versus Indeterminate Sentences

Public Defender Yeura Venters remarked that the Commission's proposal and, more notably, the OPAA proposal, constitute a radical departure from determinate sentences established under S.B. 2 and even from the sentencing ranges discussed a few meetings ago. He feels that it fails to recognize different levels of offenders.

Common Pleas Judge Andrew Nastoff praised S.B. 2 for placing accountability for sentencing decisions upon the judges, as elected officials, rather than the Parole Board. He recognizes that the proposed shift to return to indeterminate sentencing for some sex offenses is an attempt to provide an option for retaining those offenders that are highly likely to reoffend. He assumes that, in the revised proposal, the modified judicial release provision that would run parallel to Parole Board reviews is an attempt to keep some of the accountability with judges.

Dir. Diroll explained that, at the September Commission meeting, the OPAA proposed an indeterminate sentencing scheme across the board for rape offenses. During the discussion, some members favored having some form of judicial control and judicial release in any indeterminate plan. One possibility was to have judicial control run parallel to Parole Board control. He acknowledged that one of the issues motivating this option was the concern that judges—as elected officials who make decisions in public—should have control over the offender's release

date. The Parole Board—whose members are not elected and which meets in private—should not be given total control over the release decision. The compromise was to have a review mechanism for both the judges and the Parole Board.

Judge Nastoff viewed this as an improvement over traditional indeterminate sentencing because it offers another chance for the offender to be heard.

These offenders will do more time if the Parole Board is making the release decision, Atty. Venters declared. He disapproves of reverting back to indeterminate sentencing, insisting that it offers less certainty and will mean less plea bargaining and more trials and dismissals.

Atty. Murphy reminded him that the proposal focused strictly on rape. He contended that it would not result in any more plea bargaining than before determinate sentencing was established by S.B. 2. He dismissed the thought that "innocent" rapists might be locked away for life. The focus is on offenders that fall more into the category of sexually violent predators than those accused of date rape with "he said/she said" issues regarding consent.

Department of Rehabilitation and Correction (DRC) Research Director Steve VanDine reported that the vast majority of rapes are nonconsensual and involve a use of force. Only 1 to 2% are date rapes.

Atty. Venters feels that a consensus could be reached on indeterminate terms for child rape but not for adult provisions.

According to Judge Routson, the Commission is not wedded to those numbers and is still offering discussion on the concerns raised.

Judge Nastoff had recommended a hybrid with flat sentences at the low end of the range and indeterminate sentences at the max for the worst offenders. He favors a proposal that allows a judicial release mechanism because it allows the judge to revisit the case and evaluate the progress, or lack thereof, on the part of the offender. He feels it offers more assurance of an evaluation before release.

Although S.B. 2 imposed determinate sentencing, the General Assembly later moved away from that for sex offenders, said Dir. Diroll. Under the sexual predator law, the indefinite range is quite broad – 2 to life - and offers no judicial control over possible release. S.B. 260 is largely concerned with rape of children but applies indeterminate terms to almost all rapes. There is little flexibility in a penalty of 25 to life in cases where the questions of fact are on the bubble or the victim is too young to testify. The ironic result could mean more guilty people not getting convicted of rape.

Atty. Venters suggested taking child rape off the table at this time, particularly since there is already a consensus on that, while emphasizing the merits of a hybrid for adult sentences, with flat sentences at the lower end of the chart.

DRC legislative liaison Scott Neely reported that DRC Dir. Terry Collins would prefer that a review be conducted by the court *or* the Parole Board, rather than a concurrent review by both.

Review of a previous judge's decision will be awkward, said Judge Nastoff, given that many cases will be heard by a successor judge.

Atty. Bob Lane, representing the State Public Defender's Office, pointed out that a subsequent judge would not be re-evaluating the sentencing judge's decision. He would be evaluating the offender's rehabilitation and progress in prison.

If the bottom layers of the sentencing range were flat, with certain aggravating facts justifying an indeterminate sentence, then Atty. Venters said that he could consider the OPAA proposal.

Erin Rosen, representing the Ohio Attorney General's Office, urged fact-finding caution to prevent stirring up *Foster* concerns.

