**Minutes of the**
**CRIMINAL SENTENCING COMMISSION**
**And**
**CRIMINAL SENTENCING ADVISORY COMMITTEE**
**June 26, 2008**

**MEMBERS PRESENT**
Chief Justice Thomas Moyer, Chair
Common Pleas Court Judge Reginald Routson, Vice-Chair
Paula Brown, OSBA Delegate
Staff Lt. Shawn Davis, representing State Highway Patrol Superintendent Richard H. Collins
Defense Attorney Bill Gallagher
Municipal Court Judge Fritz Hany
Common Pleas Court Judge Andrew Nastoff
Mayor Michael O'Brien, City of Warren
Appellate Court Judge Colleen O'Toole
Municipal Court Judge Kenneth Spanagel
Steve VanDine, representing Rehabilitation and Corrections Director Terry Collins
Prosecuting Attorney Dave Warren
State Public Defender Timothy Young

**ADVISORY COMMITTEE MEMBERS PRESENT**
Eugene Gallo, Executive Director, Eastern Ohio Correctional Center
Lynn Grimshaw, Ohio Community Corrections Organization
John Madigan, Senior Attorney, City of Toledo

**STAFF PRESENT**
David Diroll, Executive Director
Myra Enos, Extern
Cynthia Ward, Administrative Assistant
Shawn Welch, Intern

**GUESTS PRESENT**
Christal Alexander, Office of Criminal Justice Services
Scott Anderson, Professor, Capitol University Law School
James Brady, interested citizen
Jason Cowling, legislative aide to Rep. Dyer
Bill Crawford, Supreme Court of Ohio
Jim Guy, Rehabilitation and Correction
Bob Lane, State Public Defender's Office
Phil Nunes, Ohio Justice Alliance for Community Corrections
Erin Rosen, Attorney General's Office
Paul Teasley, Hannah News

Chief Justice Thomas Moyer, Chair, called the June 26, 2008 meeting of the Ohio Criminal Sentencing Commission to order at 9:40 am.

**DIRECTOR'S REPORT**

Executive Director David Diroll reviewed the contents of the meeting packet, which included: the second draft on Simplifying Misdemeanor Sentencing; extern Myra Enos' report on Consecutive vs. Concurrent Sentencing: A Multi-State Sample; intern Shawn Welch's summary on *State v. Colon* and Statutory *Mens Rea*; the latest Legislative Update on the 127th General Assembly; and minutes from the March and May meetings.

**S.B. 17**

Municipal Court Judge Spanagel offered a summary of recently enacted S.B. 17 regarding repeat OVI offenders. Under S.B. 17, a second OVI offense will carry certain new mandatory provisions, including an interlock device. Also on second offense, if the court decides to send the offender for assessment or if the statute says treatment, then the offender must be ordered to treatment. A hearing process will be required for violating use of the interlock device. If the defendant claims a constitutional infirmity, the burden will be on the defendant to show it by preponderance of the evidence. Judge Spanagel expects that section to eventually reach the Supreme Court

On third or subsequent offense a blood test is mandatory. If the driver refuses, the officer will be able to use any reasonable means necessary to obtain the sample.

Watercraft OVI now counts as an eligible prior conviction for land OVI. The problem, however, is that watercraft OVIs are not reported on the LEADS system, so a judge will not necessarily know of a watercraft OVI.

Staff Lt. Shawn Davis, representing the State Highway Patrol, reported that the changes will not require any additional training for the State Highway Patrol but will prevent having to awaken a judge for a warrant.

**SEX OFFENDER REGISTRATION NOTIFICATION**

Representing the State Attorney General's Office, Erin Rosen reported that, on June 9, a judge from the U.S. District Court dissolved the agreed order that required registered sex offenders to file. The agreement had stayed the 60-day filing requirement for offenders to file a petition challenging the reclassification and to prevent sex offenders from falling off the registry if their registration had or was about to expire.

Dir. Diroll asked if any Ohio courts have found the retroactivity provision of the Adam Walsh Act's registration requirement to be unconstitutional.

Decisions have gone both ways, responded Atty. Rosen. Most have found S.B. 10 to be constitutional.

**SENTENCING COMMISSION'S LEGISLATIVE ROLE**

Chief Justice Moyer reported that he spoke with Senate President Bill Harris, Speaker of the House Jon Husted, House Minority Leader Joyce Beatty, and Senate Minority Leader Ray Miller. All want the Sentencing Commission to continue but do not want to direct all criminal justice bills to the Commission for review. They feel that to do so would usurp the legislative committee structure. They acknowledged, however, that they are open to the opinions of the Sentencing Commission.

