Alabama Sentencing Commission

Minutes of Commission Meeting
December 5, 2008

The Alabama Sentencing Commission met in the Large Classroom of the Judicial Building in Montgomery on Friday, December 5, 2008. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge and Beasley Professor of Law, University of Alabama School of Law, Tuscaloosa
Vernon Barnett, Deputy Director, Department of Corrections, Montgomery
Ellen Brooks, District Attorney, 15th 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
Joel Sogol, Esq., Tuscaloosa
Hon. Ben McLauchlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark

Advisory Council:
Denis Devane, Birmingham
Deborah Daniels, Birmingham
Sheriff Wally Olsen, Dale County

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:
Carolyn Bowdin, AL CURE
Annette Brown, AL CURE
Rosemary Collins, AL CURE
Kandis Daramola, House of Representatives

Welcome and Introductory Remarks
The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks.

Chief Justice Sue Bell Cobb stated that the way the Sentencing Commission has methodically worked on sentencing reform and improving Alabama's Criminal Justice System has made good things happen and laid the foundation for where we want to be. She thanked Judge Colquitt and the Sentencing Commission, and staff for all that they have done to lay the foundation for improvement.

Chief Justice Cobb stated that this year we can not allow budget problems do anything other than inspire us to be more creative and more effective; not losing sight of the fact that we simply have got to make the people of Alabama safer.

Chief Justice Cobb thanked Buddy Sharpless for allowing representatives from community corrections programs, drug courts, and juvenile detention alternative initiatives talk to the Association of County Commissioners at their annual meeting. She stressed that success depended on developing a close partnership, with everyone at all levels - state, local and private - working together.

Chief Justice Cobb mentioned the wonderful partnership that has been formed with the Sentencing Commission, Pew Charitable Trusts, Vera Institute of Justice, and CJI (Crime and Justice Institute), and the fact that through the Cooperative Community Alternative Sentencing Project (CCASP) which she co-chairs, Alabama is going to be able to have model mentor counties with a true continuums of services of alternative punishment, supervision and treatment. She said that she believes that this project will truly be a springboard for Alabama, and that our State will be a model for the nation. She noted that this project recognizes that locking up nonviolent offenders is not the most effective way to utilize our limited resources and make the people safe.

The Chief Justice announced that, based on the recommendation of the Sentencing Commission, the Judicial Study Commission is looking into the feasibility of creating a system where one entity is over all types of community punishment and supervision. Chief Justice Cobb noted that we need to literally get into operation a system that people of Alabama can be proud of and that is a unified system of community punishment.
Lynda Flynt noted that the Judicial Study Commission has already created a committee to study the consolidation of field services and report back to them.

Chief Justice Cobb explained that the concept was not a new one. The complexity of it is to find a way to consolidate these various supervision programs in such a way that the counties do not feel that they have unfunded mandates placed on them. Right now community corrections is largely conducted by non-profit associations and is a private function. It is either a private or county function, with state reimbursement for felony diversions, depending on which county you are in. She asked the Sentencing Commission to work with the Judicial Study Commission to come up with a plan, noting that there may be a lot of dissention around this concept.

Chief Justice Cobb stated that she is excited about where we are today with drug courts, noting that this month 44 counties will be taking guilty pleas through established drug courts. They are still working on expanding the existing drug courts to take nonviolent felons who have participated in appropriate drug abuse programs. She further stated that she is pleased with the work of the drug court subcommittee that is looking at the barriers to drug and alcohol treatment. Chief Justice Cobb stated that they realized from the discussion with Kent Hunt that there were several hundreds of thousands of dollars in treatment money that was not spent last year that was designated as drug court grants.

Justice Cobb explained that right now there are 147 women at the LIFE Tech Center in Wetumpka, and that facility can accommodate 100 more women. She stated that she sent a memorandum out to judges advising them of the available beds at the LIFE Tech Wetumpka facility and Lovelady and encouraged them to utilize these facilities rather than revoking probationers for technical violations. She said that when she visited LIFE Tech she found out that all the women there have multiple felonies and are all nonviolent. Only one out of every four women of the 147 offenders did not have a drug and alcohol problem.

Judge Cobb mentioned to Cynthia Dillard and Bill Wynne that this summer she would like to have a panel of judges tour LIFE Tech so these women could tell them their stories on how they can be transformed if somebody actually tried to help them get over their addiction. She asked the Commission for any suggestions that it has to help bring this difficult subject home for our elected officials, district attorneys, and judges.

Rosa Davis commented that she attended a Commission on Women and Girls meeting yesterday where Walter Wood reported on the solid impact that a few changes have made and how people were sent to the Department of Youth Services (DYS) in the past are now being kept in the community with funding provided for the resources they need.

Chief Justice Cobb noted that in the four counties that are the most populous counties - Montgomery, Jefferson, Mobile, and Tuscaloosa - commitments to the Department of Youth Services (DYS) have been reduced. She said that all these children are mostly nonviolent, but by changing a philosophy of the judges in those counties; understanding that if we lock up a juvenile who is a trouble maker and low risk (and his actions have nothing to do with violence) with a high risk child, we are increasing his chance of reoffending. If we can find an alternative for that child and not put him in detention, but work with the child and have the hearing quicker, there is a much greater chance that the child will not be sent to the Department of Youth Services.

Chief Justice Cobb advised that Judge David Breland was hired to work on developing community alternatives for juveniles. In the four counties where alternative programs have been implemented, they are working with the family and providing drug and alcohol treatment, tutoring and counseling, and there has been a 55% reduction of children being sent to DYS.

Ms. Davis stated that she understood that because of these initiatives in the juvenile system, the girls' campus has seen a reduction from 120 beds to 65 beds with only 35 beds filled. She noted that those girls are getting services in the community; they are not just being turned away, and that's what makes the difference.

Chief Justice Cobb stated that the hope is not just to save the State money, but to change the way that money is spent. She asked the Commission for any suggestions or ideas that it might have.

Report of Sentencing Standards Committee
Rosa Davis, Chief Assistant Attorney General, Chair

Ms. Davis stated that the Sentencing Standards Committee met on November 7th and made a number of recommendations. Both were changes to the worksheets including new offenses and revisions to the worksheets and instructions. Ms. Davis provided the Commission with a copy of the November 7th minutes of the Standards meeting and revised instructions, stating that these are still in draft from, since they have not yet been approved by the committee. Ms. Davis stated that Ms. Flynt had asked that the revised instructions not be distributed, since they were still in draft form, she was not given a copy until late yesterday afternoon, and she wanted additional time to review them.

