

Sentencing Commission's 2008 Legislative Package

I. Truth in Sentencing – amend to implement in 2011. (HB 413 and SB 326)

There are several major tasks that must be accomplished before the adoption and implementation of Truth-in-Sentencing (TIS). These are 1) the initial voluntary sentencing standards must be accepted and used effectively; 2) there must be sufficient space in the various levels of corrections (probation, community corrections, prison and re-entry) to accommodate the increased prison population that will result from the implementation of TIS; and 3) TIS standards must be developed and approved by the Sentencing Commission and the Legislature. All three of these must be completed before TIS can be adopted and implemented. The Alabama Sentencing Commission and all of the key criminal justice cast are now working on these critical elements, as well as attempting to evaluate the compliance rate for the existing sentencing standards, improve data entry, collection and analysis, and continue training on proper completion and submission of the sentencing worksheets, and use of the electronic forms.

The following timeline has been drafted as a blueprint for completion of the basic prerequisites for the implementation of truth-in-sentencing and proposes timeframes beginning January 2008:

Timeline To Truth-in-Sentencing

This is a very aggressive estimate of the time necessary to implement a workable truth-in-sentencing (TIS) system in Alabama. There are several critical prerequisites, including developing the new sentencing standards themselves, that must occur before truth-in-sentencing can be successfully adopted and implemented in Alabama. A fundamental and most essential prerequisite to establishing a truth-in-sentencing system is developing capacity within the corrections system, e.g., probation, community corrections, prisons, and re-entry supervision. Currently, the capacity to accommodate any meaningful truth-in-sentencing system does not exist. The minimum required to ensure that adequate resources are available to accommodate TIS will include: building at least two new prisons (one for females and one for males) and having them fully staffed and operational; diversion of the maximum number of felony offenders from prison to alternative punishment programs; and expanding and improving probation capacity and supervision by increasing the number of supervising officers.

In addition, there are two more developmental elements that must be met before Alabama implements truth-in-sentencing: 1) the initial voluntary sentencing standards (based on time imposed) must be accepted and used effectively to serve as a model for the successful implementation of sentences based on “time served” (TIS) standards; and 2) TIS standards must be developed and approved by the Sentencing Commission, with final approval by the Legislature.

All three of these elements: creating capacity, successful implementation and effective use of the initial voluntary sentencing standards; and the development and adoption of TIS standards, must coalesce for Alabama to adopt TIS as a sound and effective public safety policy. The Alabama Sentencing Commission currently is working to bring all three elements together.

***A. Initial Voluntary Sentencing Standards Effectively Implemented
(12 months)***

1. Data Preparation (AOC & ASC)
 - a. Establish current AOC cohort (completed)
 - b. Extract and compile data from e-worksheets (not started)
 - c. Match e-worksheets data to AOC cohort data (not started)
 - d. Make final “compliance” decisions (in progress)
 - e. Write programs for analyzing compliance (not started)
 - f. Review compliance results
 - g. Report compliance
2. Review Initial Voluntary Sentencing standards for possible modification to factors, instructions, and training (Standards Committee & ASC)
3. Identify and address known roadblocks (with responses/solutions)
 - a. Change in programmer staffing (new programmer designated for Sentencing Commission and related projects)
 - b. New programmers working with AOC e-applications whose actions affect multiple applications (the new programmers are working their way through the programs – time will ultimately solve this problem)
 - c. Preparing AOC data for analysis - establish uniform method of entering sentences & sentencing data (AOC & ASC – on-going)
 - d. Insufficient staff to cover all projects
 - (1) Need two additional analysts in ASC, seeking funding from outside sources – 24 months
 - (2) Utilize interns and other temporary sources to supplement staff (on-going)
 - e. Inadequate training of court specialists in proper data entry (ASC staff is researching problem areas and will provide training (on- going)
 - f. Data quality and availability -applies to all ASC work
 - (1) ASC staff is addressing data quality and availability through suggestions for changes in sentencing orders and data entry and by providing education and training for designated worksheet preparers and court personnel
(9 months)

- (2) ADOC is adopting a web-based data system (time unknown)
- (3) Pardons & Paroles is working toward a web-based data system (time unknown)
- (4) ASC will continue training on the use of the initial voluntary sentencing standards (on-going)
- g. Improvement and modification of e-worksheets data delivery - block vs. continual (future)
- h. Lack of uniform sentencing order – Uniform Sentencing Order Committee to approve draft and present uniform sentencing order to Commission (4 months)
 - (1) Name members of committee (1 month)
 - (2) Schedule and hold meeting (1 month)
 - (3) Identify and research issues and modify draft order (1-3 months)

B. Continuum of Effective Sanctions to Accommodate Truth-In-Sentencing (72 months – 12 months for pilot design and implementation; 12 months for pilot operations; 12 months for pilot evaluation; 18-36 months for statewide rollout)