Representing the Ohio Justice Alliance for Community Corrections, Phil Nunes feels it would beneficial for the Commission to weigh in on criminal bills and criminal justice issues with the legislature at least once a year.

Dir. Diroll reported that Senator Grendell has said he would be willing to schedule a hearing for a presentation by the Commission. It would be feasible then to discuss trends and direction on sentencing issues.

**CULPABLE MENTAL STATES**

The Ohio Supreme Court's recent *State v. Colon* decision held that the failure to include the applicable mental state in a criminal indictment is a "structural" error that may be raised for the first time on appeal. Sentencing Commission intern Shawn Welch compiled a chart of offenses that might be affected by this decision, offenses that lack a clear mental state in statute.

Dir. Diroll noted that the Revised Code says, unless strict liability is clearly intended, "recklessness" is the culpable mental state for any criminal offense that does not otherwise specify *mens rea*. But recklessness isn't always a good fit in these statues, he added.

Mr. Welch explained that most county prosecutors don't charge recklessness when indicting on statutes that are silent regarding a culpable mental state.

According to Staff Lt. Davis some prosecutors don't even agree on what mental state is required.

Automatically defaulting to recklessness would skew some offenses, such as vehicular homicide and assault, said Dir. Diroll.

If the statutes and instructions are too confusing, said Pros. Warren, he usually goes up to the next level, "knowingly".

Appellate Court Judge Colleen O'Toole remarked that there are different ways to interpret whether a crime carries strict liability (and no mental state). She isn't sure if it would be more beneficial to create a new rule or rewrite the statutes.

Since §2901.22 defines a culpable mental state, Judge Spanagel recommended adding to that definition to address *Colon* type cases where there is no stated mental state listed.

The first question, asked Chief Justice Moyer, is whether this is an issue the Sentencing Commission should address.

Municipal court Judge Fritz Hany was the only member who felt the Sentencing Commission should not weigh in.

Acknowledging that it involves a charging decision rather than a sentencing decision, Judge Nastoff still feels the Commission should help to some clarification.

In response to numerous questions, Chief Justice Moyer reported that, to date, the Ohio Supreme Court has not received a reconsideration motion on the *Colon* case. He noted that the issue of *mens rea* goes beyond the case of *Colon*. The case has revealed that there are obviously some gaps that need to be addressed.

Because this is being handled differently across the state, common pleas Judge Reggie Routson remarked that it is an issue that needs to be addressed.

Pros. Warren reported that some of the judges in his area are handling the issue by amending the indictment or re-indicting.

Giving credence to how Mr. Welch's memo lays out the universe of criminal statutes that have issues, Judge Nastoff suggested having a committee take this information and examine pertinent case law. Where there have been judicially interpreted mental states, the Commission could recommend that the statute include that mental state.

Pros. Warren suggested starting with the definition of "reckless" declaring it to be confusing.

Judge Nastoff declared that "recklessness" is sometimes a harder mental state to prove than "knowingly".

Dir. Diroll added that the definition covers a person who "perversely disregards a known risk." The "perversity" requirement can confuse jurors.

Bob Lane of the State Public Defender's Office stressed the need for uniformity in how people are charged based on mental states.

State Public Defender Tim Young feels it is important to examine the problem on a statute-by-statute basis rather than trying to find a one-line fix.

The task might be simplified, said Judge Nastoff, by inserting "recklessness" into the statutes that have already been judicially interpreted as such.

Dir. Diroll agreed to assign a subcommittee to address this issue. The following Commission members volunteered to serve on the committee: Attys. Bob Lane, John Madigan, and Paula Brown, Judges Hany, O'Toole, Nastoff, and Spanagel, and Pros. Warren. Judge Corzine was volunteered by another member.

Although he recognizes that this problem could fall into misdemeanor cases as well, Judge Hany has reservations about whether this is in the purview of the Sentencing Commission.

Other than a legislative committee, Chief Justice Moyer believes that this Commission is a good source to address the issue.

Judge Spanagel suggested expanding the mental state chart to other offenses, including some OVI and other traffic offenses.

Dir. Diroll acknowledged that there probably are offenses outside of Title 29 with a gap regarding mental states, although strict liability is probably intended for many of them.

Judge Nastoff suggested that the committee might want to recommend a adding a section to offer future guidance on mental culpability.

