

# Alabama Sentencing Commission

Minutes of Commission Meeting  
January 16, 2009

The Alabama Sentencing Commission met in the Large Classroom of the Judicial Building in Montgomery on Friday, January 16, 2009. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Beasley Professor of Law, University of Alabama School of Law, Tuscaloosa  
Vernon Barnett, Deputy Director, Department of Corrections, Montgomery  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General  
Cynthia Dillard, Director, Alabama Board of Pardons and Paroles, Montgomery  
Lou Harris, D.P. A., Faulkner University, Montgomery  
David Rains, Circuit Judge, 9<sup>th</sup> Judicial Circuit, Fort Payne  
Joel Sogol, Esq., Tuscaloosa  
Hon. Ben McLaughlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark  
Miriam Shehane, VOCAL

## **Advisory Council:**

Denis Devane, Birmingham  
Kent Hunt, Associate Commissioner Alabama Department of Mental Health, Montgomery  
Shelley Linderman, VOCAL  
Bill Cole, Circuit Judge, 10<sup>th</sup> Judicial Circuit, Birmingham  
Chaplin Adolph South,  
Eddie Cook, Board of Pardons and Paroles

## **Staff:**

Lynda Flynt, Executive Director  
Melisa Morrison, Research Analyst  
Paul Sullivan, Worksheet Data Specialist  
Bennet Wright, Statistician  
Christina Van Der Hulst, Legal Research Assistant

## **Others Attending:**

Annette Brown, AL CURE  
Rosemary Collins, AL CURE  
Ellen Tuzzolo, Justice Policy Institute  
Becki Goggins, Criminal Justice Information Center  
Marvin Wiggins, 4<sup>th</sup> Circuit Community Corrections  
Jeff Williams, Alabama Department of Corrections  
Ralph Hendrix, TASC, Birmingham  
Kim Davis, BHS

### **Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m. with Chairman Colquitt calling the meeting to order and making introductory remarks. He noted that this was a very important business meeting and that some of the items to be addressed were rather complex and involved. He reminded the Commission members that the Alabama Legislature was expecting to hear from the Sentencing Commission and will be looking forward to some of the Commission's reports. He advised that the Commission staff has already gone before the Legislature for the budgetary process and explained that a lot of what the Commission does today would determine the legislation that will be presenting to the Legislature during the upcoming session.

Chairman Colquitt advised that during today's meeting the Commission members would hear the report of the Sentencing Standards Committee. The Commission would also discuss the Split Sentence and the Community Corrections bills; Vernon Barnett, Deputy Commissioner, would talk to the Commission about the Department of Corrections; and Cynthia Dillard, Director of the Board of Pardons and Paroles, would give an update on the Board's activities. The Commission would also hear an update on the Cooperative Community Alternative Sentencing Project and Uniform Sentencing Order Committee.

Judge Colquitt introduced Tim Herbert, a new intern working with the Sentencing Commission, noting that the Commission really appreciated the service of the people who volunteer as interns and he thanked Dr. Lou Harris for helping the Commission get these interns. Chairman Colquitt welcomed Miriam Shehane as a new Commission member, adding that Ms. Shehane has been actively involved with the work of the Commission from the beginning.

### **Report of Sentencing Standards Committee Recommended bill and package**

Ms. Davis reminded the Commission members that at the last Commission meeting she went over all the suggested changes and modifications that the Standards Committee had reviewed. She advised that since the last meeting, the report was redrafted and sent out to the members of the Standards Committee for a vote. The votes have been received and Commission members have been presented with a copy of the Alabama Sentencing Commission's proposed modifications to the instructions and worksheets for the Initial Voluntary Sentencing Standards, dated January 16, 2009. She indicated that these were the committee's recommendations, plus other suggestions that some committee members subsequently made for further clarification. It was noted that those suggestions/recommendations that were made by committee members and staff are indicated in red in the report.

Ms. Davis indicated that she would present the report of the Standards Committee and then move the acceptance of that report. She would then make a second motion that the Commission amend those recommendations in the following manner, i.e., according to

the amendments noted in red in the booklets that were handed out to the Commission members. Ms. Davis went over each amendment indicated in red, because this was the first time that members of the Commission or Standards Committee had seen them. This was on the motion to amend the Committee's Report. The following revisions were noted:

On page 1. Rewording at the bottom of the page in the bullet and rewording of footnote 1. Footnote 1 was stricken, as it was simply put in reworded paragraph to note the inclusion of attempts, conspiracies, and solicitations into the standards by vote of the Alabama Sentencing Commission on this day.

On page 2, the committee did some rewording in the next to the last bullet, to clarify that the committee was talking about life without parole. At the request of a committee member, added that the sex amendments referenced are those enumerated in Act 2005-301 concerning child victims under the age of 12. There was some rewording in the next full paragraph simply to clarify that this whole body of work is included in the standards.

In footnote 3, wording was added to further clarify what the Commission is talking about when it added the term "significant," because of the mandate to the Commission to maintain meaningful judicial discretion.