1. Identify the steps and options in the continuum
 - a. ASC 2003 Report, Appendix C
 - b. Sentencing Reform Act, Section 12-25-32

2. Identify missing elements in the continuum of sanctions
 - a. Need for addition of prison beds
 - b. Last step up to prison / first step down
 - (1) Technical violator centers (capacity needs)
 - (2) Transition centers (LIFE TECH) (capacity needs)
 - (3) Other re-entry options (including ADOC programs)
 - c. Community-based options (organization, current capacity and needs)
 1. Pilot projects to expand and coordinate community punishment options (36 months)
 - a. State Steering Committee to set goals and standards and identify pilot sites (3 months)
 - b. Local Steering Committee, chaired by local judge, to set and implement local plan for coordination of services (4 months)
 - c. Data evaluation of pilot sites (4-6 months)
 - d. Fund pilot projects - determined by State Steering Committee (pursue grant money available along with ADOC community corrections funds)
 - e. Operate pilot programs for 12 months
 2. Analyze, evaluate, and modify as necessary pilot projects (12 months)

3. Develop and implement pilot project statewide (18 – 36 months)
4. Secure permanent funding for alternative sentencing capacity

C. The Development of Truth-In-Sentencing (TIS) standards and new worksheets (29 months preparation and presentation to the Commission; 9 months for training and feedback; and a minimum of 38 months before implementation, assuming the system has the capacity to accommodate an effective recommendation)

1. Data Preparation (9 months)
 - a. Collect available electronic data from multiple sources (AOC, ADOC, P&P, SCJIS)
 - (1) AOC Cohort (ASC – completed)
 - (2) Read and define E-PSI data to determine sufficiency (ASC and ARS – in progress)
 - (3) ADOC Data – Define ADOC release cohort, admissions cohort, and stock population and determine data deficiencies (ASC – in progress)
 - b. Construct database for pulling samples (ASC – In progress; on hold to add 2006-07 data to data bases)
 - c. Pull samples of each offense category for worksheet construction (ARS will randomly select)
 - d. Analyze samples to determine adequacy of sample information & for adequacy of sample size for each offense (ARS & ASC)
 - e. Address sample deficiencies (ASC & ARS)
2. Review the 2003 Plan for TIS and consider modification (ASC & Standards Committee - 3 months, not cumulative to other efforts)
3. Data Analysis & Worksheet Preparation (ARS & ASC- 3 months)
 - a. Examine offenses (present results to Standards Committee and Commission)
 - b. Select offenses to use (Standards Committee and Commission)
 - c. Split offenses into worksheet databases -presumably 3 (Standards Committee and Commission)
 - d. Define variables, identify data deficiencies, and address deficiencies
Define sentence length specific to a life sentence
4. Multivariate Analysis (3 months)

- a. Three files x two worksheets = 6 analyses (assuming 3 offense categories)
 - b. Create 6 equations (In/out for each worksheet and sentence lengths for each worksheet)
 - (1) Three logistic regression equations
 - (2) Three ordinary least squares (OLS) equations
 - (3) Correlation analysis (only the statistically relevant factors) Define which ones work the best
5. Worksheet preparation (In/Out & Sentence Length - 1 month each set = 3 months)
 - a. Prison In/Out
 - (1) Discriminate function analysis (how to weigh each factor)
 - (2) Use these coefficients to create weights
 - b. Sentence length (OLS equation coefficients set the worksheet weights)
6. Revision Process (4 months)
 - a. Present raw worksheets to Standards Committee for review
 - b. Review by Standards Committee for compatibility with Commissions goals as set out by statute
 - c. Standards Committee accepts or modifies
 - d. Test any modifications effect of the worksheets and affirm
7. Final sentence length worksheets (2 months)
 - a. Three sets of sentence length worksheets
 - b. Score people in databases on worksheets (median, mean, quartiles/percentiles)
 - c. Review of Sentence Length Tables by Standards Committee
8. Finalize worksheets and instructions
 - a. Simulation to gauge effect of proposals on corrections capacity
 - b. Setting cut points for worksheets and final In/Out decision
 - c. Prepare final TIS worksheet instructions
 - d. Presenting TIS to Commission for adoption
 - e. Present proposed TIS standards and worksheet instructions to Legislature

9. Education for worksheet preparers, judges, and attorneys (9 months)

D. Additional Projects

1. Risk Assessment Development (Future)
 - a. Identify risk assessment instruments available and uses (public safety, recidivism reduction)
 - b. Test available instruments against initial voluntary sentencing standards
 - c. Analyze and report test results
 - d. Identify uniform risk assessment instrument
 - e. Validate instrument for Alabama

2. Needs assessment instrument development and use (future)
 - a. Collect and review current needs assessment instruments and their uses in Alabama
 - b. Determine appropriate use
 - c. Recommend a direction for Alabama (adopt a current instrument, develop a new instrument, or purchase a commercial instrument?)

