OHIO CRIMINAL SENTENCING COMMISSION

65 South Front Street · Fifth Floor · Columbus · 43215 · Telephone: (614) 387-9305 · Fax: (614) 387-9309

Chief Justice Maureen O'Connor
Chair

David J. Diroll
Executive Director

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

February 20, 2014

MEMBERS PRESENT
Chief Justice Maureen O'Connor, Chair
Chrystal Pounds-Alexander, Victim Representative
Paula Brown, OSBA Representative
Ron Burkitt, Police Officer
Janet Burnside, Common Pleas Judge
Paul Dobson, Prosecuting Attorney
Kort Gatterdam, Defense Attorney
David Gormley, Vice-Chair, Municipal Judge
Kathleen Hamm, Public Defender
Sylvia Sieve Hendon, Appellate Judge
Thomas Marcelain, Common Pleas Judge
Steve McIntosh, Common Pleas Judge
Elizabeth Miller, representing State Public Defender Tim Young
Aaron Montz, Mayor, City of Tiffin
Dorothy Pelanda, State Representative
Kenneth Spanagel, Municipal Judge
Steve VanDine, representing Rehabilitation and Correction Director Gary Mohr
Roland Winburn, State Representative

ADVISORY COMMITTEE
Eugene Gallo, Eastern Ohio Correctional Center
Gary Yates, Ohio Chief Probation Officers' Association

STAFF PRESENT
David Diroll, Executive Director
Cynthia Ward, Administrative Assistant

GUESTS PRESENT
Scott Anderson, Professor, Capital University Law School
JoEllen Cline, Counsel, Supreme Court of Ohio
Garrett Crane, Legislative Service Commission
Monda DeWeese, Community Alternative Program
Gayle Dittmer, OJACC
Lisa Dodge, CORJUS
Sean Gallagher, Appellate Judge
Lusanne Green, Ohio Community Corrections Association
Steve Hollon, Administrative Director, Supreme Court of Ohio
Scott Lundregan, Speaker Batchelder's Office
Marta Mudri, Ohio Judicial Conference
Scott Neeley, Rehabilitation and Correction

Mark Schweikert, Director, Ohio Judicial Conference
Paul Teasley, Hanna News Network
Louis Tobin, Ohio Judicial Conference
Gary Tyack, Appellate Judge
C. Michael Walsh, Court Administrator, 9th Appellate Court
Maggie Wolniewicz, Legislative Service Commission

The February 20, 2014 meeting of the Ohio Criminal Sentencing Commission and Advisory Committee was opened by Vice-Chair Municipal Judge David Gormley at 10:10 a.m.

DIRECTOR'S REPORT

Opioids. Executive Director David Diroll reported that Rep. Sprague, Chair of the House Committee on Prescription Drug Addiction and Health Care Reform, would like the Sentencing Commission's input on some prescription drug bills focused on opiate addiction. He invited him to attend the March meeting.

DRC's Pilot Programs. Over the past several months, there has been some progress made on developing incentives to divert more offenders from prison. These grew out of the discussions on applying the Juvenile RECLAIM program to some aspects of the adult criminal justice system. DRC put together a proposal requesting applicants for three different pilot grants. 29 counties applied, said Dir. Diroll.

DRC Research Director Steve VanDine reported that DRC believes it will be able to fund all 29 proposals. They include three different mechanisms: 1. One model, based on probation caseloads, will give a fiscal increment for each person on the probation caseload and rewards if they complete probation successfully; 2. Another model involves incentives to keep more offenders in the local community if they had more local resources (mostly for mental health or substance abuse) available – either the county would coordinate distributing the resource money for those programs, or DRC could distribute the money; 3) The third model will target certain offenders (F-4 an F-5 nonviolent offenders), if their rate of committing those type of offenders decreases, there is a sizable bonus. This is the closest to RECLAIM.