Footnote 5 was reworded.

Page 3 – The committee reworded some of the first paragraph. Two committee members suggested rewriting. The two different rewrites were combined to read as follows: *The sentencing judge has the final responsibility for insuring the worksheets are: completed for the offense of conviction, and reflect the appropriate worksheet factors considered by the court, and sent to the clerk to forward to the Alabama Sentencing Commission.*

At the bottom of page 3, closed the parenthesis.

Page 4 - Added to the address of the Sentencing Commission.

Page 5 – Inserted provision explaining that the standards had taken into consideration all of the enhancements when developing the standards, specifically including the Habitual Offender Act and other enhancements. It was noted that at least one judge believed the Habitual Offender Act was jurisdictional and could not be avoided, even by passage of the Sentencing Reform Act, specifically stating otherwise.

Page 8 – In footnote 17, in the body the committee was attempting to clarify the use of worksheets when there are two counties or two courthouses and cases in each that the judge is imposing sentences taking into consideration each offense or when the district attorney wants to offer a deal on both together. The

committee needs to clarify what is a sentencing event and when worksheets must be completed. The bottom line is in those situations, is that you have to fill out a worksheet in both venues, because the worksheet has to be filed in both venues to relate back to the case number.

Page 10 – The committee first recommended that the phrase “prior incarceration” be further defined in the individual instructions, but the committee decided that it would be better to include the definition in the glossary of terms. The word “unsuspended” was added to the definition to specify that prior incarcerations are only unsuspended terms of incarceration. The committee also added parole or community corrections revocations along with probation revocation.

Page 11 – In the middle of the page, left the word *the* in, instead of striking it. Added the dates in for the Dennis Lee Jones case and reworded footnote 23 and added the case cites.

Page 13 – Added a comma between footnote 25 and 26.

Page 13 - Footnotes 25 and 26 – There was a suggestion that the committee add the district court case number at the committee meeting. The committee agreed to do that and 25 and 26 make that change.

Page 14 – Changed some language in item 2 at the top of the page to be the same as used in other places. There were a few other grammatical changes or emphasis changes in the italicized portion. The black italicized portion is what the committee did and voted on. Italicized and underline.

Page 15 – There was some rewording for clarification at the top of the page. There were a lot of issues raised by the committee on reverse split sentences.

Page 16 – At the bottom of the page added a reference.

Page 17 – Changed the language to explain the difference in a worksheet score that falls between two scores on the sentence length range table and a worksheet score that is higher than any score that is on the sentence range table and how those are treated differently.

Page 18 – The committee clarified that when the worksheet score is higher than the highest score on the sentence length tables, that makes the sentencing event a non-standards event. On those, the worksheets still need to be sent to the Sentencing Commission, because that is the only way the Commission will know why the offense was not sentenced within the sentence length ranges that are recommending.

Page 18 – Clarification regarding split sentences was made by providing that “suspension of the incarceration portion of the ‘split’ is not available under the standards. This change was made to clarify some of the issues raised in the *Quick* case.

Page 18 - Chairman Colquitt suggested that the address of the Sentencing Commission should be corrected to match the address on page 4.

Ms. Davis noted that those were all of the modifications the Standards Committee made to the general instructions. She stated that in regard to the specific instructions on the drug prison In/Out worksheet, there were no modifications made by the committee on the drug prison in/out worksheet itself. She further stated that she made a modification on “Attempt, Solicitation, or Conspiracy to Sale/Distribution of Schedule I-V (other than to a minor”. It was amended to reference “Attempt, Solicitation, or Conspiracy to Sale/Distribute Schedule I-V”, deleting “distribution” and adding “distribute” and taking out the word “of.”

On the Sentence Length portion of the Drug Worksheet, the committee added “with unsuspended” sentence for prior incarcerations imposed of one year or more because that’s the way it reads on the In/Out worksheet.

On the the Sentence Length portion of the Drug Worksheet at the top of the page marijuana is spelled two different ways, this was corrected to read “marihuana”.

On the property prison In/Out worksheet and property Sentence Length worksheet added “unsuspended” in front of references to prior incarcerations. On page 2 of that the committee added the reverse split language.

The committee did not make any changes on the property sentence length worksheet. On the personal/prison in/out worksheet, the committee added the word unsuspended to number 5. The committee added the reverse split language to number 10.

On the prison In/Out worksheet for personal, the committee did make a couple of additional changes; the committee added asterisks by those offenses that are excluded if the victim of a sex offense is under the age of 12. The committee noted that at the bottom of the page. The committee asterisked them again on the sentence length worksheet.

Chairman Colquitt asked whether the asterisk should go between the most serious conviction offense paragraph and number of prior adult felony convictions paragraph so that people can find it readily. It would be attached right in the middle of the page just below attempt, conspiracy, and solicitation of murder. That way when you see an asterisk you wonder what does that mean?

Ms. Davis agreed, stating that was an excellent suggestion, because she had wanted to include at the bottom of that page a statement that the final sentencing order, after the grant or denial of probation, must be attached. She further stated that she would make both of those changes and put the asterisk on the personal worksheet.