Judge Nastoff pointed out that, although the judge would make the finding, the sentence would still be within a range under the maximum.

Mr. VanDine suggested starting in the other direction: only allow flat sentences if there are mitigating circumstances.

Since rapes are not one size fits all, Judge Nastoff stressed the importance of weighing mitigating factors versus aggravating factors to sort out each case.

The judge will still have to make a decision up front regarding the length of the sentence, said Atty. Murphy.

The judge also has to decide on treatment for the offender, said Lynn Grimshaw of the Ohio Community Corrections Organization, and doesn't know if it will be successful. This is why judicial review can be beneficial, he noted.

According to Atty. Rosen, offenders with flat sentences don't bother trying treatment because they know they are getting out in a certain amount of time, regardless.

Judge Nastoff favors judicial review because the judge is familiar with the case file, including evaluations of the offender. He was elected by, and is accountable to, the public. If the public is dissatisfied with the judge's decisions, it can replace him. The same cannot be said for the Parole Board.

One of the positive aspects of the OPAA proposal, said Atty. Murphy, is that it offers a sliding scale on the minimum sentence within the range. It also offers an additional 10 to life sentence for the sexually violent predator specification.

Representing the Office of Criminal Justice Services, Candy Peters reported that, based on release data from 2004, the average sex offender served 13.2 years in prison.

S.B. 260 even includes some flat sentences, said Atty. Venters.

A **straw vote** was held on whether nonconsensual sexual conduct involving victims 13 and older should be indeterminate, determinate, or a hybrid. (The vote involved Commission members and others who have been serving on the Sex Offender Committee.) The result: Purely Determinate – 3; Purely Indeterminate – 10; Hybrid – 5.

In short, the group agreed to focus on the indeterminate ranges on the handout for actual rapes. While individual votes weren't recorded, the proponents of determinate sentencing included the defense bar. The judges leaned toward the hybrid.

Adding Judicial Release to Indeterminate Sentences

Judge Nastoff feels that a strict indeterminate sentence agitates judges, because an entity that is unfamiliar with the case (Parole Board) makes release decisions. He feels that responsibility belongs with the judge. He could accept indeterminate sentencing so long as some form of judicial release were included.

If both the judicial and Parole Board systems were used and allowed to run parallel, Dir. Diroll asked if one would get to veto the other. That is the way the sexual predator law works now, he noted.

According to Judge Nastoff, the offender would have two opportunities for release and one system (judicial or Parole Board) could not stop or veto the other.

That would be similar to "super" shock probation before S.B. 2, said Atty. Lane.

Currently, said Judge Nastoff, when an offender is released on judicial release, he is done when the 5 years of supervision end.

Sara Andrews of the Adult Parole Authority pointed out that the length of parole is discretionary. She also claimed that a few hybrid sentences currently exist under pre-S.B. 2 law.

According to Ms. Peters, if a sex offender recommits, it usually occurs within 3 years of release.

Atty. Grimshaw recommended requiring 5 years supervision for all sex offenders, whether it be parole or probation.

Ms. Andrews suggested not making it a blanket 5 years, but allowing it to be adjusted.

Representing the Chief Probation Officers' Association, Gary Yates asked who would make the decision of release from supervision, noting that parole already has a mechanism for parolees.

Currently, said Judge Nastoff, if someone violates judicial release, only the balance of the original sentence can be imposed. He asked that judicial release violators be subject to the same sanction as parolees.

Municipal Court Judge Jeff Payton expressed concern over the fact that the court has no control over what the Parole Board does.

Atty. Grimshaw recommended that if the offender is granted release by either the judge or Parole Board and he violates the condition of release, he would be returned to prison and could not be considered again for any early release.

Atty. Murphy suggested that, for the serious violent predator, either the Parole Board process or judicial release should be available, but not both.

Acknowledging that serious violent predator laws are already pretty tough, Mr. Neely again noted that DRC Director Terry Collins also prefers judicial release or Parole Board release, but not both.

Defense Atty. Bill Gallagher asked why it was important to offer one or the other and not both.

According to Ms. Andrews, it is necessary to clarify who has authority to grant release.