The pilot programs will run through June, 2015, and some of the money could be extended after that point. The cost is expected to run approximately $10 million.

He noted that the biggest counties don't do well in option #1 and the smaller counties don't do well in option #3. There are 6 fairly large counties in option #3, 9 counties in option #2 and the other counties (small and medium sized) are in option #1.

Options #1 and #3 will allow more leeway for the counties to choose how they will make use of available resources and programs already in existence to reduce the numbers of offenders targeted. Since the counties choosing option #2 have requested resources to offer additional or expended program opportunities for their offenders, it will require those counties to be more specific as to which programs they want to fund.

These are all pilot projects and the process was accelerated in hopes to be able to evaluate them in time to make some decisions before the next biennium on which options to continue.

H.B. 130. Dir. Diroll reported that H.B. 130, the other bill regarding collateral sanctions for former inmates, was introduced this week regarding the "ban the box" issue, which is the box on employment applications asking if the applicant has ever committed a felony.

PROPOSED CRIMINAL JUSTICE COMMISSION

Chief Justice Maureen O'Connor thanked the Sentencing Commission members for input on her proposal for a potential transition of the Sentencing Commission to a new Criminal Justice Commission. She has had discussions with Senate President Faber about that proposal but there currently is nothing further in the process. She is pleased that the Sentencing Commission's response has been positive. She was ready to respond to the few questions that had been raised.

Many people had expressed favor with taking on more topics and expanding the spectrum beyond sentencing. They also liked the idea of a commission that would be more inclusive. She received several requests for continued participation from the community corrections people, including CORJUS, OJACC, and OCCA. She was surprised at the number of interest groups to represent that segment.

She explained that it would be a broad-based commission, but would have subcommittees study particular topics and report to the full commission. They would also bring in *ad hoc* members for flexibility.

She responded to some questions that were proffered by the Ohio Judicial Conference:

1) Will the new commission work on individual bills or will it be a forum for larger projects?

She responded that it would proceed to be focused on comprehensive issues in which the General Assembly has an interest that it would like to have resolved by a group that reached consensus and reflected all key stakeholders. The attraction there, she said, is that this commission would be viewed as a resource and consultant for legislation and policy initiatives. It would be a body that would be asked to offer input on ideas or topics that would be brought up internally and also provide suggestions from external sources for areas of study and evaluations. It could certainly evolve from there.

2) Will it be involved in legislation and policy setting? If so, how will this be reckoned with the traditional role of the judiciary?

She explained that there will be members of the judiciary at the table. The recommendations and product that would come out of this commission would have the input of the judiciary and all the other stakeholders as well, which she believes is both a traditional approach and an approach that has been and will be productive.

3) Will the commission adopt positions on legislative and other initiatives through a consensus of its members? What about dissenters who are opposed to its' official position?

She believes that there is always room for compromise when these topics are brought before a group of stakeholders. There may be topics that are of no interest to some stakeholders and some hot-button topics. It is expected that there would be a consensus with a majority, but possibly even some dissenting voters and opposing views. It may be possible to have a minority report filed as well.

4) How will the new commission avoid the stasis that affects the current Sentencing Commission?

She believes this would be a rejuvenated commission and will likely address some hot topics. In her opinion, there should be some strict rules on selection and participation by the interest groups. She encouraged them to select their representatives carefully. She noted that John Murphy, Executive Director of the Prosecuting Attorneys' Association, believes that the membership of the new commission should be composed mostly of elected officials from all three branches of government. She remarked that, with all due respect, her experience has been that when elected officials get assigned to commissions, they end up sending their representatives.

Since they will need people who are willing to commit the time, it might become necessary to update the method of attendance so that some people are allowed to attend by telephone so that physical presence is not necessarily the only option for participation.

She strongly believes that the new commission should be under the auspices of the court. She stressed that the court is a neutral apolitical place and this building is the appropriate forum. Criminal justice issues are brought to the court for decision-making because it has, by law and the constitution, the authority and neutrality that is necessary for effective dissemination of this information in context.