Ms. Davis noted that those were the committee recommendations with amendments to the worksheets and the instructions. The committee recommended no changes to the sentence length table. Ms. Davis advised that the sentence length tables were not

included in what members were to consider today. The only things that members are presented with were the changes made by the committee or staff which she had gone over with them.

She advised that there was a motion on the floor to accept the report of the committee with the amendments that have been made, and presented to the Commission today in the document provided to the members, with the understanding that the sentence length tables attached to this document make up the initial voluntary sentencing standards as modified. Ms Davis noted that there was a motion to include the recommendations made today, and to authorize staff to make mere editorial or grammatical changes if needed, indicating that the motion included taking out the underlining and italics that the committee used to designate changes. The motion was seconded.

Ms. Davis stated that the final document would be the cleaned up, without the underlining and italics denoting the changes the strike-outs, or the different colors. The motion was unanimously approved by the Commission with the amendments.

Ms. Davis presented the Sentencing Standards Modification bill, explaining that this was the bill that asked the Legislature to approve the Sentencing Commission's modifications to the worksheets, standards and the instructions. It was explained that the committee had recommended the addition of attempts, conspiracies, and solicitations for those offenses designated on the personal and drug worksheets today. Joel Sogol moved to approve the bill, Ellen Brooks seconded the motion, which was passed by a majority vote. Ms. Davis called for a vote to make sure that those be included as worksheet offenses. The Commission approved the addition by a majority vote.

It was noted that the Standards Committee had not considered the Frequently Asked Questions (FAQs). Ms. Davis asked Commission members to look at those because the staff might make some changes and send them out.

### **Split Bill and Community Corrections Bill**

At the request of the Chair of the Legislative Committee, Dr. Lou Harris, Lynda Flynt gave the Committee report, reviewing the bills proposed for the Commission's 2009 Legislative package. She reminded the Commission members that the members had looked over the Community Corrections and Punishment Act when they had previously been provided the entire Community Punishment and Corrections Act, even the provisions that the Commission were not attempting to change. She stated that the reason she included all sections of the existing Act was because she wanted to make sure that the Association of Community Corrections, the Community Corrections Division of the Department of Corrections and the Commission members had a chance to review all provisions and get any and all recommended amendments. After the time for input had been extended several times without any suggestions, the amended versions were put in bill form.

Ms. Flynt pointed out that in several places throughout the bill, while there are references to “an authority,” but there is no reference to “a nonprofit entity.” Since most of the community corrections programs are nonprofit entities, the Legislative Committee wanted to make sure that they were also included under these provisions. The first such amendment is on page 2 where “Board” is defined.

The second amendment is the same one that was introduced last year. Under existing law the statute provides that any person selling any controlled substance is automatically excluded from participating in a community corrections program, regardless of the amount of drugs sold or the circumstances. There were problems because of the very wording of the statute on distribution of controlled substances – i.e. distribution can mean either selling drugs or giving away drugs. The Commission and Community Corrections Division of the Department of Corrections ran into problems with this wording in determining the reimbursement, if any, that a community corrections programs receive. They are authorized reimbursement if it is not a sale, but a give away. The consensus of the Legislative Committee was that the judges should be given that discretion on whether defendants charges with distribution/sale should be eligible for community corrections programs, because there are some instances in which someone could be charged and convicted of a felony even though it’s just a small amount (one pill). Ms. Flynt noted that for two years the Commission has voted to exclude the selling of controlled substance as an absolute exclusion. She emphasized that this change does not mean that the judge and DA have to agree to allow a defendant charged with selling drugs to participate in a community corrections program, it just gives them the option to decide, where now it is not an available sentencing alternative and is expressly excluded in any and all instances.

Ellen Brooks went on record as stated that because this change would take away power from district attorney to automatically exclude these offenders, she was opposing the bill.

Ms. Flynt explained that while the Commission had voted for these changes in past years, she wanted to go through them. She further stated that Judge Rains made some good suggestions, one of which was that the terms “offender” and “inmate” were used interchangeably throughout the bill and should be amended to be consistent. Lynda indicated that she went back and amended the bill to reference “offender” throughout except when specific reference was to state inmate or county inmate.

The next amendment on page 4 does define offender as any county or state inmate who is sentenced or legally authorized to participate in community corrections programs.

Page 8 – The committee added a provision. Ms. Flynt explained that the Community Corrections Act now authorizes a straight sentence to community corrections or in conjunction with any other type of sentence like a split sentence, specifically mentioning splits. In the Code under the provision for straight probation, there is an express provision which states that you give probation you have to have a sentence which is suspended--a prison sentence or jail sentence, imprisonment, that is suspended. There are some instances in which the judge will sentence directly to a certain number of years in a

community corrections program. While this is legally authorized under the Code, if the offender is revoked the only sentence he or she can be revoked to is community corrections because that is the underlying sentence. The committee decided that a sentence of community corrections should have an underlying sentence that is suspended, the same a probation sentence, so the judge would have something on which he can rely and invoke when community corrections is revoked. Both the Legislative Committee and the Commission voted to make this change.