Ms. Davis did not ask members to adopt the changes shown in the minutes or instructions; however, she said that if the Commission is not going to meet in January, the Commission might need to look at the draft revisions today because they need to be presented the Legislature during the 2009 session.

Ms. Flynt indicated that the issue came up as to whether the Commission members were authorized to vote via email, but no answer was ever provided. She did note that the Commission needs to have at least one more meeting before the Legislature goes into session to look over the annual report.

Ms. Davis advised that there were a number of items that the Standards Committee had gone over last year, but didn't have a quorum at the committee meeting. This year the committee went back and revisited all of those items.

General Instruction – Score Exceeds Recommended Sentence Length Score
The first thing that the committee went over was in the General Instructions to clarify that where the score on the worksheets exceeds the score on the sentence length tables. The decision of the committee was that if the score exceeds everything on the sentence length table, the judge should sentence outside the standards. It was further decided that in these instances where the judge sentences outside the standards because the score does not fit within the worksheet scores, the worksheets should, never-the-less be submitted to the Sentencing Commission for data collection purposes.

In the materials that were handed out, Ms. Davis noted that the first part of that recommendation had been incorporated into the draft but the second part had not. That was one of the issues that the Commission staff wanted to review.

The second change was clarifying the issue how split sentences can be applied. It was clarified that for compliance purposes both the total sentence of a split sentence and the incarceration portion of a split must comply with the recommendations under the standards. As another issued under split sentences, was whether a split sentence where all incarceration was suspended would comply with the standards prison recommendation. The committee decided the answer that it would not. The committee in most instances

recommended specific language to be included in the general instructions. That language has been added into the general instructions.

Another change was to clarify that youthful offender sentences of incarceration count when you are looking at prior incarcerations. This explanation was added in the handout that Ms. Davis distributed on the definition of prior incarcerations.

It was further clarified that nol-prossed cases should not be counted when determining additional counts for offenses that are being scored along with the most serious offense. The only offenses that count as additional offenses would be "convicted" offenses.

Item F – amendment clarifying whether or not a sentence that carries a prison term as a condition of probation is compliant with a non-prison recommendation on the sentencing in/out worksheets. If the sentence is to prison, it is not in compliance with a non-prison recommendation.

Clarification on what should be done for cases that originate in two or more counties and are being sentenced at the same time. The Standards Committee looked at this issue as two or more venues. Sometimes there are two courthouses in one county or in a multicounty circuit and cases filed in two counties that are settled at the same time. The decision was that worksheets should be filled out in both counties. The cases can still be settled together, but both have different case numbers and a worksheet is needed in both counties, which can show that the other offense was considered at sentencing.

Amendment was needed to clarify how prior DUI convictions should be counted. As the General Instructions currently read, it is unclear on whether you count misdemeanor DUIs as prior misdemeanors when it is part of the offense of felony DUI. The intent was that all priors be counted whether they are felonies or misdemeanors. The Committee clarified that in the instructions.

Adding offenses and truth-in-sentencing – Ms. Davis stated that members were given new worksheets for personal, property, and drug worksheets. The personal worksheets and the drug worksheets have a major change, adding attempts, conspiracies, and solicitations for murder on the personal worksheet and for the drug offenses, excluding DUI. Attempts, conspiracies, and solicitations are now included because they are punished the same as the offense attempted, etc. and they will now be given the same score. The reason the Committee added these inchoate offenses to the worksheets is that sentencing them outside the standards, attempts, conspiracies, and solicitations could and would be sentenced higher than the actual offense.

Ms. Davis announced that she had provided Commission members with a handout that included a chart showing the number of convictions for attempts and conspiracies in the last five years. While there was discussion regarding adding additional offenses (trafficking, meth, etc.), the Commission talked to the consultants and were advised that now the data which is being pulled together should be for the development of truth-in-sentencing standards. This time when the Commission runs the data and looks at the

offenses, it will be able to look at everything being sentenced. Last time the Commission just took the most frequent crimes of conviction, which represented 87% of all non-capital felonies of conviction. When the Commission looks at the truth-in-sentencing standards it will consider other offenses, which could be included under the new worksheets and standards.

The Standards Committee discussed community corrections in regard to the confusion over whether community corrections was a prison or non-prison sentence. Ms. Davis stated that, under the standards, a sentence to community corrections is either an IN Sentence or an OUT sentence and is always considered compliant with the In/Out recommendation. She explained that when the Commission was compiling the data for constructing the initial "time imposed" sentencing standards, it could not separate the community corrections offenders out. The issue came up on whether to put community corrections under non-prison or prison or whether the Committee should leave it under both, as it is now, as either a condition of probation or ADOC sentence. The Committee decided to leave it just like it is and make no change at the present time.

The Committee also discussed whether or not a limited appeal should be allowed or authorized where a judge simply does not consider or seek to consider the sentencing standards. The judges on the committee objected strenuously to having an appeal of that nature implemented at this time and the Committee agreed. The decision was that the Standards Committee would not make the request for a statutory change allowing a limited right to appeal at this time.

The Committee considered clarifying the instructions regarding the fact that the Habitual Offender Felony Act did not apply to sentences that complied with the recommended under the sentencing standards. The committee decided that's already clear. The Legislative Committee is recommending a change in the legislation that clears up one part of the definition that caused some confusion and that will be considered.

Two other issues came before the committee. One was whether reverse splits count as a prison sentence. The committee recommended that they not count, because they do not result in an actual prison sentence. As part of the split, if someone is put on probation first and they complete the probation judges don't tend to send them off under the split. Under the sentencing standards, an offender would have to go to prison on a split, which would defeat the purpose of the reverse split. The Committee recommended that reverse splits not be considered a prison sentence for worksheet purposes.

There was a request to add a space for district and circuit court case numbers. Ms. Davis provided members with three sets of worksheets that allow a place for circuit and district court cases, noting that the space could be added without difficulty.

The Commission members were asked members to read the minutes and General Instructions which noted what was added or changed by italics and underlining. Provisions crossed through reflect that there was a recommendation that it be deleted.

Ms. Flynt asked members to write draft on the minutes, because the commission staff will be sending out a corrected copy. The part on the second page that says that there will be worksheets for all nine sentence standards offenses is wrong. It needs clarifying that it means when they are sentenced at the same time as the standards.

Ms. Flynt recommended that in the first paragraph under 2 (General Instructions) to add for the offense of conviction in the sentence that's underlined because worksheets are being completed. They get to court, change the conviction sentence, and they plead it down. The committee wanted to clarify that be for the sentence of conviction.