Appellate Court Judge Gary Tyack asked if she would be the person to decide who is on the commission and the staff.

It will be a collective effort, Chief Justice O'Connor responded. She does not plan to select each member of the commission, but instead expects a small group to do so. The Supreme Court will provide a staff dedicated to the project and it will be funded out of the Court budget.

One of the major concerns of the Prosecuting Attorneys' Association, said Prosecuting Attorney Paul Dobson, is how the Supreme Court, if it is to remain neutral, can then justify the conflict in reviewing the constitutionality of statutes that its own commission may have recommended. For the court to be neutral in making a determination, it should have no preconceived interest in legislation recommended by its own commission, he contended.

The Commission will be under the auspices of the Supreme Court merely by the action of donating funds to help staff the group, said Chief Justice O'Connor. This does not make a work product of the commission a product of the Supreme Court. The commission will include stakeholders

from law enforcement, practitioners, legislators, and many other entities in addition to judiciary. Since it will deal with many areas of legislation and all areas that come before the court, and not just sentencing, the fact that it is housed in the same building as the Supreme Court of Ohio should not be a pediment.

It raises concerns for him and the OPAA, said Pros. Dobson, that the proposal recommends having the commission deal also with more substantive issues of criminal law.

Chief Justice O'Connor declared that the commission's duties will not involve writing statutes, but serve more as a consultant on topics that are primarily proposed by the legislature. She pointed out that the proposal is still a work in progress.

When municipal Judge Kenneth Spanagel asked if there is still a desire to include a policy recommendations process, Chief Justice O'Connor responded "yes", emphasizing that every stakeholder will still be able to raise issues for consideration. If any Commission members disagree with the final consensus on an issue they are always welcome to issue a minority report. She does not want to silence or limit participation. She also assured victim representative Chrystal Pounds-Alexander that victims of crime will have representation on the new group.

Since the new Commission is expected to make use of several subcommittees as well as the primary commission, Pros. Dobson expressed concern about the substantial time commitment this might require for some people, particularly judges, prosecutors, and defense attorneys. He feels this must be taken into consideration.

This is why she had suggested the use of subcommittees and *ad hoc* committees, Chief Justice O'Connor responded. Members of the full Commission could choose someone to represent them on *ad hoc* committees. She pointed out that it will also be important not to have any one group overrepresented.

Perhaps there would be fewer meetings of the full Commission, Judge Spanagel suggested, and more by subcommittees and teleconferencing.

Chief Justice O'Connor concluded by stating that she will continue to engage the legislature to determine the direction for making this happen. She again commended the Commission members for their hard work and many accomplishments.

Dir. Diroll noted that the new group would likely operate under aspects of the Open Meeting and Sunshine laws, as the Sentencing Commission does now.

APPELLATE REVIEW OF SENTENCING AND OTHER ISSUES

Prior to the enactment of S.B. 2 in 1996, there was no formal authority to review a criminal sentence, *per se*, said Dir. Diroll, unless it was contrary to law or an abuse of discretion. The enactment of §2953.08 brought a different kind of sentencing questions to the appellate courts. Parts of that statute were rendered void by the *Foster* decision and it has since been amended in H.B. 86. Those changes engendered confusion and many appellants and appellate courts view §2953.08

broadly. The number of cases has mushroomed. After discussions with Judge Sean Gallagher of the Eighth District Court of Appeals (Cleveland), and his presentation in November, Dir. Diroll invited Appellate Judges Sylvia Sieve Hendon and Gary Tyack, along with Court Administrator C. Michael Walsh (the members were suggested by Judge Sheila Farmer of the appellate court judges' association) to discuss the statute and related issues such as the uncertainty regarding merging allied offenses of similar import.