Page 11 – The counties now are authorized to utilize the community corrections offenders to perform community service. The committee added that now the community corrections programs are also authorized to utilize and perform community service in the county.

The other 2 amendments on Page 16 were merely grammatical changes.

The provisions on page 17 deal with limited civil liability and under existing law only references authorities. The Legislative Committee included nonprofits in these provisions, as well as authorities.

Page 18 - The Committee included nonprofit entities as well, requiring them to maintain liability insurance. The Committee struck the general liability reference, because, as Buddy Sharpless pointed out, there were other types of liability insurance not just general liability insurance. The last thing that the Committee did, which was based on another recommendation by Buddy Sharpless, was to include a specific provision authorizing insurance coverage for nonprofits through the Association of County Commissions. Mr. Sharpless explained that he is now authorized to get insurance coverage for the counties, and he wanted specific authority to allow the Association to provide the same type insurance coverage to nonprofit entities.

Judge Rains commented on the provision requiring a suspended sentence in order to sentence somebody to community corrections. He stated that maybe he did not understand that when it was voted on by the Commission before. He noted that if someone was transferred out of DOC to community corrections, and then they are revoked they are to serve the remainder of their sentence. When you transfer somebody out of DOC, he asked if there has to be an Order that suspends the sentence.

Ms. Flynt explained that this change does not affect institutional diversions at all, because an institutional diversion is a separate provision in the law that authorizes the Commissioner, with the judge's approval, to divert an offender that has been sentenced to the penitentiary to participate in a community corrections program. These offenders have been given a prison sentence which they are serving and the new provision does not affect that at all. This is just for those offenders directly sentenced to community corrections.

In response to Judge Rains question about the difference, Ms. Flynt explained that it was because there were two separate statutes involved one involving direct sentences to

community corrections under the Community Corrections and Punishment Act and the institutional diversion statute.

Judge Rains noted that under current practice, if a person is sentenced directly to community corrections and violates the conditions of the community corrections program, his or her community corrections sentence is revoked when they are ordered to active incarceration. That's the way that the statute talks about active incarceration. He asked what's wrong with that practice. Ms. Flynt explained that it was because there was no underlying sentence of incarceration that was suspended that would come into play upon revocation. Ms. Flynt noted that the only sentence was to community corrections.

Judge Rains further stated that this is a great example of the problem that has been created by the Department of Corrections, because they give good time credit on community corrections sentences if an inmate is granted an institutional diversion or if an inmate is sentenced directly to community corrections on a suspended sentence, whereas if a defendant is sentenced to community corrections as a condition of probation, no good time is authorized. He stated that because of this inconsistency and because he does not believe someone in community corrections should receive good time he is going to vote against this bill.

Ms. Flynt noted that it had already been approved by the Commission and was being brought up again because it is now in the form that it was going to be presented to the Legislature.

Ms. Flynt referred to the bullets summarizing the bill's provisions, noting the issue that Judge Rains brought up. In these bullets the difference is explained on when good time applies. This is a problem; however, it was brought before the Legislative Committee for possible legislative change, and it was opposed by the Department of Corrections DOC, the Association of Community Corrections, and rejected by the Legislative Committee. Under the current law, anyone sentenced directly to community corrections and meet the conditions for reimbursement or is granted institutional diversion, can earn good time because they are technically considered inmates and they do earn good time. However, if you sentenced a defendant to probation and as a condition of probation the offender must participate in a community corrections program, good time does not apply.

Judge Rains stated that he has never sentenced anybody to community corrections on probation. He further stated that he has sentenced people to serve their sentence in community corrections, because that is what the statute says. He asked if he can give somebody probation, and require them to serve that sentence in community corrections. Are they getting jail credit or not? Ms. Flynt stated that if they are sentenced to community corrections with an underlying jail sentence of imprisonment, for instance, if you say I'm sentencing you two years to the penitentiary, and I'm going to suspend it and sentence you to community corrections those offenders receive good time. If an offender is sentenced to community corrections as a condition of probation, they do not receive good time.

Judge Rains mentioned that he wrote to the Commission about this question and was advised that Ms. Flynt was going to ask for an Attorney General's opinion. He was informed that Ms. Flynt withdrew that request, because she knew what the outcome was going to be. Ms. Flynt indicated that was not true, she had never asked for an AG Opinion on this issue and she did not remember ever having a discussion about an AG opinion request.

Judge Rains asked if DOC requested the opinion. Mr. Barnett replied that they did not, to his knowledge. Mr. Barnett asked if the Commission wanted to extend good time to people who are in community corrections as a condition of probation.

Judge Rains questioned why any judge would require someone to serve their sentence in community corrections if the community corrections program wasn't going to receive any money from the Department of Corrections as reimbursement? He emphasized that the good time statute only authorizes good time to someone incarcerated, and that legally the ADOC could not give good time. He indicated that this issue may be corrected if and this practiced is challenged in court.