Judges Spanagel and Hany welcomed Chief Justice Moyer's suggestion that the subcommittee should apply this scrutiny to both felony and misdemeanor statutes.

Atty. Madigan agreed that applying a uniform look at the mental states of negligence etc. for misdemeanors would be most helpful.

Judge Hany recommended starting with a list of offenses and progressing from there.

**CONSECUTIVE AND CONCURRENT SENTENCING: A MULTISTATE SAMPLE**

Over the last several years, there has been a key statutory change and several Supreme Court decisions which have affected how multiple counts are charged and sentenced. As a result, Ohio no longer has a statutory cap or statutory guidance on consecutive sentences. Nor is there a presumption in favor of concurrence. At the request of Commission members, extern Myra Enos researched how other states handle the issue of consecutive versus concurrent sentencing. She found that some states have a presumption of concurrent sentencing and some have a presumption of consecutive sentencing. Her report starts with a list of those states.

Dir. Diroll added that some states determine concurrent/consecutive sentencing by rules and others do it by sentencing guidelines. Most information was gathered from state sentencing commissions. The default position in most jurisdictions is at the judge's discretion. Some jurisdictions default to consecutive sentences. Federal statutes, he noted, lay out discretional factors. A few states do jury sentencing, he added.

According to Atty. Gallagher, federal statutes group multiple offenses together as one. With some states, he remarked, consecutive sentences don't come into play unless the criminal act involves certain conduct.

The grouping of multiple offenses is often based on conduct, said Judge Nastoff.

Dir. Diroll acknowledged that there is a range of approaches. Virginia views each case as a criminal event. Offenses are charged differently in different states. In Ohio it is easy to stack charges of similar elements.

Judge O'Toole favors the "grouping" concept. Since the U.S. Supreme Court seems to favor findings by juries, she suggested that Ohio might want to follow that trend.

In Kentucky, said Atty. Gallagher, consecutive sentences don't matter much since offenders only serve 20% of the sentence due to lack of space. He feels not only that a cap is needed on consecutive sentencing in Ohio, but that the whole sentencing structure should be overhauled.

Judge Nastoff noted that it might be time to consider another major overhaul. He noted that current the prison population is at 132% of stated capacity and CBCFs are maxed out. Like most judges, he said he attempts to use community sanctions first for low level offenders, but when they violate those sanctions, he eventually steps up the penalty to time in prison. He asked what examining the whole system again would entail for the Commission.

The Commission would need more staff, said Chief Justice Moyer.

Dir. Diroll noted that, with S.B. 2, the Commission had clear legislative direction based on a strong desire for changes. Further impetus came from the Lucasville uprising in 1993.

Judge Nastoff asked if this Commission would want to take the lead in analyzing and recommending major changes again. Does the Commission have the resources to begin such a project or should we limit ourselves to smaller projects?

Believing that the legislators need our guidance, Atty. Lane suggested that the Commission needs to make the effort.

Chief Justice Moyer reported that a group from the Council of State Governments (CSG) is scheduled to visit our state to review Ohio's sentencing structure and prison system.

Mayor O'Brien asked if a "before and after" study has been conducted on the effectiveness of S.B. 2.

Mr. VanDine acknowledged that prison crowding was significantly reduced as a result of S.B. 2. Coupled with a decrease in the crime rate in 1993, a shift to more community alternatives offered by S.B. 2 helped the decrease.

New records were broken this year in prison population, said Dir. Diroll. The current population is 50,402 and the prior high was just before S.B. 2 was enacted. One significant reduction came as a result of S.B. 2's reclassification of theft and raising the felony threshold. He pointed out that since S.B. 2's enactment there have been some new felony offenses added that have impacted the prison population. These have included stiffer OVI and domestic violence penalties.

In the last six fiscal years, said Mr. Nunes, community corrections programs have diverted over 200,000 people. Since drug abuse is a major contributing factor to prison crowding, he declared that treatment programs serve as a viable alternative for low level nonviolent offenders.

Dir. Diroll reminded him that diverting low level nonviolent drug abuse offenders to community correction treatment programs was another major part of the changes implemented by S.B. 2. Many of the current drug abusers serving time in DRC are there because they violated the local sanctions and treatment programs offered by the court.

Eugene Gallo, of the Eastern Ohio Correctional Center, contended that the state's current criminal justice system is insufficient. He insisted that we cannot afford to continue following current practices if it fails to make the public safer while draining our resources.