Judge Gallagher referenced a January 11, 2014, story in the *Plain Dealer* that predicts that Ohio's prison population will reach around 54,000 by 2018. He personally believes that neither S.B. 2 nor H.B. 86 sufficed to reducing the prison population. He also does not believe that legislators have taken enough time to understand how the decisions of trial court judges are reviewed on appeal. This has resulted in debate over what statutory enactment is even applicable to felony sentencing review. Some of the factors permitted for review, he declared, are undefined, such as "worst form of the offense". He added that there are a lot of problems with consecutive sentencing and what to do with 4th and 5th degree felonies. Ultimately, a method or framework is needed for how these sentences should be reviewed which is fair across the board and can be easily understood by prosecutors, defense attorneys, and trial judges.

Consecutive sentences tend to create the biggest challenge for his court, said Appellate Judge Gary Tyack of the Tenth District (Columbus), noting that defense attorneys always appeal if a judge isn't specific with spelling out the findings and details of consecutive sentences. His court tends to send these cases back to the trial judge and the offender just ends up with the same thing, which he feels it is a waste of time.

It hasn't helped, said Appellate Judge Sylvia Sieve Hendon of the First District (Cincinnati), that there is conflicting language coming out of the various districts. She noted that the courts tend to err on the side of giving trial judges broad discretion. She believes the allied offense doctrine is the biggest nightmare of all. Some defense attorneys, she said, claim offenses committed over a great length of time are all one offense because of the offender's mindset.

Another problem, she contended, are the sentencing "tentacles" such as driver's license suspensions, post release control, restitution orders, court costs, community service, etc., that get appealed or argued as voidable. These often result in the offender getting sent back for resentencing and usually ending up with the same sentence. Judges tend to craft sentences to avoid that, if possible. Judges would like to convince the legislature to be more exact. She's not sure that allied offenses can be codified but she stresses the need for some direction.

On the issue of allied offenses, Judge Gallagher explained that some judges declare that the act of burglary is complete upon entry and everything after that is a separate offense. Other judges say that all of those acts are all part of the same offense. It ultimately is up to the judges to make a judgment call based on the facts.

When the case of *State v. Foster* struck the guidance offered by S.B. 2 in 2008, the Supreme Court of Ohio then established a two-step

procedure for reviewing felony sentences known as the *Kalish* standard: the first step was to determine whether the sentence was clearly and convincingly "contrary to law," and the second step was to review the trial court's decision under "an abuse of discretion" standard. How, Judge Gallagher asked, do you find "abuse of discretion"? He contended that, if §2953.08 is the defining statute for felony sentencing review, it needs to be rewritten in a way that addresses this problem.

According to Judge Tyack, many offenders come in on a plea bargains that involve dismissing some of the charges. When they come to the appellate court, they declare that the sentence included some of the charges that had been dropped by the plea bargain. The appellate judges constantly has to explain that if they made a plea bargain, they have to live with it, and once the trial judge determines the sentence, the defense team cannot renegotiate the deal.

Stressing the need to keep things from being mandatory as much as possible, Judge Hendon remarked that in many cases, it would help to know the intent of the legislators when statutes were written.

§2929.14(C), said Judge Tyack, is the statute that results in cases getting sent back to the trial court on a weekly basis.

State Representative Roland Winburn says that legislators feel they have the right people at the table offering good advice on how to write the statutes, such as people from the Legislative Service Commission. Now he hears that they have made matters more complicated.

The judges need to know from the legislators, said Judge Gallagher, who you want in prison and how long do you want them there?

State Representative Dorothy Pelanda asked the appellate judges to propose the language needed for the definitions.

Prior to July, 1996, they didn't have this problem, said Judge Gallagher. With indeterminate sentencing, the Department of Rehabilitation and Correction decided who got out and when. He understands the logic behind switching to determinate sentences but the appellate judges need to be able to tell the trial judges why the imposed sentences are invalid. They need to be able to offer detailed criteria as to why the sentences are wrong. Something as vague as "abuse of discretion" and "contrary to law" does not cut it.