If judicial release is set up akin to super shock probation, then no veto system is needed, said Atty. Gallagher. Under super shock, the remaining portion of the sentence was suspended, but if the offender violated the conditions of release, he was forced to serve the remainder of the sentence. He sees no ambiguity in the process and sees no need for a veto system.

Judge Nastoff agreed, but said he would like to retain judicial release mechanisms. If the judge considers granting release, he would grant a hearing. If he denies the hearing, he effectively denies release. If the judge denies a hearing, there should be a waiting period before the Parole Board can do a hearing, and it would be responsible for any release decisions from that point on.

Atty. Lane argued that the Parole Board should be able to make a decision regarding a hearing irrespective of what the court does.

DRC Atty. Jim Guy warned against creating any tensions between the Parole Board and court.

Judge Nastoff contended that the judge does not want to just punt the control to the Parole Board, but wants to retain some control over the sentence.

According to Atty. Gallagher, that is the same as a definite sentence with judicial review.

Common Pleas Judge Jhan Corzine remarked that more than half of the current legislators were not around when indeterminate sentences existed before S.B. 2. As a result, the Commission is likely to fight the same battles that it fought ten years ago.

If we adopt indeterminate sentencing as proposed, but allow the judge the option of granting judicial release at a given point, then it is similar to a hybrid sentence, Judge Nastoff contended.

By acclamation, the Commission agreed that:

> **The indeterminate sentencing scheme for sex offenders should include a judicial review component. Once the offender's minimum term is served, both the court and the Parole Board, on separate tracks, could review the inmate's record and determine whether release is appropriate. Neither would have express veto power over the other's decision. The judicial review would follow the judicial release format (§2929.20), except that the inmate must wait at least 2 years after being denied release at a hearing before petitioning again. The court could not release the inmate without holding a public hearing at which the inmate, inmate's attorney, prosecutor, and victim could appear. Judicial review would not affect the Parole Board mechanism, which would continue to follow its own rules.**

Judge Nastoff stipulated that the clerk of courts should be required to forward a copy of the petition and decision to the Parole Board.

According to Atty. Guy, that is *supposed* to happen now but the Parole Board doesn't always find out in time.

Members agreed by acclamation:

> **The clerk of courts' duties should be amended to require them to notify DRC when an inmate files for judicial release.**

Atty. Lane noted that, under parole, the offender has 5 years of supervision and if he violates parole he can be sent back to complete the original sentence, with credit given against the maximum. Post release control, however, would differ.

Currently, said Ms. Andrews, once the minimum term has been served, the offender gets a Parole Board review.

For a sentence of 10 to life or higher, said Mr. Neely, a Parole Board hearing should occur after the minimum term has been served.

Prison Terms for Rape and Attempted Rape When the Victim Is at Least 13

Judge Nastoff asked if the 25 years was the maximum for the most heinous rape not involving a young victim.

Dir. Diroll noted that there usually are additional charges that would be applied and add more time. He pointed out that, under pre-S.B. 2 law, a rapist served 7 to 25 years. When the OPAA recommended a 25 year maximum instead of life (which is recommended in S.B. 260), it was based on old law.

For some sexual predators, said Judge Nastoff, 25 years are not enough.

Atty. Murphy said that the OPAA would be willing to consider a maximum life sentence for the worst of the worst sex offenders.

Judge Nastoff noted that no sexually violent predator label has ever been imposed in his county. It gets pled off.

Dave Berenson of DRC noted that there are only 90 sex offenders labeled as sexually violent predators in Ohio prisons.

The worst of the worst, said Atty. Lane, are never indicted on just one count of rape. There are always other charges added to the underlying charge of rape.

Judge Corzine remarked that the judge always has the right to veto a plea bargain.

It would be helpful to know the impact of the proposal on the prison population, said Atty. Gallagher, as well as post-*Foster* numbers.

The terms selected by S.B. 2 were based on the average times being served pre-S.B. 2, Dir. Diroll reported. He noted that the patterns have changed since then on rapes and some other sex offenses. They are now serving much longer terms.