Page 1 - The committee added the additional offenses of attempts, conspiracy, and solicitations.

Page 2 – The committee added that when you are looking at the sentencing standards you are looking at the whole package of the worksheets and the instructions along with the sentence length tables, because they all go together to explain exactly what can be done and how it can be done.

Page 3 – The committee added worksheet should not be submitted to the sentencing commission until the final sentence is imposed, i.e., if the probation hearing has been held and decided. The sentencing standards include both disposition and sentence length and you are not through with the sentence for standard purposes until the disposition is finally decided. Ms. Flynt made that suggestion.

Page 4 – A few lines from the bottom adding to the clerks' responsibility to make sure that the worksheet offense corresponds to the offense that is finally sentenced there was a clarification added by using italics on page 6 to clarify that you sentence under the worksheets or under existing law not as a combination of both.

Page 6 – The committee added the attempts, conspiracies, and solicitations to the list of offenses that can be sentenced under the worksheets.

Page 7 - Clarify convictions occurring in different counties that are sentenced at the same time. They constitute separate sentencing events and that applies to venues also.

Page 9 - Prior DUI convictions - the committee added all felony and misdemeanors. That's a committee recommendation to make sure that everything is counted. The committee wanted to add throughout every where it talked about incarceration that incarceration includes YO incarceration or youthful offender adjudications or nolo contendere dispositions that result in incarceration. Ms. Davis noted what the committee talked about here is original sentence incarcerations so rather than go through and add it everywhere it says incarceration the committee included it in the definition section of what is a prior incarceration.

At the bottom of the page, the committee recommended if the worksheet score is higher than any score on the worksheet sentence length tables that it is sentenced outside the

standards. The committee recommended because of this Dennis Lee Jones case as it was pending that instead of saying compliance with the voluntarily sentencing standards occurred to say a sentence under the voluntary sentencing standards occurs when any of the three conditions set afterwards are met. The only one that was added by the committee is where prison is recommended on the prison in/out worksheet and a split is imposed, the split portion of the sentence is not suspended. The committee added at the bottom of the page any unsuspended sentence to prison for actual active incarceration that is considered a prison sentence and is not authorized under a non-prison recommendation.

Ms. Flynt asked how about community corrections?

Ms. Davis stated that community corrections is a prison sentence.

Ms. Flynt suggested putting that in there because that's not really incarceration. Under the Community Correction's Act it specifically says that it can be imposed as a split or otherwise. You actually have to have an incarceration portion that's not suspended and that he has got to be behind bars for that certain length of time. That needs to be clarified.

Page 10 - Added the language *A reverse split is not available as a sentence under the initial voluntary sentencing standards where prison in/out worksheet results in a recommendation of prison.*

Page 12 – Changing the case number and adding the DC case number to worksheets.

Page 13 – (after 2) add the language *A sentence under the initial voluntary sentencing standards must comport with the recommendation of prison or non-prison.*

Add the language *for a prison sentence, the defendant must be sentenced to an unsuspended prison term or a term in community corrections. The sentence must be chosen from the prison sentence length ranges and if a split is imposed, the incarceration portion of the split must be from the recommended ranges for a split sentence. When imposing a split, the trial court may suspend the underlying sentence on which the split is imposed, but may not suspend the incarceration portion of the split except to place an otherwise eligible offender in community corrections.*

Or to a term in community corrections was added to clarify that a community corrections sentence is considered a prison sentence as well as a non-prison sentence.

Page 16 – Step A was an attempt to clarify what happens when the score is higher than any score on the worksheet.

Step C - On page 17 - To clarify the split sentence may be imposed only if the total sentence imposed falls within that allowable to impose a split.

Ms. Davis noted that in the initial voluntary sentencing manual beside each worksheet there is a list of instructions on facing pages. There will be changes made to incorporate what the committee has said as to in the general instructions. For instance, on the drug prison sentence length worksheet when talking about prior incarcerations that language will be expanded to include number 7. That language will be expanded to be consistent with what the committee says in the general instructions.

Uniform Sentencing Order Committee

Ms. Davis stated that the sentencing order that she handed out is the latest version, although not the latest version that was considered by the committee. The committee came up with a version for a purposed uniform sentencing order that was circulated among members of the committee which includes a number of judges. Ms. Davis mentioned that she has talked to some of the judges that have been using the proposed Order and they have become comfortable with it. Some of the judges that promised to use the proposed sentencing order have failed to use it. The plan was that the Uniform Sentencing Order Committee would come up with the order, the order would be sent out for judges to use, and judges would write back and tell the committee where they encountered problems. The committee has heard back from several judges and incorporated their suggestions.

Ms. Davis asked members to provide her with any suggestions or comments that they have on the recommendations that have been made. She advised that the Commission will vote on those recommendations when it meets in January.

Report for Legislative Committee and Vote on Proposed Legislation
Dr. Lou Harris, Chair

Dr. Harris stated that the Legislative Committee is going to present issues for the Commission to vote on today. These are really critical issues that the committee struggled with and didn't even settle that day. The committee continued to work for the next month and voted on line trying to come up with a consensus.

Lynda Flynt stated that the minutes of the Legislative Committee meeting were emailed to members earlier (The committee did to save time and travel money on the community corrections and drug court act). She further stated when the Commission is discussing the vote on the sentencing standards changes and may want to consider whether to allow a vote by email to avoid having to come back or go ahead and schedule a meeting in January or early February.

<u>Voluntary Truth and Sentencing Bill</u>
The truth-in-sentencing bill and the postponement until 2011 is the same one as the bill introduced last year. Ms. Flynt stated that the Commission would not know how effective the existing voluntary sentencing standards have been until the staff compiles the data for this year's report to the Legislature. The Commission plans to finalize and distribute the report in January or February. This will be the first year that the

Commission has actually had enough reliable data to look and see what the compliance rate is with the standards recommendations, i.e., are judges following the standards in 75% of the cases or more or are they deviating from the standards; how effective the standards are; and whether there are enough alternative sanctions available, e.g., community corrections, drug courts**,** and reentry. In addition, before the Truth-in-Sentencing Standards can be developed the Commission has to obtain a separate set of data on time served for our consultants, Applied Research Services.

The Commission was reminded that the initial standards were based on "time imposed" data, while the truth-in-sentencing will be developed based on how much time prisoners they actually serve on the sentence that was imposed. It is different data that has to be compiled and analyzed before the Commission can draft up the new standards and worksheets. The postponement bill was introduced last year but did not pass. Ms. Flynt advised that the Commission would try to get this bill introduced before the legislative session.