Chairman Colquitt mentioned that he knows of at least one case where good time or jail time prison credit was given to a person who was on escape, and was apprehended by the FBI in Tennessee and brought back to Alabama after about 10 years. Then, he was put up for parole immediately because he had enough time for parole. He had been on escape for almost nine years. Ms. Davis noted that was an error, because you don't acquire time while you are on escape.

Judge McLauchlin stated that every sentence has got to be to the state penitentiary. Then, the judge can suspend that sentence, and put them on probation or put them in a community corrections program. The only legal sentences in Alabama, unless this act changes that, is to sentence a felon to the penitentiary (with the exception of felons incarcerated in county jails up to 3 years). He stated that this is the definition of a felony offender, except for split sentences, in which a judge sentences to incarceration and then comes back and splits it into an incarceration portion and a probation portion. .

Judge Colquitt noted that the only example in Alabama where you do not have to impose a sentence is youthful offender. Youthful offender you can actually suspend the imposition of the sentence, never impose it, and put them on probation. If they violate probation, bring them back in and then sentence them.

Ms. Flynt asked members to look on page 8, starting on line 12, with the language "the court may sentence an eligible offender to any appropriate community based alternative provided either as a part of or in conjunction with a split sentence or otherwise as an alternative to prison." The Legislative committee was trying to emphasize that it needs to be a suspended sentence which is consistent with Judge McLauchlin's interpretation.

The other issue that the committee had on this bill was the recommendation to clarify what confinement is in terms of escape. The Legislative Committee voted not to make any changes, because there was no suggestion of how it should be amended.

Ms. Flynt stated that before moving on to the split sentence bill, Ellen Brooks wanted a revote on the Community Corrections bill. Ms. Brooks responded that this was not a revote, inasmuch as the Commission has never voted on this bill and had never seen this bill.

Ms. Flynt noted that this bill, as it is written, is to be reintroduced or given to Legislative Reference Service to introduce in the Legislature. The Commission had voted on the proposed changes, but had never voted on it as it is presently written. Noting that there was a motion to vote on this bill. Joel Sogol seconded the motion. The motion to vote on the bill was approved by majority vote.

Ms. Flynt asked for a motion for approval of this bill. Joel Sogol moved to approve the bill as written and discussed. Dr. Harris seconded. The bill was approved by a majority vote, with Judge Rains and Ellen Brooks opposing.

Referring to the Split Sentencing bill Ms. Flynt advised that the Commission had voted on the Split Sentencing Bill before, and reference the provision relating to the exclusion of sex offenders and the proposed amendment. She indicated that the recommendation for amendment, which was made by Judge Rains, was a good one because there was some concern about that the way a comma was put in and left out that someone could argue that the whole split sentence statute did not apply to any Class A or Class B felony, rather that how the legislative intent was to exclude only Class A and Class B sex offenders. The Legislative Reference Service argued about the comma. Ms. Flynt noted that this was one of the issues that she wanted to bring it back to the Commission for consideration of the change suggested by the Legislative Reference Service.

Asking the Commission members to refer to page 3, Ms. Flynt indicated the proposal that the Legislative Reference Service suggested, which they said would clarify these provisions better than through the use of commas. Their amendment would make sure that only Class A and B felony sex offenders involving a child under 12 are excluded from the provisions of the split sentencing statute. Ms. Flynt asked if members wanted to discuss all of the changes then vote.

Rosa Davis moved that the Commission accept the recommendation that Ms. Flynt has discussed and which was suggested by the Legislative Reference Service. Vernon Barnett seconded the motion. The change was approved by a majority vote.

Ms. Flynt stated that she also wanted to make sure that the ADOC and everyone else understood what changes the Commission was making in authorizing sentencing judges to revoke on a partial sentence. Noting that the Commission has discussed this issue **before**, but not in the context of the good time. She further stated that she wanted to

make sure that everybody understood all the ramifications, and it was suggested to bring this up for a vote again.

The other issue was on page 3, subsection A1 and it starts on line 14. It was suggested that a change be made to add rehabilitation or reentry facility. The suggestion came out a meeting between Commissioner Allen and Chief Justice Cobb. This was specifically authorize a judge to split a sentence to Life Tech.

The question was raised as to the difference between a rehabilitation and reentry facility? Ms. Davis noted that a rehabilitation facility could be a physical, mental or a drug rehab. How that differs from treatment might be the question, but reentry is someone who has been in and coming back.

Ms. Flynt explained that the intended change was to allow a judge to sentence directly to Life Tech by using the split or to Lovelady. There were some suggestions to say "state certified facility." Someone suggested "state approved" or "state licensed facility" and there was another suggestion to put in "certified by mental health," It was noted that the drug treatment program of LifeTech is certified by Mental Health, but the other parts would not be.