The legislators need a more specific proposal on how to rectify this problem, said Rep. Pelanda. She understands the problem and wants to help give them the right tool to address it. She asked the judges for specifics on how they want the statute amended.

The intent behind offering guidance under S.B. 2, Public Defender Kathleen Hamm recognized, was to cajole judges toward the outcome that legislators wanted, (*i.e.*, who they wanted in prison), without mandates. However, it then became problematic for the appellate court. She finds it offensive when a case is sent back because the judge "didn't say the right word."

Judge Gallagher admitted that judges are not policy makers. They need legislators to define things.

Atty. Hamm agreed that the courts need the legislature to say “this is what is important to us”. She believes that the guidance under S.B. 2 actually did that by asking the judges to consider certain factors. But requiring a judge to use specific words, she insisted, is offensive. It results in some judges just rattling off factors to get them on record without necessarily considering them.

That, said Judge Gallagher, is why there are so many inconsistencies.

Prosecuting Attorney Paul Dobson disagreed with the claim that judges rattle off the factors without considering them. He believes they give the factors strong consideration.

Judge Hendon wishes that legislators could grasp the concept of prejudice. She says some appeals get filed over mistakes that don’t harm the defendant at all.

In his perspective, said Judge Tyack, there are three major things that affect the sentencing outcomes in Ohio. First, the state did away with reformatories, then it did away with the 15 year limit, and third, there are less assets or treatment programs available in the smaller counties. The lack of programs, he declared, make judges feel they have no choice but to send someone to prison.

It is essential to keep this communication open, said Rep. Pelanda. She noted that there are 11 bills coming through that deal with opiate addiction and it will be necessary to understand the available options for penalties.

Judge Gallagher acknowledged that judges are part of the problem as much as anyone else, but legislators make the policy, not judges.

§2953.08 created the world of appellate review of sentencing, Dir. Diroll noted. It is the only statute that addresses the issue. He believes that this committee could come up with recommendations on how that language should change that would provide the specifics sought by Reps. Pelanda and Winburn.

Pros. Dobson feels that the full Commission is too large of a group to come up with a solution in a timely manner. He feels it could be accomplished quicker with a smaller committee.

In agreement, Dir. Diroll said that was why he had suggested a smaller group to draft some language and solutions then forwarding them to the full Commission for final approval. He agreed with Judge Gallagher that §2953.08 works well as the framework from which to start.

When this statute was included in S.B.2, Dir. Diroll recalled, the intent was that it is a limiting statute that would only allow certain things to be appealed. The statute began by listing appeals of right. Some of that was later changed by the *Foster* decision. Some of it was revived, although imperfectly in his view, by H.B. 86.

Foster removed the maximum sentence direction from the sentencing code in §2929.14 but not from the appellate statute. The result now opens the door to a meaningless appeal under §2953.08(A)(1), he noted.

Foster removed the findings that S.B. 2 required that dealt with the length of prison terms, both the minimum and maximum, but it did not remove the findings required on whether to send the offender to prison. H.B. 86, however, did remove some of those.

Although minimum sentences were never formally added to this statute, an appeal was created by the guidance that judges should select the minimum term on an offender's first commitment to prison, Dir. Diroll said. H.B. 86 amended §2929.11 (which sets the basic overriding principles of felony sentencing) and added language that requires the judge to "use the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state and local government resources". Under a broad reading of the "contrary to law" clauses in §2953.08, the defendant could make the argument that the trial court did not weigh whether the sentence meets that criteria.

§2953.08(A)(2) has a presumption against prison unless certain factors are specified. Although it was not directly affected by *Foster*, some thought it was, opined Dir. Diroll. And it changed with H.B. 86. The narrow appeal for sexual predators in (A)(3) was added by the General Assembly after S.B. 2 went into effect.

