

Alabama Sentencing Commission 2006 Legislative Package

1. Sentencing Standards Bill

HB 115 SB 167 SB 231

In compliance with the directives included in the Sentencing Reform Act of 2003, this bill proposes the adoption of voluntary sentencing standards with appropriate work sheets for 26 felony offenses. These sentencing recommendations, for the first time in the history of this state, provide judges with a starting point when considering sentencing within the broad sentence ranges provided under our Criminal Code. These recommended sentences, which are within the wide ranges currently available under existing statutory law, provide judges with additional information and direction crucial for making informed sentencing decisions.

The recommendations, or “sentencing standards” as they are called, are voluntary, nonappealable, historically based, time imposed, sentencing recommendations developed for 26 felony offenses, representing 87% of all felony convictions and sentences imposed in Alabama over an approximate five-year period from October 1, 1998 through May 31, 2003. The standards are recommended sentence ranges and dispositions for the covered offenses, developed utilizing key factors normally considered by judges in imposing sentences.

The Commission believes judges will follow the sentencing recommendations in about 75% of sentenced cases. The standards represent the “normal” case containing recognized sentencing factors. Of course, other factors will undoubtedly exist in about 25% of sentenced cases and judges are expected to take those additional factors into consideration to impose either a harsher or more lenient sentence than recommended. Preliminary testing of the standards has indicated that use of the standards will produce the desired result, i.e., greater uniformity in sentencing and the elimination of unwarranted sentencing disparity.

The proposed legislation is virtually the same as the sentencing standards bill that was introduced during the 2004 and 2005 Regular Sessions that passed the House in 2005, and was in a position to pass the Senate on the last night of the session. Some minor changes have been made to the bill, including a new implementation date for the sentencing standards and some minor improvements in the standards themselves to clarify definitions and recommendations. In addition, a provision was added to require filing of the standards with the Clerks of the Senate and House, as well as the Clerk of the Alabama Supreme Court.

2. Access to Juvenile and Youthful Offender Records

HB 121 SB 170 SB 172 SB 232

This bill, necessary for implementation of the sentencing standards, amends §§ 12-15-100 and 15-19-7 of the *Code of Alabama* 1975, to provide statewide access to juvenile and youthful offender (YO) records for judges, prosecutors, victim service officers, probation and parole officers, court personnel, and defense attorneys. Confidentiality will, however, continue to be maintained with regard to the general public and all nonessential persons and

entities. These records are significant in determining sentencing outcomes and essential for the completion of worksheets required for the implementation of the sentencing standards.

Section 15-19-7 was also amended to provide penalties for the wrongful disclosure of youthful offender records. As amended, the wrongful disclosure of these records will be punishable as a Class A misdemeanor, the same as now provided for the wrongful disclosure of juvenile records.

3. Pardon and Paroles Facility Fees

HB 28

This bill amends § 15-22-30 of the *Code of Alabama 1975*, increasing the amount that can be deducted from the wages of residents of residential facilities operated by the Board of Pardons and Paroles from 25% to 45%. Deduction of 25% is already authorized for recoupment of expenses for room and board. The additional 20% authorized by this bill is for the payment of court costs, fines, fees, assessments, and victim restitution. This comports with the amounts now authorized to be deducted in § 15-18-180 *Code of Alabama 1975*, as amended by Act 2003-353, for defendants assigned to a work release or other residential program operated by a community corrections provider.

4. Amendment of Burglary 1st and 2nd Degree Statutes to Eliminate the “Loot Rule” for Deadly Weapons

HB 120 SB 233

This bill recognizes that offenders in the same circumstances should be treated alike and amends §§ 13-7-5 and 13-7-6 of the *Code of Alabama 1975*, relating to Burglary in the 1st and 2nd degrees. The amendments require that an offender either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to be convicted of the higher offense. The bill specifically provides that, if the deadly weapon or dangerous instrument is merely one of the items stolen in the burglary and thus, is not used in any way in the commission of the crime or flight from the crime scene, the crime does *not* involve the “use” or “threatened use” of the deadly weapon or dangerous instrument.

5. Correction of the Theft of Property 2nd Degree Statute

HB 116 SB 229

In 2004, the threshold value of property stolen for the crime of Theft of Property 2nd degree was inadvertently changed back to the pre-2003 level in a bill changing the words “horses” and “mules” to “equine” and “equidae.” The pre-2003 statutory language was used in making the amendment. This change effectively eliminated the crime of Theft of Property in the 2nd degree. Under current law, there is no Theft of Property statute that makes it a crime to steal property ranging in value from \$1,000 to \$2,500.

6. Driving Under the Influence (DUI) Statute; Out of State Convictions

HB 117 SB 230

Under current law, prior DUI convictions from out-of-state may not be used for the purpose of enhancing punishment when a person is subsequently convicted for violating Alabama's DUI statute. This creates an anomaly, in that a DUI offender could have numerous prior DUI convictions in another state and yet could be convicted and sentenced as a first offender if he drives drunk in Alabama. This Bill would amend Alabama's DUI statute to specifically authorize the use of out-of-state convictions for enhancements under § 32-5A-191, Alabama's DUI law, providing equal treatment for all DUI repeat offenders.

7. Authorize (not mandate) Increase of the Maximum Fines for Offenses

HB 118 SB 236

The fines authorized for criminal offenses have not been adjusted since the Criminal Code was originally codified back in the 1970's. This Bill amends §§ 13A-5-11 and 13A-5-12 of the *Code of Alabama 1975*, to increase (based on the inflation index) the maximum amount of fines authorized to be assessed upon one convicted of a felony, misdemeanor, or state law violation. If passed, the amendments would allow the judge to retain his/her discretion to impose any lesser fine amount and would simply authorize the imposition of a larger fine in appropriate cases.

The proposed fines are comparable to those authorized in Tennessee, Georgia, and Virginia as well as to the fines imposed for new offenses in Florida, Mississippi, and South Carolina.

8. Drug Trafficking Statute

HB 119 SB 235

Alabama's current drug trafficking statute fails to provide a fine for the most serious trafficking offense and does not include the drug commonly referred to as "ecstasy." This bill amends Alabama's drug trafficking statute, § 13A-12-231 of the *Code of Alabama*, to provide a fine for the most serious trafficking offenses, to include the ecstasy drug, and to correct the fine for trafficking in hydromorphone (a popular narcotic prescribed for pain).

9. Pre-sentence or Post-sentence Investigation Reports Required in All Felony Cases

HB 122 SB 234

Under current law, pre-sentence investigation reports on convicted felony offenders are required only upon motion of a party or the court and these reports are provided in written or electronic form. These reports contain information essential to the supervision of probationers and the classification of prison-bound offenders. The reports also contain vital information for maintaining current data on convicted offenders on which policy decisions can be made for improving Alabama's criminal justice system. The bill requires either the filing of *post-sentence or* pre-sentence reports, to avoid case processing delays and also requires such reports to be completed in electronic format.