Ellen Brooks suggested reorganizing the wording so that it only applies to those two facilities, i.e., Lovelady and LifeTech. Ms. Flynt asked if Lovelady was certified by Mental Health. Vernon Barnett stated that they certify what they can, but they are not certifying the entire function of these facilities. He further stated that you have got to be careful if you put in something like that, because there is not a certifying agency.

Ellen Brooks explained that she doesn't have a problem with a prison, but she has a problem with some private facilities out there. She expressed her concern that we are losing our protection that some judges, because of lack of facilities and other things, may start sending these folks to some not very good places that are not very safe.

It was noted that most of the reentry programs in Alabama, other than facilities like Life Tech are run by private nonprofit organizations. If the statute is written with a very restrictive certification process required, you would be eliminating those people and denying a lot of people the opportunity to come out of prison and get into some of these reentry programs. If the certification is too restrictive it could be a real problem.

Mr. Barnett stated noted that Pardons and Paroles runs Life Tech and that is a State run facility. He further stated that he thinks that some of these other facilities that people want to add are not run by the State and ADOC does not have any certification process for these kinds of facilities. What ADOC does when they use them is they have their people go and check up regularly and make sure that people who are put there are being taken care of properly. He advised that the ADOC does not have a certification process.

It was noted that the capacity at ADOC is over 188% and that Lovelady and Life Tech Wetumpka have empty beds. The community corrections programs seem to be

successful and ADOC has been asking judges, especially under the split sentence, if they would reconsider these split sentence people, because they still have jurisdiction over them and they could come in and modify their sentence. They want to be able to do the same thing for Life Tech. exception the front-end as well as the backend and fill the LifeTech and Lovelady beds.

Bennet Wright indicated that according to the prison admission data revocations for the last three years have been up about 600. Ms. Flynt stated that the Commission staff will be providing this, and other data information in the 2009 Annual Report.

There was a motion that the Commission oppose any change to the provision. Rosa Davis seconded the motion and it was approved by majority vote.

Referencing the bottom of page 6 and onto page 7, line 2, Ms. Flynt explained that this wording was what the committee voted to change to provide an additional option for a judge when the probation portion of a split sentence is revoked. The appellate courts have held that if someone is sentenced to a split sentence, for instance, 15 years split three years or 20 years split five years, under existing law if a defendant is sentenced to serve five on a 20 year split or three years on a 15 year split, the judge's only option if he is subsequently revoked from probations is to send him back to prison for the entire remaining suspended sentence. The courts did note that there was an exception; if an offender was not sentenced to serve the entire three years on a 15 or the entire 5 years on a 20 year split, the judge could send him back for the remainder up to the three or 5 years. For instance, if he was originally sentenced to 15 years to serve two years, the judge could send him back for that one year or the entire remaining suspended sentence – 13 years. That's the only instance in which you had an option to give him less than the full suspended term.

The Legislative Committee wanted to clarify that the judge should have the option to revoke the suspended sentence either in whole or part. The issue and the concern came up about good time and how to deal with the good time in those situations. ADOC says that if it is a 15 split two and is revoked to serve one year, for that one year which remains on the minimum three he will not be given good time and he will serve day to day. If a judge revokes and orders incarceration for the remaining suspended sentence on a 15 year split two, then the defendant will get good time for the entire remaining term of incarceration.

Chairman Colquitt noted that the question becomes: Will the remainder of the split sentence be served without good time eligibility or with good time eligibility?

Ms. Flynt stated that as the bill is proposed, if an offender is sentenced to a 15 year split sentence with two years to serve and he is revoked, you can give him two more years (rather than just 1 year or 13 years). Since one of these years still falls under the minimum term (3 years) he would not get good time on that one, but he would on the other one. Under the same scenario, the defendant revoked for the remaining suspended

sentence would not get good time for one year of the 13 years (which is a change from present practice).

The main reason that the Legislative Committee started looking at this was because now a judge has no alternative but to sentence a defendant to serve the remaining suspended sentence if he is sentenced originally to a 15 year split to serve 3 years or 20 year split to serve 5 years. It is an all or nothing approach. The committee wanted the split provision to track the probation revocation statute and authorize a judge to revoke in whole or part.

Ms. Flynt explained that when the committee brought this issue up over the last two or three years and got a vote, the Commission did want to change it where the judge had the option to revoke in whole or part. Now the issue is how the Commission wants to treat good time. She stated that as far as ADOC having an administrative problem with computing good time, they have already got a program in place for good time calculations.

Ms. Flynt noted that under existing law, if a judge revokes a defendant for the remaining sentence, the defendant gets good time on everything regardless of the fact that he didn't complete that three years. What the committee is suggesting in this bill, unless the Commission tells it otherwise, is that ADOC be consistent with the way they are handling revoking for the remaining maximum that you wouldn't allow good time on any part until it reaches the maximum (3 on a 15 year split and 5 on a 20 split). The committee did not put a limit on the number of times that a judge could revoke. Chairman Colquitt explained that under this proposal you would give no good time on a split up to a certain cap. Ms. Flynt asked members to look on page 8 on lines 4-9, and pointed out the language of this change.