(A)(4) allows an appeal if a sentence is "contrary to law," but Dir. Diroll pointed out that this was not intended to be a catch-all.

That is the section now being used on a regular basis, Judge Tyack declared.

Dir. Diroll acknowledged that it needs to be defined, noting that if a sentence is contrary to a statute then it is pretty clear cut. When the guidelines were established in S.B. 2, it was assumed that if a trial judge did not consider the guidelines, such as weighing the seriousness and recidivism factors, then he was acting "contrary to law." He noted that H.B. 86 made some of this tougher because it removed the reasons that the judge had to state, a misreading of *Foster* in his opinion.

If that is not put in the transcript or on the record, said Judge Gallagher, then the appellate judges are put in the difficult position of having to assess whether the sentence is contrary to law. Offering clear definitions would go a long way to help.

According to Pros. Dobson, approximately 60% of the appeals in his district are sentencing appeals. He agrees that a standard of "contrary to law" is way too broad and tends to offer the defendant an option for appeal when no other valid appeal exists. He suggested removing "contrary to law" in favor of something better defined.

Under old law, said Common Pleas Judge Janet Burnside, if she found an error or omission in the sentencing record, she could correct it, so long as the defendant has not left the confines of the local jail. Under S.B. 2, however, the minute she journalizes a sentencing she has no power to make corrections. Since there are many cases that get returned by the appellate court because of omissions, she suggested allowing a certain amount of time for corrections, if necessary.

Judge Tyack urged the Commission to make sure the provision that says you cannot appeal an agreed sentence does not get eliminated.

The vast majority of cases get solved by a plea, said Dir. Diroll, but a smaller number are resolved by agreed sentence. The idea on limiting these appeals is that you shouldn't appeal things that you have agreed.

Since the defense bar are the ones coming up with arguments about "contrary to law," Judge Hendon suggested asking them to develop a definition for it.

The sentencing provision that is omitted the most, said Judge Burnside is the required instruction on post-release control, even though it is automatically part of the sentence. That is why she favors a time period for allowing corrections to be made. She contended that sentencing is increasingly complex and it is easy to forget something.

The finality of sentencing is so fundamental, said Atty. Hamm, that it is a fundamental right of the defendant to hear that post-release control is a part of the sentence.

Pros. Dobson cautioned that discretionary items should not change.

Another area that cries out for clarification, Dir. Diroll acknowledged, is the "clear and convincing" standard on review, which isn't defined by statute. In 2008, the Ohio Supreme Court set the standard for it in *Kalish*.

Since H.B. 86, some courts have interpreted the "contrary to law" clauses to allow broad reviews of criminal sentences, several appellate courts have taken different positions on what the trial judge must do to make a "finding" before stacking terms on consecutive sentences.

According to Judge Gallagher, his district has never turned down an appeal.

Judge Hendon remarked that she would like to see more motions to dismiss on the motion docket. If they were going to limit anything, it would probably be post-release control.

As the discussion resumed after lunch, Judge Gallagher offered some specific questions for the Commission to address: Is *Kalish* still valid? Since it was a post-*Foster* plurality opinion, has it been abrogated by H.B. 86? Can it still be applied to non-H.B. 86 cases? Even if still viable, how can "abuse of discretion" ever be a valid review standard? How do you ever find a sentence was arbitrary or unconscionable if the sentence falls within an acceptable range?

Dir. Diroll responded that *Kalish* ignores the statutory prohibition against using "abuse of discretion" as the standard.

The big question regarding "abuse of discretion", said common pleas Judge Tom Marcelain, is whether it is based on the proportionality of cases by that judge or someone else.

With so many appeals regarding “abuse of discretion”, Judge Gallagher believes that no judge’s decision should ever be reversed if the sentence falls within a range.

Judge Tyack suggested that the judge could include a note in the journal entry of what he believes are the best indicators of an appropriate sentence for that particular offense.