Mr. Nunes remarked that the CSG has conducted studies in other states and made recommendations to their legislators. Their recommendations after conducting a study in Ohio could prove valuable in determining a plan of action.

If we move ahead on this effort, said Chief Justice Moyer, we will need a committee to do so.

Dir. Diroll noted, in *State v. Ice*, that Oregon Supreme Court held findings supporting consecutive sentences were not required under sate constitution to be made by jury, rather than by trial court. However, the federal constitutional right to jury trial requires that facts supporting imposition of consecutive sentences be found by a jury, rather than a judge. At issue is whether the factual considerations come with a jury right under *Blakely, et al*. The U.S. Supreme Court agreed to hear this case and the results will influence the debate on the state level. He remarked that the case is likely to affect how we look at the issues.

Mr. VanDine said it might be useful to do some polling. He suggested asking what prosecutors and judges like and don't like about S.B. 2 and its effects over the past 13 years. We should also ask what they want us to look at for a consolidated package.

If the CSG group made recommendations in other states, said Judge O'Toole, they may have already addressed the concurrent/consecutive sentence issue.

Judge Nastoff suggested dovetailing our process with their process.

Mr. Nunes asked if some states use both determinate and indeterminate sentences.

Yes, Dir. Diroll responded. He explained that in the mid to late 90's Congress offered funding to states that imposed truth-in-sentencing laws, defining truth as 85% of the sentence. Ohio already had its truth-in-sentencing policy in place by that time. In fact, Ohio has the most honest truth-in-sentencing policy in the country. A lot of states allow good time to reduce sentences by one half.

Ohio had a hybrid before S.B. 2, he noted. There were 12 sentencing schemes masquerading as four tiers of felonies. Violent and drug offenses had indeterminate sentence ranges. Nonviolent F-3s and F-4s had flat-time sentences. The move to determinate sentences was an effort to simplify sentencing structure.

It is like comparing the trees to the forest, said Judge Nastoff. Those practitioners dealing with the "trees", or individual, prefer the "truth-in-sentencing" determinate sentences, whereas those dealing with the "forest", or larger problems such as prison population, prefer the indeterminate sentences that offer options for early release.

Although Ohio has a truly honest "truth-in-sentencing" structure, Mr. VanDine remarked that a couple of other states are about to join that rank by establishing a 100% standard (serving 100% of the sentence).

Atty. Gallagher and Judge Nastoff favor using a poll to obtain input from judges, prosecutors, and defense attorneys.

Since the Common Pleas Judges Association educational committee meets in September, Judge Routson recommended presenting the poll to them at that time.

Judge Nastoff suggested having Mr. VanDine work with the Commission staff to develop a questionnaire. He and Mr. Gallo agreed to work on a committee to develop the questionnaire. Mr. Gallo recommended putting it on the website.

By acclamation, the Commission agreed to:

> **Conduct a survey of sentencing judges, prosecutors, and defense attorneys on the effectiveness of the Commission's plan under S.B. 2 and to learn what changes that are needed. The questionnaire should questions on concurrent and consecutive sentencing.**

**SIMPLIFYING MISDEMEANOR SENTENCING**

Dir. Diroll reported that the Commission's revised misdemeanor statutes took effect 2004, so there has not been as much time for amendments to clutter the statutes as had occurred with felony statutes since S.B. 2. In addition, misdemeanor statutes are not as complicated as felony statutes. As a result, efforts to refine and simplify the misdemeanor section of the Revised Code will not result in as much shrinkage.

**Purposes of Misdemeanor Sentencing.** Attention first turned to §2929.21(D) limitations. Inserted in the 11th hour via H.B. 490 in 2004, Dir. Diroll explained that the intention was to avoid having full-blown sentencing/restitution hearing for minor offenses. It should not, however, exempt certain traffic cases and other minor misdemeanors from basic principles such as proportionality and fairness. He offered an edited version that simplifies and clarifies the provision.

> **By acclamation, the amended language for §2929.21(D) was adopted.**

**General Misdemeanor Sentencing Guidance.** The first sentence allows a judge to impose a jail term for a misdemeanor, and also consider imposing one or more community control sanctions, recapped Dir. Diroll. The second sentence of this statute allows the court to impose the longest jail term on offenders who commit the worst forms of the offense. Similar language in felony law was struck by *Foster*. However, the *Foster* issue might be irrelevant here because misdemeanors do not automatically have the right to trial by jury.