Ms. Davis noted that the maximum amount of time under this bill that a defendant could serve day for day on a 15 year sentence would be three years. If you got the 15 split to serve two this law does two things: it says that you can revoke in whole or in part so that if it is 15 split to serve two or three and you want to revoke you can revoke for 13 or you can revoke for three. The amendment would give you that option.

Ms. Flynt asked the Commission is the Commission would approve the bill. Ellen Brooks suggested that the staff redo the bill and send the members an email to vote on the language. Ms. Flynt stated that she did not know if the Commission could vote by email. Chairman Colquitt stated that the Commission was not authorized to vote by e-mail.

A motion was made that the Commission send the bill back to the Legislative Committee. Judge Cole suggested that the language on page 6, paragraph 6 c, where it refers to subsection a be used. Judge Rains made a motion. Ms. Flynt asked if there was a second to the motion made by Ms. Brooks that the bill be sent back to the Legislative Committee. He stated that his motion was to amend the bill as Judge Cole suggested, as authorized by Subsection a on page 8.

Ms. Flynt noted that there was a motion and a second for amendment of the bill. Joel Sogol moved to approve the bill as amended. Vernon Barnett seconded the majority and the bill was approved by a majority vote.

Ms. Flynt advised the Commission members that Commissioner Allen made a presentation at the budget hearing and in preparation of this presentation Commissioner Allen asked the Commission staff to provide him with information on all the new crimes that had been passed over the last 10 years, categorized as felonies, misdemeanors, misdemeanors raised to felonies, and mandatory minimums. She stated that she would provide this information to the Commission members upon request.

**Vernon Barnett, Deputy Commissioner  
Department of Corrections**

Utilizing a PowerPoint prepared by Commissioner Allen, Mr. Barnett stated that the Commissioner gave this presentation to the Joint Legislative Budget group yesterday. Showing a slide of stacked bunks in prison dorms that demonstrates Alabama's prison overcrowding, he noted that this is the same slide that the Department of Corrections has been showing the Commission for two or three years. Mr. Barnett advised that as of January of 2007, there were 24,100 inmates in ADOC. As of January of 2009 there were 25,283 inmates.

In the last 10 years, there have been 86 new felonies created by the Legislature. Every year over in the last 10 years there have been about 8.6 new felonies; however the Department has not seen an increase of funding to house all of these new felons. Mr. Barnett stated that approximately 80% of the people that come to ADOC are drug addicts; most using drugs or alcohol or both.

He noted that the supervisory reentry program has proven to be very successful. So far the Department has transitioned out 1,700 inmates back into society successfully. Mr. Barnett noted that Elana Parker with the Department of Public Health agreed to work with the agency and is on loan from the Department of Public Health, which pays her salary. Ms. Parker has created a network of volunteers all over the state to assist the Department in transition of these inmates back into society in a more productive manner, so that hopefully few of them will reoffend.

Mr. Barnett advised that the Alabama Therapeutic Education Facility is going to open in Columbiana, Alabama and that the Department will have 400 beds there.

As far as costs, Mr. Barnett stated that in Alabama inmate costs is \$39.36 per day per inmate. Alabama's figure for 2008 is actually \$40 per inmate per day. The national average is \$64 per inmate per day, which is the federal average.

Reviewing the Department's actual expenses/expenditures for 2008, Mr. Barnett explained that the ADOC gets the majority of its funds from the State General Fund and that the Department gets almost no federal money. The rest of the revenue it receives, is miscellaneous revenue, a large part of which money from work release. When people

start laying off members of their workforce, they start with work release inmates. Because of this, ADOC's work release program has decreased about 100 jobs per month since last October. Mr. Barnett noted that DOC's budget calls for an employed count of about 1,800 inmates. That number is now 1,300.

Discussing the cuts due to the ADOC funding crisis, Mr. Barnett stated that ADOC actually had an \$11 million dollar shortfall of funding to begin with. The Department has now been asked to cut another \$23 million out of its budget, totaling a deficit of \$33 million.

Mr. Barnett stated that there is a merit raise and hiring freeze. The hiring freeze does not apply to ADOC officers, because the Department actually saves money for each officer that they are able to hire and train. This will impact support staff exclusively. The problem with this is that although ADOC has incredibly increased IT capability a lot of what they do has to be done by human hands.

#### *Medical Reductions*

There will no longer be nurses on staff for work release facilities. If someone is injured, they will be taken to a local medical facility. Also, the ADOC is offering and amending its medical contract. The Department had negotiated a contract with its provider, who assumed a large amount of the risk. Under this contract the ADOC was shielded from liability and catastrophic cases. ADOC cannot pay the premiums any more, so it has had to receive more risks on the backend in order to save the Department some money on the frontend.

The ADOC obtained its FAMD vaccine from Public Health for free, so they have been able to reprogram that money.

The Transportation Department is willing to pay more for ADOC's inmate labor. On employee health insurance, the ADOC was given one month off from paying those premiums by the SEIB, which amounts to around \$3 million.