When the Supreme Court took away the findings, Atty. Hamm declared, it took away any review of discretion.

It then becomes an issue of how many reasons are enough, Defense Attorney Kort Gatterdam argued.

When Judge Burnside contended that this goes to the issue of proportionality, Judge Gallagher noted the difference between consistency and proportionality. According to §2929.12, he said, proportionality tends to relate to the offender’s conduct in relation to the crime, or whether the sentence is proportional to what the offender did. Consistency is whether that sentence is consistent in relation to that of other offender’s.

The onus, Pros. Dobson argued, should be on the person trying to prove inconsistency by showing something other than his sentence is the norm.

If the sentence is chosen from within a range, Judge Gallagher argued, then there is no argument as “abuse of discretion” is practiced.

Then where is there any avenue for appeal, Atty. Gatterdam asked. He agrees that the onus should be on the defendant but if he brings some evidence it should be reviewed. The review is already very narrow but we shouldn’t narrow it even more.

Dir. Diroll remarked that there needs to be some proportionality with consecutive sentences.

When a sentence for burglary is higher than for homicide, Atty. Gatterdam asserted, then there definitely appears to be a question of proportionality to the crime. Those are the cases where the offender feels he would have gotten a lesser sentence if he killed the victim.

Judge Gallagher compared that to the case where an offender received a stack of more than 80 years for multiple counts of pornography and declared that a more defined track is needed because the defendant cannot appeal on the generic claim that the sentence is not fair.

Judge Gormley suggested using a process similar to the federal circuit court system, whereby some counts might be dismissed as frivolous while others are forwarded to the next level. It serves as a gate keeping mechanism for the district judge to discount counts that are frivolous so that no one has to waste time looking at them.

Atty. Gatterdam wondered how that would work with a trial situation before the direct appeal since there are transcripts. In habeus, the magistrate reviews things and makes a decision.

There are numerous factors involved with each sentence, said Pros. Dobson, which is how it is supposed to be. By nature of their experience, the trial judges are in the best position to determine what the sentence should be, based on evidence, testimony, and facts.

Thirty years ago a defendant could appeal their sentence, said Judge Burnside, but no one did because it wouldn't go anywhere. Now everyone appeals because they know it'll be heard.

Atty. Gatterdam believes a defendant should have a right to challenge a sentence if they believe and can articulate that they got a poor sentence. He also believes that reviews are very limited.

According to Judge Tyack most post-release convictions go out res *judicata*, noting that they should have been raised on a direct appeal.

If goal is to reduce the number of appeals, said Judge Spanagel, then Judge Burnside's concern about correcting sentencing errors or omissions needs to be addressed.

Judge Gallagher remarked that a transcript is needed within 10 days to know if a mistake was made and an appeal could be made.

Judge Marcelain thinks it could be done based on the entry itself.

Once journalized, it is frozen in time, Judge Burnside contended.

Judge Gallagher interjected that the court on its own motion can reconsider during a certain period of time.

Judges Tyack and Gallagher observed that there was apparently consensus that §2953.08 should be the vehicle for defining the standards.

Dir. Diroll suggested beginning with §2953.08, working on the definitions and making recommendations. He will ask the committee to work on these and bring suggestions to the full Commission. The committee should consist of appellate representatives, trial court representatives, prosecuting and defense attorneys and anyone else who wants to participate.

Judge Tyack remarked that Judge Gallagher will be presenting these issues to the Appellate Court Judge's Association and seeking feedback.

Dir. Diroll asked Judges Hendon, McIntosh, Marcelain, and Burnside, and Attys. Hamm and Dobson to consider serving on the subcommittee. He suggested they begin by working out the definitional issues and offered to get something to them before the next meeting.

FUTURE MEETINGS

Future meetings of the Ohio Criminal Sentencing Commission have been tentatively scheduled for March 20, April 17, May 15, June 19, July 17, and August 21.

The meeting adjourned at 2:00 p.m.