Judge Spanagel recommended leaving the second sentence in place, because someone is likely to appeal if the option is not there. Judge O'Toole argued that the statutes need to be consistent.

The Sixth Amendment right to a jury trial is at issue, Judge Nastoff argued. He noted that there is a different Sixth Amendment analysis for misdemeanor cases.

Dir. Diroll explained that the sentence was included because of concerns of county commissioners about overcrowding jails. He noted, however, that, with the exception of impaired drivers, relatively few offenders are serving maximum sentences in jail.

The Commission unanimously approved Judge Spanagel's motion, after it was seconded by Judge O'Toole, to:

> **Recommend retaining language in §2929.22(C) steering the court to consider one or more community control sanctions before imposing a jail term and suggesting the longest jail term for offenders who commit the worst form of the offense or offenders whose conduct and response to prior sanctions demonstrate that the longest jail term is necessary to deter him from future crime.**

**Sexually Oriented Misdemeanors.** Most of section §2929.23 addresses sexually oriented offenders who are classified as Tier III sex offenders/child victim offenders. Dir. Diroll asked whether most of the statute can be struck because there no Tier III sex offense misdemeanors.

Erin Rosen, representing the Ohio Attorney General's Office countered that there are three sex offense misdemeanors that fall into Tier III. It would be rare, she admitted, but could happen.

> **By consensus, the Commission agreed to retain the reference to Tier III in §2929.23 and to approve other suggested amendments.**

**Underage OVI: Elective Mandatory Term.** §2929.24(E) is odd, said Dir. Diroll. It covers the almost impossible situation in which a driver under age 21 has five prior OVIs in 20 years. The penalty includes an additional mandatory term of not more than 6 months *only* if the court elects to impose a jail term on the underlying offense. In essence, he remarked, it's up to the prosecutor to decide to charge the offense with a specification, making it mandatory.

Judge Spanagel expressed difficulty in understanding how underage OVIs could eventually amount to a felony offense resulting in "mandatory discretion".

Dir. Diroll explained that, if the offender is sentenced for underage OVI and a specification and the court decides to impose a jail term on the underlying offense, then an additional mandatory jail term of up to 6 months will be served consecutively to and prior to the jail term imposed for the underlying offenses.

> **The Commission accepted the streamlining amendments and took no further action on §2929.24.**

**Misdemeanor Community Control: Suspended Sentence**. Dir. Diroll pointed out that S.B. 2 did away with suspended sentencing for felonies. But H.B. 490 (§2929.25) gave misdemeanor judges discretion to choose between direct and suspended sentences. He asked whether the suspended sentence should be phased out for misdemeanors.

After a resounding "no" from Judge Hany, the Commission agreed:

**To recommend only streamlining changes to §2929.25.**

**Non-Jail Residential Sanctions: Contagion Testing.** Mr. Diroll suggested removing language already covered in other statutes governing jails and prisons (Ch. 341 and 753, and §§1713.55 and 2301.57) from §2929.26(E) regarding testing for contagious diseases.

**By acclamation, the Commission recommended §2929.26, as amended.**

**Misdemeanor Nonresidential Sanctions.** §2929.27(A)(14) requires the offender to obtain counseling under narrow circumstances. Rather than narrowing the field, Dir. Diroll deleted the specifics and subsumed it into a general authority to order counseling in any case.

Dir. Diroll asked if GPS monitoring and other high tech sanctions should be mentioned as in felony law.

**By acclamation, the Commission agreed to recommend the amendments to §2929.27 and suggested that GPS monitoring and other high tech sanctions should be included in §2929.27(A)(2).**

**Misdemeanor Financial Sanctions: Restitution.** The third paragraph of §2929.28(A)(1), said Dir. Diroll, implies that the Rules of Evidence apply at sentencing, which isn't true. The second sentence of that paragraph places the burden of proof upon the victim or survivor to justify by a preponderance of the evidence the amount of restitution being sought. This does not exist in felony or juvenile restitution law and only adds to the confusion regarding whether Rules of Evidence apply. In the interest of simplification, he suggests striking the second sentence and clarifying that the amount of restitution cannot exceed the civil jurisdiction of the court.

Dir. Diroll pointed out that these are not mini civil damage cases. The purposes and principles section already explains that there are no additional hearings for restitution in misdemeanor cases.

If "evidentiary" is deleted, said Judge Hany, then further burden of proof should also be deleted. He noted that he usually handles restitution issues at the time of sentencing, without needing an additional hearing. If there is further debate regarding restitution, they get to sort it out through the civil process.