According to Ms. Peters, sex offenders are currently serving an average of 13.2 years and 17.8 years if they have a life tail on the sentence. She remarked that 30% of the sentences were more than 10 years. Only about 20% of all sex offenders had sentences of 3 to 4 years, due to evidentiary problems or he said/she said issues. She pointed out that none of those had child victims.

Atty. Gallagher recommended a broader sentencing range, noting that low sentences are almost always imposed by plea bargain on offenders who generally deserve a low sentence. He prefers allowing the judge the option of choosing either a determinate or an indeterminate sentence.

Another option, said Judge Routson, might be to use the proposed indeterminate ranges and to keep attempts as flat sentences. If there are evidentiary issues, the charges could be amended to an attempt.

If it is a case that seriously concerns the prosecutor, said Atty. Gallagher, then he is not going to agree to plead it as an attempt.

Atty. Murphy remarked that he prefers an indeterminate sentence in case an evaluation reveals the offender is more dangerous than they first realized. He views an attempt as a completed offense, except for the incompetence of the offender or the interference of an outside agency that prevented the completion of the offense.

If the prosecutor feels the offender will continue to traumatize the victim, he can oppose the plea, said Atty. Venters.

Atty. Murphy said the OPAA prefers indeterminate sentences for such violent attempts.

A judge is basically rolling the dice as to whether he maximizes or does not maximize a sentence, said Judge Corzine. He favors some wiggle room at both the top and bottom ends of the sentencing range. He referenced a case where a juvenile offender did not deserve to go to prison, but, as judge, he had no option. He favors as much discretion as possible at the top and bottom of the sentencing scheme.

The legislators decided several years ago to mandate prison terms for rape cases, said Atty. Murphy, and that is unlikely to change.

Atty. Venters reiterated that the more certainty he can bring to a client regarding sentencing options, the better able that client is to make a decision on how to plead.

Echoing those concerns, Atty. Gallagher remarked that if every sex offender sentence has a tail, it offers little room for bargaining. Every offender needs to know the amount of time he will serve.

Atty. Murphy contended that a person with a sentence of 2 to life, would have a good shot at the judicial release mechanism.

Pros. Steve McIntosh suggested offering the option of a hybrid sentence for attempts and those cases most likely to be plea bargain situations.

Atty. Murphy asked what findings would be necessary to get to the indefinite range in such a hybrid.

Judge Corzine suggesting offering a broader range, noting that once you start hybrid fact finding, you get *Foster* issues.

Dir. Diroll asked if attempts should be subject to indeterminate sentencing, and, if so, what the range should be.

Judge Nastoff asked how a sentence of 6 to 15 would trigger *Foster*, as opposed to a sentence of 3 or 5.

There has to be some objective criteria for imposing that sentence, said Judge Corzine, which is permissible as long as it does not require a finding of fact.

The solution, said Dir. Diroll, would be to make sure the sentencing scheme would not require a special finding that permits the leap to the maximum. He asked Atty. Murphy if the OPAA might accept a flat sentence of 2, 3, 4, or 5 years with an indefinite sentence of 6 to 15 years for attempted rape of a victim over the age of 13.

Pros. David Warren remarked that prosecutors and victims always emphasize that they want the offender to get counseling. If given a short, flat sentence, the offender seldom gets counseling.

Atty. Venters raised the hypothetical case of an innocent person who goes to trial to prove his innocence, but the jury determines otherwise. That offender is denied counseling because he still claims his innocence. Due to the denial and lack of counseling, he is forced to serve the full 15 years.

Given today's forensic capability, Pros. Warren expressed doubt that a jury of 12 people would make a mistake that serious and send an innocent man to prison for rape.

A fall-back position is needed, Atty. Gallagher insisted.

The best argument for indeterminate sentencing, said Phil Nunes, representing the Ohio Community Corrections Association, is that the

offender can be returned to prison to finish the remaining portion of the full sentence if he violates conditions of his parole supervision. Under determinate sentencing, however, the offender is released under post release control which only allows him to be returned for 9 months for a violation of supervision.

When asked whether attempts involving victims over the age of 13 should have a flat sentence range, hybrid sentence, or indefinite sentence, consensus was reached that a hybrid sentence would be most appropriate.

If the offense is serious enough to go to the maximum minimum, then it deserves an indefinite tail, said Judge Nastoff.