Ms. Flynt went over some of the major provisions:

One change on page 2, line 9 including "continuum of punishment" to reference ADOC's supervisory re-entry program.

Page 4- Line 18 – A correction was needed because it still shows 2004 as the time for the initial standards to go into effect, when they were actually adopted and became effective October 1, 2006.

Page 5 - Line 6 and Page 9 - Line 21, 22, 23 – The Committee changed reference to 2009 to 2011.

Page 10 - Line 23 and page 11 lines 1 and 2, wording was added to clarify that truth-in-sentencing had not been implemented. Ms. Flynt explained that when the Sentencing Reform Act was codified, although the provisions in the Act were clear when referring to the initial standards as distinguished from those provisions on the truth-in-sentencing standards proposed for future development and implementation. When the Act was codified and different provisions were put into different statutes, it was confusing on which provisions applied to which standards. Added to the confusion was the fact that the truth-in-sentencing statute did not show the development and implementation was in the future and that the provisions were a "blue print" which may be subject to later revisions. To avoid any misunderstanding on which standards were being discussed, and to clarify that the truth-in-sentencing standards were not yet developed or implemented, on page 10 the committee added language at the bottom specifically providing that those provisions are for truth-in-sentencing that has not been developed.

Ms. Davis noted an editorial change on line 23 the only should come after applied (shall apply only after).

Ms. Flynt emphasized that the existing provisions on truth-in-sentencing were blue prints only and that the Standards Committee would have to finalize the structure and procedures for use of these standards at a later date. Ms. Flynt noted that there was a problem with the way the statute is currently written referencing an extended term of sentence on line 19 equal to 120%. It is supposed to be additional 20% of the minimum term.

Page 12 - Line 3 – Where it says no sentence of active incarceration may be suspended the committee may need to do something to make sure that it is doing away with institutional diversion. The Standards Committee thought that this is not the time right now to make the change.

Clarifying with Mr. Barnett that the ADOC supervised reentry program did not have overnight facilities, Ms. Flynt noted that reference in the bill to the SIR program would remain and that reference to supervisory re-entry programs should also be included, based on a recommendation from ADOC.

Ms. Davis stated that in 2003, when the Commission was trying to take Alabama law, and make it apply as best as it could to show how a continuum of sanctions other than probation and incarceration could be established. She stated that this was a type of truth-in-sentencing issue, but there was parole, SIR, and probation on a split. Now there is another type of relief - supervisory reentry.

Ms. Brooks stated that she would not be in favor of adding another thing to the wrong place unless somebody could give her a good reason why supervisory reentry program even needs to be in this bill right now.

A member requested to let the minutes show that Jeff Williams referred and requested that this provision be included. It was mentioned that this amendment was approved by the Legislative Committee. Someone stated that it passed by unanimous vote; however, Ms. Flynt advised that the vote was not unanimous, it was eight in favor and two opposed, with Ellen Brooks and Dr. Harris voting no. Chairman Colquitt stated that he thinks that it might help for people to understand what the effect of moving reference to SIR from the active incarceration provision and (along supervised reentry programs) listing it under intermediate punishment. There was a motion made to take the phrase in line 9 relating to the supervisory reentry program and move it to fit under Section B.
Ms. Flynt noted that Ms Brooks' original motion was to strike both the reference to supervised reentry program and supervised intensive restitution in lines 9-11 and put them under the intermediate punishment provision. The motion was seconded and a majority approved.

Rosa Davis moved to make a grammatical change on page 10 to say that the truth-in-sentencing standards shall apply only after development and legislative approval. Ms. Flynt called for a motion. Ellen Books moved, Cynthia Dillard seconded the motion, and the majority of the Commission approved.

Split Sentencing Bill

Ms. Flynt stated that this bill was also introduced last year. While there was no opposition, it did not pass. She reminded the Commission members that this was a bill that the Chief Justice requested the Sentencing Commission to include in its legislative package and would prohibit the stacking split sentences. The Chief's rationale was that when split sentencing was first developed it was to provide a sentence for those offenders who needed some time incarcerated but not a long term, followed by a period of supervision. She noted that this was the major provision in the bill but also explained the following proposed amendments:

Page 3 - Line 5 and 6 – Change in wording and placement of a comma. Ms. Flynt explained that this was a recommendation by Judge Rains. He was concerned that because of the way the comma was placed when the sex offender provision was added, it could be interpreted as not allowing a split to be used for any Class A or B felony, not just sex offenses. By taking out the comma on line 5 and adding it on line 6 would show that it was only excluding criminal sex offenses that constitute Class A and B felonies, which was the intent of the Legislature or the Attorney General when he proposed the amendment adding the comma.

Line 3, 9-12 – Ms. Flynt noted that when the split sentencing statute was amended to apply to sentences of over 15 years and no more than 20 years, split to no more than five to serve and requiring three years incarceration, the Legislature deleted the language stating that during the incarceration portion of a 15 year split 3 an offender could not be given correctional or sentence time or would be eligible for parole. While a later provision at the end of the statute does make a general statement for any split sentence, to make sure that it is clear, the Committee suggested adding this provision back in the provision describing a 15 year split sentence

The next major change, was on page 4 (lines10-23) and page 5, lines 1-11. Ms. Flynt noted that when the bill was introduced last year the provisions on Boot Camp were taken out because Boot Camp no longer existed; however, the Department of Corrections did not want the provision taken out. Ms. Flynt suggested leaving this portion without amendment, as ADOC requested. She stated that it will cover page 4, line 10-11 and places throughout the bill where the Committee had struck any reference to boot camp, which will be put back in.

Motion**:** Rosa Davis moved to delete the deletions, Joel Sogol seconded the motion and it was approved by a majority of the Commission members present.

Ms. Flynt explained that the next amendment was a time limit for the probation portion of the split sentence, noting that under current law, there is no limit like there is for general probation. Under the general probation statute for a felony there is a five year limitation on a probationary term. For a misdemeanor there is a two year limit. Under the split sentence statute, there is no limit on the probationary portion of the split. The committee thought that there should be a limit on probation and made this change on page 3, lines 18-20, page 5, lines 20-22 and page 8, lines 6-8.

Referencing page 6, line 12 under the provision referencing conditions that may be imposed on a person sentenced to a split sentence, the committee included participating in and completing substance abuse or community punishment and correction's program. Ms. Flynt suggested rewording: instead of saying "while incarcerated …" to say "during the incarceration or probation portion of a split sentence" and then start each 1, 2, 3 and 4 by eliminating the 2.