Atty. Brown wondered if the inclusion of the language "evidentiary hearing" gives the defendant the right to have a separate hearing.

According to Dir. Diroll the restitution provision says that the court will hold a hearing only if the amount of restitution is unresolved.

Judge Nastoff declared that if the judge has already given a sentence, then opens the case again for a post-sentencing hearing because someone disputes it, it can create problems. Whatever is declared at sentencing is supposed to be final. In his court, if restitution cannot be determined at the time of sentencing then it does not get imposed.

Atty. Brown preferred retaining the word “evidentiary.”

Since felony law does not say “evidentiary”, Dir. Diroll suggests making the felony and misdemeanor statutes parallel on this issue.

If “evidentiary” is removed, said Judge Spanagel, then it is like a small claims type hearing and it allows more flexibility as to the type of evidence needed.

If a post-sentence hearing is conducted and the judge determines that the amount of restitution needs to be increased, Judge Nastoff asked what mechanism is available to enforce that order since sentencing had already been completed. He argued that there is no authority to modify the sentence unless the offender has violated community control. There has to be a basis on record for the amount of restitution ordered.

Atty. Brown recommended tabling further discussion of this issue until after the municipal court judges have a chance to look at it.

According to Judge Hany the judges won’t want to have to follow the Rules of Evidence. They won’t mind doing a hearing, he explained, but won’t want to have to follow the Rules of Evidence.

**Misdemeanor Financial Sanctions: Waiving Costs.** §2929.28 allows the court to waive the payment of courts costs at sentencing. It was added to statute to codify the holding of the Ohio Supreme Court in *State v. Clevenger* (2007), said Dir. Diroll. He suggested adding parallel language to felony sentencing law if it’s retained here.

Judge Spanagel declared that *Clevenger* is bad law and should not be codified. Instead it should allow the court to suspend court costs after sentencing. Every court holds tons of unpaid fines and costs. Currently, most fines can be suspended but court costs cannot. The Joint Commission on Court Costs is expected to recommend statutory language that will grant permission for courts to suspend court costs after sentencing. He suggested language stating: “The court may waive the debt of court costs if the defendant proves inability to pay at time of sentencing, or at some later time.” Like any other business, the court should have the right to write off bad debts that cannot be collected.

He reported that the Court Costs Commission and the judges’ association plan to introduce something in January, contending that it is more logical to change the law that covers *Clevenger* than to overrule *Clevenger*.

If the Commission prefers the language in the current draft of simplification recommendations, then he recommended amending the language to read “… if the defendant moves to waive the costs at sentencing or any later time.”

Dir. Diroll recommended the language “if the defendant moves to waive the costs at any time.”

Judge O’Toole pointed out that it also needs to address uncollectible court costs that are already out there. If uncollectible, costs are civil. Other than by civil judgment, Judge O’Toole wondered how court costs can be enforced.

It is important, said Judge Hany, to take into consideration if the defendant can prove indigence after a certain time versus having the ability and refusing to pay. He suggested allowing the court to waive costs at the court’s own motion.

Judge Spanagel suggested amending the language to “upon motion of the defendant or on the court’s own motion”.

Pros. Warren declared that he doesn’t like clerks filing a motion on his cases.

Judge Spanagel suggested waiting to see what the Court Costs Commission recommends.

**Organizational Penalties.** §2929.31(A)(15) authorizes a fine of not more than $1,000 for minor misdemeanors that are not classified. Doubting that any unclassified minor misdemeanors exist, Dir. Diroll recommends deleting the phrase.

**Million Dollar Fine.** While §2929.32 authorizes million dollar fines for some offenses, division (C)(2) excludes felony offenders. Noting that the aim is mostly toward major drug offenders, the exclusion tends to negate the section and defeat its purpose, said Dir. Diroll. The section needs to be better integrated with the rest of the Revised Code regarding super fines.

Judge O’Toole suggested checking further to find out why it is included in statute.

**Confinement Repayment Options.** §2929.36 states that “homestead” has the same meaning as in homestead exemption law. In other criminal contexts the language “home” is used instead. Dir. Diroll recommends using “home” instead to be consistent with the rest of the criminal statutes and not require resorting to an arcane definition in Tax Law.

**FUTURE MEETINGS**

Future meetings of the Ohio Criminal Sentencing Commission are tentatively scheduled for July 17, August 21, September 18, October 16, November 20, and December 18, 2008.

The meeting adjourned at 2:10 p.m.