In the absence of specifications to be found by a jury, Atty. Lane argued that this hybrid could cause great disparity. One person could get a 2 year flat sentence and another could get an indefinite sentence of 6 to 15 years. He feels an indefinite sentence should be based on findings by a jury. This range, he contended, is too broad.

As long as judges have discretion, there will always be disparity, Atty. Gallagher acknowledged.

After lunch, the Commission agreed in a close vote:

> **To recommend a hybrid sentencing plan for attempted rape of a victim who is at least age 13.**

The vote of Commission members only: Purely Indeterminate – 6; Hybrid – 8. The judges and defense tended to favor the hybrid. The prosecution and law enforcement leaned toward the pure indeterminate approach.

The Commission then agreed by acclamation:

> **The hybrid for attempted rape of a victim who is at least 13 should include the option of a flat 2, 3, 4, or 5 years *or* an indeterminate sentence of 6 to 15 years.**

No vote count was recorded, although the prosecution continued to express doubts about the hybrid.

Dir. Diroll then asked if an indefinite sentence should be considered for nonconsensual rape, with a "preferred" sentence of 7 years from a range of 5, 6, 7, 8, or 9 to 25 indeterminate.

Judge Nastoff asked what was meant by "preferred".

The judge would normally default to a sentence of 7 to 25 unless the case was deemed less serious, Dir. Diroll explained, in which case the judge would choose a lower minimum, or a higher minimum if the case were considered as more serious.

Prosecutors have generally agreed, said Atty. Murphy, that a "presumed" sentence should be somewhere in the middle of the range. So "preferred" would mean guidance toward a middle year term.

If you create a "preferred" sentence of 7 to 25 years, Atty. Gallagher argued, then you create a presumption on the jury verdict.

Judge Corzine contended that the judge can make findings to lower the sentence but not to increase the preferred term, without stirring up *Foster* issues.

Since *Foster*, said Dir. Diroll, there is no longer a need for a finding toward imposing the minimum, nor a presumption toward the minimum.

By acclamation, the Commission agreed:

> **To recommend a range of 5, 6, 7, 8, 9, to 25 years for nonconsensual rape with a victim over age 13.**

Prison Terms for Child Rape

The next question for discussion was whether to retain the distinction that a sex offense committed against a victim under 10 years of age is more serious than when the victim is 10 to 13 years of age. Under the current proposal, rape committed against a victim under the age of 13 or with the use of force, serious physical harm, or a prior would result in a sentence of 15 years to life.

Judge Corzine recommended a sentence of 20 years to life for the inclusion of serious physical harm or a prior.

Current law makes a distinction based on serious physical harm, said Atty. Murphy.

Most agreed that the penalty for rape against a victim under the age of 13 would increase to 20 years to life if it involves serious physical harm or a prior sex offense.

For rape of an 11 to 13 year old victim, Mr. Nunes asked why the penalty was only 10 to 25 years for straight rape instead of 10 to life. He feels the proposal would have a better chance of passage if increased to 10 to life instead of capping it at 25 years.

Atty. Murphy agreed that it would have a better chance of passage.

Dir. Diroll noted that force, serious physical harm, or a prior would increase it to 15 to life. Since one of those was usually present, few cases would fall into the 10 to 25 category.

According to Ms. Peters, the new federal penalty for this rape under the age of 13 with no serious physical harm, prior, force, etc. is 30 years to life.

Most concurred that the penalty should be 10 years to life for rape of a victim aged 11 to 13.

Atty. Rosen pointed out that the label of sexually violent predator means the offender has committed a prior sex offense.

The serious violent predator spec usually results in life without parole, said Mr. VanDine.

Juvenile Judge Stephanie Wyler suggested making rape plus the serious violent predator spec result in a sentence of 20 years to life since rape plus serious physical harm or a prior is already listed at 20 years to life.

In that case, said Mr. Yates, it would be necessary to increase the penalty to 25 years to life for rape plus the sexually violent predator spec plus force.