Motion: On line 12, page 6 instead of having as it is written while incarcerated or on probation and among the conditions thereof, strike that language and put in lieu thereof, "during the incarceration or probation portion of a split sentence" and then pick up "the defendant maybe inquired to do all of the following." Amend Subsection I by striking 2 and begin pay and fine. Strike 2, 3, & 4 and start it with "make restitution and provide for the support" Vernon Barnett seconded the motion. The majority favored.

Page 6, line 4 - "Regardless of whether the defendant has begun serving the minimum period of confinement the court shall retain jurisdiction and authority throughout the period to suspend that portion of the minimum sentence that remains and place the defendant on probation." The motion was moved and seconded. The majority favored.

Page 6, 8-11 and page 10, 1-5 – Reminding the Commission members that the issue of revocation options had been discussed before, Ms. Flynt stated that the appellate courts has interpreted this portion of the split sentencing statute to mean that if an offender is revoked from probation after serving his entire imprisonment portion of the sentence, the sentencing court's only alternative is to revoke the remaining suspended sentence and incarcerate the offender for the remaining sentence. This has been the interpretation even though part of the statute says that the sentence may be revoked in whole or parts. Ms**.** Flynt noted that what the committee is trying to do is say the judge has the authority to revoke, and he can either make him go back for part of that suspended sentence or the whole thing, but he is not limited to revoke for the entire suspended sentence. The Commission voted on this last year and it was approved.

Page 10, line 8 - The Committee will put back in provisions on boot camp. Also on page 10, line 8-10 the committee talked about giving full credit towards incarceration for the time served in a state certified residential treatment program that an offender has been ordered to attend, upon successful completion of the program.

Referring to page 6, lines 8-11, Ms. Davis asked if the proposed amendment would affect the judge's authority to send back for the remaining portion of a split or any additional time allowed on the split. For example, she state, if a judge sentences to 10 years split to serve three, lets the defendant out after serving two years in prison and puts him probation. He still has one authorized year left. If he is revoked and sent back for one more year, he would serve day for day. Ms. Davis expressed concern that the amendment would change the calculation of good time.

Ms. Flynt asked members to look at the split statute where it specifically provided that, i.e., the part of 15-18-8 that talks about getting credit for good time and parole eligibility after it is revoked. Page 7, lines 9-12, noting that this bill and all the amendments except H on 7 were approved out of the Legislative Committee. It was also approved by the Legislative Committee last year and unanimously by the Commission.

Ms. Flynt noted that lines 6-12 provide that "no defendant serving a minimum period of confinement ordered under the provision of subsection (a) shall be entitled to parole or deductions from his or her sentence under the Alabama Correctional Incentive Time Act during the minimum period of confinement provided, however, that this subsection shall not be construed to prohibit application of good time to any period of confinement which may be required after the defendant has served such minimum period." Based on this provision, which is not changed, a judge would be allowed to send a defendant back for one year without good time or parole.

Ms. Flynt suggested amending it to say "authorized incarceration period" instead of minimum period. She explained that under existing law and under the proposed amendment if a defendant serves two years incarcerated on a 15 year split 2, and he is out on probation and is revoked, the court can send him back for an additional year or two years and that for at least one year of that he does not get good time or parole.

Motion: Rosa Davis made a motion to amend on page 7, line 11 where it says may be required after the defendant has served the "maximum period authorized" as the incarceration portion of the split. The motion was seconded. The majority favored. Ms. Flynt stated that she thinks this could clarify that there are two portions - an incarceration portion and a probation portion.

Ms. Davis stated that under existing law in order not to get good time the judge must order the time revoked as part of a split. The proposed amendment would allow the judge to send a defendant back for a part of the sentence that is not a split for which they get incentive good time. If this change is make it should be clarifiedthat the judge must specify when he orders revocation to a split or not.

Ms. Flynt noted that the amendment would not authorize good time up to the maximum authorized. Ms. Davis noted that the maximum authorized is three, so after that he would get good time. However, he could send him back on a split.

Ms. Flynt noted that the amendment provides that the offender would only get good time or parole consideration only after he has completed the maximum authorized. She stated that this is talking about time served after revocation.

Chairman Colquitt stated that, as he understands it, the idea is that you would never get good time or parole eligibility on this three, because that is the maximum allowed time for which a judge could split the sentence. If you do a two and two, then, the most that the split sentence law would apply to is three. Then, you still have got one year here that the judge is not empowered to split to and the defendant would be eligible for good time

or parole on anything other than the maximum split which is three. He further stated that he doesn't think that it requires the judge to say I am splitting a sentence, because it is apparent that the judge is splitting the sentence. The law says that the most that the judge can give without benefit of parole or good time is three and by law, the defendant is presently entitled to credit - anything over three the defendant by law is entitled to good time or parole.

Ms. Davis stated that she thinks as written right now with the amendments that is ok; however, what is not clear is if you have 10 split to serve two he has a one year left that he can sentence him on a split two. So instead of when he revokes him he sends him back for three years. Does the first year count as part of the split when the judge hasn't said that it does?

Ms. Flynt noted that the Committee said that you couldn't get good time or parole consideration during that time and struck out the reference to minimum. As amended the provision reads: "No defendant serving a period of confinement ordered under the provision of subsection (a) shall be entitled to parole or deductions from his or her sentence under good time during the period of confinement so ordered; provided however that this subsection shall not be construed to prohibit application of good time or any period of confinement which maybe required after the defendant has served the maximum period authorized as incarceration portion of the split sentence. Any incarceration ordered up to the maximum shall not be entitled to good time or parole eligibility."

Ms. Davis stated that this gives the judge discretion to lower the sentence by saying he can send him back for any part of the remaining sentence, but in order to do that he has got to serve the maximum authorized by law on a split. Ms. Flynt noted that in most instances courts impose two years incarceration on a 15 split three. You have got one year standing out there. If you want to allow them to receive good time on that one year Judges will not sentence them to that.

Ellen Brooks commented that this is real important and the Commission has spent a lot of time on it. She asked is there a way to refer to a subcommittee? Ms. Flynt responded no that referring it to another committee would not be proper. She stated that the Legislative Committee has already voted and approved this amendment twice. Because the Legislative Committee has been formed to review legislation, to create another subcommittee to review what has already been considered and approved by them would circumvent their authority. Forming a new committee or subcommittee when the Legislative Committee has approved a bill and one or two members oppose it should not be allowed. She noted that if the Commission has problems with the way the good time is calculated it can rescind the original vote and strike out all reference to the procedure to follow on revocation. She mentioned that the Commission had agreed on everything so far except the revocation portion and being able to impose a partial sentence.