Mr. Barnett noted that one of the things that he and Commissioner Allen would like to throw out to this group is that they need to think about exactly what role the prison system plays in the criminal justice system, because ADOC cannot continue the mission that it now has. The only way that the Department is doing any sort of rehabilitative work in the prisons, except for some limited drug treatment, is through the use of volunteers. They seem to be willing to come up supplies, etc. This is for the current fiscal year.

In the last few months, the ADOC has been seeing a huge increase in the number of inmates coming in. For those inmates awaiting transfer from the county jails: those with Transcripts over 30 days ready was down to 100 last week and next week it will be down to single digits. For those awaiting transfer with transcripts ready under 30 days there are probably close to a thousand state inmates awaiting transfer. Mr. Barnett stated that most of the inmates that come to ADOC are only there for a short period of time.

Discussing the expenses of the Department due to illnesses, many relating to age, Mr. Barnett stated that the Department has 1,100 inmates now that are over 65 years of age. The ADOC is seeing that it has this large population that it can no longer support. Most other states have mechanisms to release as many inmates as it takes to keep below a certain cap but Alabama does not have such a mechanism.

Mr. Barnett noted that what they have tried to do is develop the most responsible way as possible to affect reentry. The theory being - if folks continue to go to their drug treatment and continue to get their mental health meds and counseling, that they have got a place to sleep, and they have got food the chance of reoffending is greatly decreased. If they are released under supervision the chance of reoffending is less because someone is holding them accountable. That's what ADOC has tried to do and that has been successful; however it is not a huge impact when you consider Alabama's current prison overcrowding condition.

Rosa Davis stated that one thing the Cooperative Community Alternative Sentencing Project is looking at is the use of a statewide use of risk and need assessment instruments. They are finding that the costs are not prohibitive; for around \$150,000 Alabama could implement a proprietary nationally accepted risk needs assessment for everybody in the penitentiary and incoming convicted offenders.

Chairman Colquitt introduced Ellen Tuzzolo with Justice Policy Institute, advising the Commission members that Ms. Tuzzolo was going to be working with the AOC, Board of Pardons and Paroles, ADOC, and the Sentencing Commission with regard to women offender issues.

Lynda Flynt noted that the Drug Court bill that was distributed to members was for information purposes only, noting that this bill was not a part of the Sentencing Commission's Legislative package, but was one that the Commission supported before.

**Cynthia Dillard, Executive Director  
Board of Pardons and Paroles**

Ms. Dillard stated that the Board of Pardons and Paroles had their budget cut 10%. The Board is not giving merit raises, cannot fill vacancies, and is developing a plan to determine what active caseloads they have over 200. These active caseloads over 200 the Board is going to ask the Governor or Finance Director to allow them to hire replacements.

**New Business**

Chairman Colquitt mentioned that, throughout the state departments, we are already seeing a complete termination of all out-of-state travel and some in-state travel. That is happening in a number of departments and the Sentencing Commission itself has already had to defend the idea of paying member's travel to commission meetings.

Ms. Flynt noted that the Sentencing Commission will only authorize this meeting, because it was already scheduled. She stated that the Commission is statutorily required to meet four times a year, but she didn't know whether or not the Sentencing Commission would be able to reimburse for travel or buy meals for future meetings. She said that the Sentencing Commission will continue to look for money to pay travel and buy meals.

Ms. Flynt provided members with an outline of the 2009 Annual Report, noting that this year's report will include more figures and data. She acknowledged that staff statistician, Bennet Wright, and staff analyst, Melisa Morrison, have been working very hard on getting the sentencing standards compliance figures together. Ms. Flynt asked members to let the Commission staff know, if they have any other topics that they think would be good to add to the report.

Noting that the report will include the standards and what the compliance rate is now, Ms. Flynt advised that right now Henry County is the only county that is not sending in any worksheets. There has been a 4,000 inmate drop based on the projection in the population of ADOC. While it could not be said that this decrease is due to the implementation of the sentencing standards, the decrease was due to a combination of factors. Some of it is due to the sentencing standards, but credit also has to be given for drug courts, community corrections, or for pardons and paroles dockets.

#### *The Budget Hearing*

Ms. Flynt reported that the Sentencing Commission was not mentioned yesterday at the budget hearing. The Sentencing Commission has asked for \$30,000 to host the National Association of Sentencing Commissions in the year 2010. The Finance Director, Governor, nor the Legislature has made any comment about this request, one way or the other.

#### *Judicial Study Commission*

The Judicial Study Commission's committee on Consolidation of Supervision Services is still looking for people that are interested in serving on that committee. It has been postponed until sometime in February to wait and see what happens with the budget.

Ms. Flynt stated that the commission staff will attend and make two presentations at the Judge's Midwinter Conference. The conference is scheduled for January 21-23, 2009.

Cynthia Dillard provided copies of Life Tech for women brochures.

#### **Schedule Next Commission Meeting**

The next Commission meeting has been tentatively set for May 15, 2009.

Chairman Colquitt stated since there was no further business the meeting was adjourned.