The Commission agreed by acclamation:

> **To recommend increasing the minimum prison terms in the Prosecutor's proposal as follows: 20 years to life for rape of a victim under age 13 when the crime includes serious physical harm or a defendant with a prior rape conviction; 20 years when there is a sexually violent predator (SVP) spec; and 25 years when there is both force and an SVP spec. The maximum in these cases would be life.**

The Commission also agreed in a split vote:

> **To increase the 10 year maximum (on the Prosecutors' chart) for rape when the victim is under 13 and there is no force, serious physical harm, prior, or SVP spec, to life in prison.**

Seven members favored life, four preferred a 25 year maximum, and three expressed no preference.

Prison Terms for Attempted Child Rape

Attempts usually result in a penalty that is one step down from the completed act, said Dir. Diroll. The current proposal recommends a penalty of 5 to 25 years for attempted rape of a child under the age of 13. Attempted rape of a child under the age of 10 or with the use of force would result in a penalty of 10 years to life. Attempted rape plus serious physical harm or a prior sex offense conviction would also result in a penalty of 10 years to life. He noted that the last two would have the same penalty as rape of a child under 13 or with the addition of a sexually violent predator spec.

Eventually, the Commission agreed:

> **To recommend, for attempted rape of a person under 13, a 5 to 25 year term when there is no force, serious physical harm, prior, or victim under 10. The penalty would increase to 10 to life when any of those factors are present.**

The vote: Yes – 7; No – 3. The defense led the dissent.

Splitting Rape Into Two Statutes

Dir. Diroll asked if the statute for child rape should be merged back into §2929.02.

It would be simpler if the statutes for child rape were broken out, but he didn't have strong feelings, said Judge Nastoff.

Atty. Murphy favored keeping it in the same section so that there are minimum changes and less chance of false accusations for making changes we didn't make. He preferred to keep it simple.

Mr. VanDine favored two statutes, citing the research difficulties today in tracking two distinct crimes under the same ORC section numbers.

The Commission agreed:

Rape of a person under age 13 and other rapes should be separate statutes.

The vote: 2 statutes – 8; 1 statute – 3, led by prosecutors.

Director Diroll then asked if there was a need to vote on the package as amended. Members agreed that their earlier votes on the individual changes reflected consensus on the package.

JUVENILE SEX OFFENDERS

Most of the discussion has involved sex offenses committed by adults, said Dir. Diroll. It will be necessary, at some point, to also address those committed by juvenile offenders. He wondered if the interim report to the General Assembly should include a comment regarding its temporary non-applicability to the juvenile system or remain silent on the issue.

If adjudicated delinquent and convicted of rape, said Ms. Peters, the juvenile offender will be on the National Public Register the rest of his life.

He could even get a life sentence, said Mr. Yates.

Representing the Ohio Judicial Conference, Kris Steele said that he served as a juvenile court probation officer, specializing in sex offenders, for the 10 years prior to coming to the Conference. In this position, he observed that all the sentencing changes made in the judicial system for adults eventually trickle down to the juvenile system, including changes to sex offender law. He pointed out that the victims of juvenile sex offenders are more likely to be under the ages of 13 or 10. He recommended stipulating in the report to the General Assembly that the proposal is designed to address rape offenses committed explicitly by adults and that suggestions will come at a later date on how those might be applied to juvenile offenders.

Kim Kehl, representing the Department of Youth Services, reported that the Department is currently doing an internal evaluation of the increase in juvenile sex offenders. He explained that there is a huge population of juveniles that are not adjudicated but committing offenses of a sexual nature. Often the sex offense act is a reaction or symptom of the juvenile having been molested himself or grossly neglected. The juvenile has often been removed from home *because* they were a victim. Children Services does not look at the criminality possibility in removing them from the home as a victim. This non-adjudicated population is huge, he declared. Many of the cases, he

added, bring in issues of competency. He warned that entering this arena of juvenile sex offenders will be akin to entering a swamp.

This is about the only area, said Judge Payton, where there are such clear distinctions between adult and child offenders that need to be handled separately.

At some point, said Dir. Diroll, it will be necessary to address what refinements are warranted for dispositions of juvenile sex offenders.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for October 19 and November 16 in 2006 and January 18, February 15, and March 15 in 2007.

The meeting adjourned at 2:27 p.m.