Answering the question on why a judge should be given the right to impose a split sentence and then revoke for a portion of the suspended sentence, Judge Colquitt gave the

following explanation: Assume a trial judge is facing a situation where the original sentence is a 10 year sentence, split to serve two years and now the person comes back before him because of a probation violation. The judge now has two options – he can either continue him on probation or revoke him. The judge doesn't want to continue him on probation because he has violated his term of probation, but he also doesn't want to send him off for eight more years (even though he is eligible for parole and good time and will probably serve only two or three years.) If the judge is interested in giving the offender less time in prison, he could revoke and sentence him to another split for a year, which would be served day for day. Under the proposed bill, he could also revoke to serve a portion of the remaining suspended sentence. The purpose of the amendment is to give the judges more flexibility for technical infractions or minor infractions, etc. The complicated part of the equation is regarding the time that the offender would be authorized to receive good time or be eligible for parole consideration. The easiest way would appear to provide that any service up to the minimum 3 years (or 5 years on a 20 year split) would not be eligible for good time or parole, otherwise there would be administrative problems in trying to track 25,000 prisoners and compute what sentence they are serving.

A member explained that the problem is trying to figure out if the judge doesn't want to impose a split but wants the defendant to get good time and parole consideration. There ought to be something in this bill or there ought to be a separate bill for the sake of the judge's judgment. The judge should be able to order what he wants and make it clear whether the sentence is a split sentence where there is no good time or parole consideration or whether the sentence is to be a modified sentence reduction in what the defendant is to serve. There has to be something that says this is what the judge is doing.

Ms. Flynt suggested rewording the bill's provisions so it would be clear that if the judge doesn't say anything that additional year up to the maximum the defendant doesn't get good time or parole eligibility.

Ellen Brooks moved that the Commission accepts the amendment as proposed on page 7, line 11. Ms. Flynt noted that the Commission had already voted on the amendment and approved it. Ms. Brooks stated that there was nothing on the table to vote on.

Ms. Flynt noted that the Commission voted on the provision requiring the defendant to serve the maximum period authorized at the incarceration portion of the split sentence before receiving good time or parole eligibility.

Ms. Brooks asked if the Commission could authorize the staff to work this out to impose the will of the body. Ms. Flynt stated that she understood the will of body was to make sure that a defendant did not get good time or parole during that three years if the sentence was a 15 year split.

Ms. Davis asked if was the will of the body that if a judge chooses to send someone back to prison for less than the remainder of the total sentence and there is time left on the split that the time has to be counted, so that the first portion of that incarceration is an

additional split that the judge cannot send the person back for the remainder of his sentence with good time and parole on everything he is sending him back for. In other words, the judge can limit a split up front, but if he does and then revokes and sends him back for less time then the remainder of the sentence he cannot get good time and parole up to the maximum allowable under a split.

Chairman Colquitt noted that under this provision it would be adding authority that the judge does not now have. The law presently says that on any split sentence up to three years the defendant shall not get parole and shall not get jail credit. If the judge gives a defendant three years to serve on a split sentence that is all the judge is entitled to do. Now the judge is being empowered to split two and two. The judge is not being limited; rather, the judge is being given more authority.

Ms. Flynt noted that what the Commission has voted for this amendment and unless there is a motion to rescind that amendment the bill should be amended to limit no good time just during that period and no parole eligibility during that three years if it is a 15 split and five years if it is a 20 split. She stated that was the vote of the Commission thus far. She further stated that the next motion was to let the Commission staff draft wording to that effect and send it out to members for approval. Ellen Brooks made the motion. The motion was seconded. The majority favored.

Ms. Flynt asked members to look on page 7 which was an amendment proposed by the Association of County Commissions and was voted down by the committee. Ms. Flynt stated that the change was voted on by the committee with a tie vote.

On page 7, starting with line 14 – The amendment proposed by the Association of County Commissions provided that any defendant sentenced under this section shall at all times be deemed in the custody of the Department of Corrections and the Department shall be financially responsible for the medical cost of the convicted defendants without regard to Department's receipt of a transcript if the convicted defendant is housed in the county jail for any reason. Reiterating that the committee had a tie vote, M Ms. Flynt noted that the concern expressed in the Legislative Committee meeting was that when it says any defendant that includes any defendant that is charged with a misdemeanor or a felony. It is not limited to state inmates. This proposed amendment was not approved by the Legislative Committee.

Buddy Sharpless stated that the Association of County Commissions is trying to avoid a situation where a state inmate sentenced to a split sentence that ends back up in jail does not revert back as the county's responsibility for medical cost.

Vernon Barnett, Deputy Commissioner of the Department of Corrections stated that was also a situation where ADOC was responsible for inmates that were being kept in the county jails. If the inmate never came to ADOC, the Department does not have any records. Mr. Barnett further stated that the level of medical care varies and the Department doesn't want to be in a position where it is medically or financially responsible for an inmate that's not under ADOC's care. Another aspect of this concerns

the problem of transcripts. As far as ADOC being responsible for the medical care of state inmates that is not a problem for the Department; however, ADOC does not want their responsibility expanded to inmates that are not under its care and control. Mr. Barnett noted that DOC has some very serious problems with the way the bill is drafted.

There was a motion to delete lines 14-19 on page 7. The motion was seconded which was approved by a majority vote.

There was another motion to amend the provision on page 6, line 11 where it says "for any portion" to insert "for any portion or all" for clarity. The motion was seconded and passed by a majority vote.

Drug Court Bill

Ms. Flynt asked Judge Johnson to discuss the drug court bill. Judge Johnson stated that the Alabama Drug Offender Accountability Act of 2009 is the joint work product of the Drug Court Task Force and that they started working on it a year ago. Judge Joel Laird was chairman of that committee. That committee met a number of times and met on-line by conference call a few times. He further stated that he presented a bill to the Legislative Committee and the committee made some requests/suggestions. The Task Force has accepted the bill with the Sentencing Commission's recommended changes.

Judge Johnson stated that he went before the District Attorney's Association after he sent them a copy of the bill. He was invited to attend the District Attorney's Association meeting that was held in Orange Beach on June 26th. Several district attorneys had objections. Judge Johnson further stated that he received an email from Mr. Hillman saying that they now have all of their objections and wanted to meet the week of December 15th to discuss these. He responded to Mr. Hillman's email, but has not yet received any correspondence so he does not know what their objections are. He noted that the Task Force will be delighted to look at any suggestions, as it did from the Sentencing Commission, and unless they dramatically change the bill the Drug Court Task Force will agree to those. The bill is not mandatory. One of the big objections was that it's based on the model state act and it has been tweaked to fit Alabama - which is a major tweak.