II. Amendment of Split Sentencing Statute. (HB 416 and SB 421)

This bill amends Section 15-18-8 of the Code of Alabama 1975, to prohibit the imposition of consecutive incarceration portions of split sentences for separate offenses. Under existing law, during the incarceration portion of a split sentence, the offender is not entitled to deductions from his sentence for good time, nor can (s)he be considered for release on parole. There currently is no prohibition regarding the imposition of consecutive split sentences or the stacking of split sentences to require a defendant to serve more than one mandatory imprisonment portion of a split sentence for more than one offense. This bill would expressly prohibit sentencing a defendant to serve multiple consecutive incarceration portions of split sentences upon conviction for more than one offense. It also expressly provides the remedies that are available upon revocation of probation, specifically provides for continuing jurisdiction when a defendant is sentenced to a split sentence, uniformly applies the maximum terms of probation for all types of sentences, eliminates the provisions relating to boot camp (since these disciplinary camps have now been terminated in Alabama), and authorizes full credit for time served on probation, upon successfully completing a court-ordered residential drug or alcohol treatment program. The bill also clarifies that for a split sentence of 15 years or less, during the maximum term of imprisonment imposed (up to three years), a defendant shall not be eligible for good time or parole. It further expressly provides that the sentencing court retains jurisdiction to modify the existing sentence.

III. Community Corrections Act. (HB 414 and SB 326)

This bill amends §15-18-171(14) to remove convictions for the sale of drugs from the list of excluded offenses for community correction program diversion eligibility. The offense “distribution of drugs” under Alabama’s Criminal Code includes both sales and delivery. While a person convicted for the delivery of drugs in violation of the statute is not prohibited from participating in a community corrections programs, under existing law, a person convicted for the sale of drugs (including small amounts) in violation of the same statute is prohibited from participating in a community corrections program. This bill would authorize defendants convicted of the sale of a controlled substance to be considered for participation in a community corrections program. (would not include large amounts of drugs prosecuted as drug trafficking).

IV. Theft of Property. (SB 413)

This bill amends theft of property statutes to classify thefts of property from the custody of law enforcement agency and donated property under either theft 1st, 2nd or 3rd degree, depending on the value of the property involved. Under existing law, these thefts are only included in the definitional section of the Criminal Code.

V. Prison Industry. (HB 583 and SB 366)

This bill amends §§ 14-7-7, 14-7-8, 14-7-12 through 15, and 14-7-18 through 22, of the Code of Alabama, relating to the Department of Corrections prison industries, inmate training, and inmate rehabilitation, to authorize the Department to contract with private industry for onsite work programs. The bill also specifically authorizes state, county and municipal employees and nonprofit organizations to purchase products made by prison labor directly from the Department of Corrections, and provides for the vocational training and rehabilitation of inmates through greater utilization of prison industries.

**Proposed Legislation the Commission/Legislative Committee
Voted NOT to Pursue**

Victim Notification Act - At the request by Cynthia Dillard, Director of the Board of Pardons and Paroles, the Sentencing Commission voted not to introduce this bill during the 2008 Regular Session.

Parole Eligibility/Furloughs by DOC Commissioner

Amendment of § 15-22-28 to incorporate eligibility criteria for parole of serious offenders (now provided by regulation of P&P) or changes in furlough provisions were rejected by Legislative Committee.

Amendment of § 15-18-175(e) Escape

The Legislative Committee voted not to recommend amendment of the provisions of this statute to provide that “the willful failure of an inmate to remain within the extended limits of his or her confinement or to return to the place of confinement within the time prescribed” MAY (rather than “shall” as it now reads) be deemed an escape from a state penal institution.

Community Corrections Act Amendments

The Sentencing Commission rejected a proposal to include a provision authorizing the Commissioner of the Department of Corrections to transfer an inmate to a LifeTech Transition program, if approved by the sentencing judge or successor and the Director of the Board of Pardons and Paroles.

The Sentencing Commission rejected the Legislative Committee’s recommendation that § 15-18-171 (14) be amended to provide that the exclusions did not apply to inmates who were within 24 months of ending their sentence (EOS), if otherwise recommended for diversion to a community corrections program for assistance with reentry.

The Legislative committee rejected a suggestion to amend the Act to specifically provide that the court retains continuing jurisdiction over offenders sentenced to community corrections, since this already seem to be the law.

Also rejected by the Legislative Committee was a proposed amendment to §15-18-172(d) to clarify that diversion of inmates to programs other than the county of conviction applies to both front-end and institutional diversions. The Committee believed that this was clear as the statute is now written and no clarification was needed.