Judge Johnson noted that one of the main objections was that it not be made mandatory and it is not. There are some jurisdictions in this state that do not have drug courts that are insisting that they need legislation specifically to authorize establishing one. There are now 44 counties with drug courts and in a couple of months there will be a total of 48 counties with drug courts. He emphasized the importance of the bill stating that it gives structure to the support that the drug courts will continue to receive from AOC. Funding is not specifically addressed in the bill, so the drug courts are on their own in regard to funding. Judge Johnson noted that the Legislature has been very generous in the last two years in providing funding, approving $1.7 million for the last fiscal year. For this fiscal year they have budgeted $3.4 million.

In response to a question as to whether defendants charged with DUI could participate in drug court under the Act's provision, Judge Johnson stated that they are not excluded. There are a couple of counties now that allow DUI defendants; however, there are also a couple of district attorney offices who have diversion programs who do not allow it. There are municipalities around the state that have DUI diversion programs that are modeled, two of which are Mountain Brook and Leeds. It's just like drug court and they are probably a little tougher than the CRO and DUI Level I schools. The proposed bill does not prohibit DUI offenders from participating in drug court and that may be one of the things that district attorneys want to include**.** If they do, they need to go back and amend the local acts that set them up and under which they are operating. They need to go in as a group and change the division programs that they run to exclude it, if that's what they want.

Ms. Flynt noted that municipal ordinance violations are not included in this bill. Judge Johnson stated that this bill is for state offenses and that they are expanding drug courts in other areas. They are in the process in Jefferson County of starting a probation revocation drug court track. He further stated that they are also looking at juvenile drug courts/dependency drug courts and there are a couple of counties that have truancy programs where they use their drug courts to monitor and drug test the parents. They are doing it in Huntsville. The Chief Justice has been instrumental in expanding the existing drug courts; however, no expansion provision is included in this bill. Judge Johnson advised that he is not asking that this bill be a part of the Sentencing Commission's legislative packet; however, he is asking for the Commission's consent and support. He explained that the bill will be brought forth by the Drug Court Task Force, the Chief Justice, and AOC as part of the UJS Legislative package.

Judge McLauchlin moved for the Sentencing Commission to support the Drug Court bill as written. Dr. Harris seconded the motion.

Judge Johnson stated that when he receives the information from the DA's office he will present their recommendations and objections to the Task Force and Sentencing Commission. He stated that he does not see why the Task Force wouldn't agree to some small technical changes.

Ellen Brooks stated that she was going to abstain from voting until she sees what the changes are and what the Task Force does. She further stated that she is personally for the concept and just wants to workout some issues.

The majority favored the motion. Ms. Flynt noted that the record will show that Ms. Brooks abstained.

The Community Correction Bill

Ms. Flynt explained that this bill proposes amendments primarily to add some provisions for clarifications. She noted that Staci Neeley who is with the DeKalb Community Corrections program suggested many of these. The Association of Community Corrections has been asked to look over these proposed amendments, as well as the

existing Act and suggest any changes. There are many places throughout the Act, such as the definition of the board that references authorities but not nonprofits. Ms. Flynt noted that there are several different kinds of community correction programs and county programs. There are nonprofits and there are authorities. Throughout the proposed bill the Legislative Committee has tried to cover the nonprofits as well.

Ms. Flynt explained that Mr. Sharpless, the Director of the Association of County Commissions, provided some suggested amendments and the members of the Legislative Committee were provided a copy of his emailed suggestions which were very helpful. This bill reflects the changes. On page 2, line 22 this was an issue that some opposed on the Legislative Committee, but the majority approved the amendment. As amended, the bill would leave it to the judge's discretion whether to allow to someone selling drugs to be sentenced to a community corrections program. The majority of the Legislative Committee voted to exclude selling as a prohibited offense and leave it to the judge's discretion on whether community corrections would be appropriate for defenders to go to community corrections.

Page 3, lines 12-13 includes a new definition of an offender. Judge Rains noted that throughout the Community Corrections Act an offender is referred to as both an inmate and offender. The committee felt that the terminology should be consistent, therefore, in most places that that uses the phrase "state inmate" has been changed to reference "offender". The committee retained the definition of county inmate and state inmate, but clarified that either can be sentenced to participate in a community corrections program. It was explained that by referring to "inmates" in certain places of the Community Corrections and Punishment Act, it is misleading since these defendants do not actually ever step foot inside a prison. The committee thought that it would best to clear up the confusion by making this change.

Page 8, line 20 – This provision states that a community correction sentence must be based on a suspended sentence. This is consistent with the law as it now relates to a probation sentence. Under the probation statute, a probation sentence requires a suspended sentence as a condition precedent for granting probation. The rationale is that if there is no underlying prison sentence or a jail sentence, there is nothing to revoke an offender to if he or she violates a condition of probation. The Legislative Committee thought even though the Community Corrections Act says that a judge can sentence an offender straight to community corrections, as part of a split sentence or any other way, a direct sentence to community corrections without an underlying sentence to incarceration which is suspended is a problem upon revocation. For example, if the judge sentences someone to five years at community corrections, and he violates the conditions, the judge does not have an option of imprisonment when community corrections is revoked. This amendment would actually be the same as with probation requiring a suspended sentence, so that there would be an underlying sentence to revoke an offender to the suspended imprisonment portion for the sentence.

Page 12, line 1 authorizing community punishment and correction programs, as well as counties, to utilize offenders to perform community service in the county. Right now community service is just limited to counties.

Page 25, lines 17-18 and 24-25 regarding civil liability – The committee wanted to include county commission and nonprofit as well as an authority. As Mr. Sharpless pointed out, the provision references counties should not be included because there is already a provision saying they aren't liable over a limited amount. That is why the committee took out reference to county and just added the terms "authority" and "nonprofit."

Page 26, lines 16-26 – This discussion arose due to concerns about a person's medical cost and who was responsible for these costs while they are on probation or community corrections Now if they get injured or if they have medical problems on probation Pardons and Paroles doesn't pay for it. When the issue came up, Ms. Flynt stated that she called ADOC and asked Vernon Barnett what ADOC does with these people. Mr. Barnett stated that on the institutional diversions they get the inmates to sign something saying that we realize to get on the community correction's program we have got to agree that we are going to be responsible for all medical costs. Ms. Flynt stated that would take care of institutional diversions but what about those sentenced directly to community corrections.

Ms. Flynt stated that she contacted the director of the community corrections program in Shelby County and he advised that they get offenders to sign something similar to the waiver that ADOC uses, during their orientation. Mr. Sharpless pointed out that there was a question whether this was cruel and unusual punishment to not provide medical treatment and shouldn't it be limited only where they are not in confinement. Also, in the provision on page 27, lines 1-6 that's where it says that after they incur $2000 liability they must be sent to ADOC.

Vernon Barnett, Deputy Commissioner of the Alabama Department of Corrections stated that they have had a new development. ADOC has been able to come to terms with Medicaid on the status of these offenders that are in community corrections and community programs. They are fully Medicaid eligible and anyone who goes into one of these programs is going to be covered by Medicaid.

Ms. Flynt asked if that was just for offenders on institutional diversions. Mr. Barnett responded that it was not limited to just institutional diversion and that he understands from dealing with Medicaid that is the way that the statutes were written. The Department still doesn't have any relief for the ones that are incarcerated, but it specifically allows for people who are on community punishment type and transitional programs.

Mr. Sharpless stated that the explanation that Mr. Barnett gave the Commission regarding Medicaid was the first time that he had heard it. He further stated that he is not familiar with the statute. He noted that a Medicaid eligible person doesn't necessarily get every

penny of their medical cost paid; there could be some remnants of cost left that aren't reimbursed through the Medicaid program. Mr. Sharpless stated that he would rather that if it's a county inmate that is in the program, the county would be responsible for any legitimate cost not otherwise covered by Medicaid. That position should be the same with regard to the State.

Ms. Davis stated that would only be true if to treat them is so restricted that they don't have access to medical care. For instance, for a person on probation who reports in to a probation officer the State has no obligation under its correction's system or its probation system to cover the medical cost of that person. It's trying to make community corrections or your county work release people or whoever else is out there in the community and free to go to a doctor or choose a doctor responsible for their own medical cost. Once you lock them up and they can't do that, then you become liable. That's what the 8th Amendment requires.

Question: What if they are sentenced straight to community corrections and not the institution? Ms. Davis stated that it doesn't make any difference. It depends on whether or not they have access to medical care in the community. You don't need to impose an additional burden for somebody who technically has access to medical care. The 8th amendment doesn't require you to.

Question: What about those that are sentenced straight to community corrections, but are required to show up every night and be incarcerated. Ms. Davis stated that if they get sick in the middle of the night, if Medicaid covers it then Medicaid covers it.

Ms. Flynt suggested putting at the end of line 23 "and not confined." Because there are community correction programs that have overnight facilities and if somebody got sick you certainly would want to provide them with medical care.

Mr. Barnett and Ms. Davis suggested leaving this provision alone for right now until all the kinks are worked out. Vernon Barnett moved to leave the provision as it now reads. The motion was seconded. The motion was approved by a majority vote.

15-18-184 on page 26, line 13 – Ms. Flynt noted that Mr. Sharpless put this in there because he said that a lot of times under the county they can obtain group insurance for a county program and that they are authorized to get insurance for nonprofits too if it is in there that way. He noted that there are different types of general liability. General liability is just one, therefore, he recommended saying maintain "appropriate" liability insurance rather than "general" liability insurance.

There was a motion to amend line 8 to strike the term "general" and put "appropriate" liability insurance and to amend line 13 to put such liability insurance may be obtained through any available source including the county commission. The motion was seconded. The motion was approved by majority vote.

Ms. Flynt asked if there was a motion to add on page 4, line 18, 4 after the word "the"

"The community corrections division" of the DOC. There was not a motion.

Sentencing Standards Modification Bill

Ms. Flynt stated that the there is also a bill that amends the sentencing standards and the worksheet instructions. It amends the standards and worksheets to add attempts. conspiracies, and solicitations to the offenses of murder and certain drug offenses, noting that under current law these inchoate offenses are subject to the same punishment as the choate offense. She explained that the Commission has to modify the worksheets according to the Standards Committee recommendations and these must be approved by the Legislature. If the Commission has no problems with the bill, Lynda advised that they could go ahead and vote on the bill today or wait and carry it over to be considered at the same time the worksheets and instruction changes were considered. She asked if there was a motion to amend. Ms. Davis noted that the bill is fine, but stated she thought Ms Flynt wanted to look over the provisions again. Ms. Flynt stated that the bill is fine except for where it says that the Commission approved it today. The Commission has to approve it on a date certain. Ms. Davis explained that the Commission has to approve the worksheets and the instructions on a day certain and that is the date certain that is mentioned in the bill and with which the Commission has to be concerned

Ms. Davis noted that the Commission is talking about issues of statutory and legislative instruction. When the Commission approves the worksheets and instructions as changed, those worksheets and instructions are filed with the Legislature and the Alabama Supreme Court, along with a bill that goes to the Legislature that says the Commission presented these changes for the approval by the Commission on such and such date and filed them with the Supreme Court and the Clerks of each house of the legislature. It is all one package. The Commission decided to consider the bill, the worksheets and instructions at the same time; therefore a vote on the bill was delayed to a later meeting.

Kent Hunt, Associate Commissioner
Substance Abuse Services Division, Alabama Department of Mental Health and Mental Retardation

Kent Hunt, Associate Commissioner, stated that the Department of Mental Health/Mental Retardation is still working in partnership with the Chief Justice on expanding drug courts. The new drug courts are ahead of where Mental Health is in providing treatment support. Mr. Hunt further stated that Mental Health is beginning to offer other things other than what it had originally only been able to offer and usually it was a punishment of some kind. He assured the Commission members that the Department would continue to work as hard as it can to create treatment support for those drug courts**.**

Mr. Hunt noted that he sent the Chief Justice a list and there are 21 counties in the state of Alabama out of 67 that don't offer adult outpatient care for substance abuse and addiction treatment. Outpatient care is the minimum. That means that there is not anybody there to do a clinical assessment; there is not anybody there to do outpatient therapy, group counseling, case management, etc. Mr. Hunt further stated that they need to be able to offer those services in every county, particularly those counties that have a drug court.

He stated that the juvenile drug courts are now going to be important in the development phase as well. Treatment support for those drug courts is as crucial as for adult drug courts. There are 44 counties out of the 67 that have no outpatient adolescent's drug treatment or services.

Mr. Hunt noted that there are many programs around the State that have been created that call themselves substance abuse treatment programs. He explained that they are not monitored by anyone and do not have Mental Health's minimal stamp of approval. The Department's minimal approval is that they be certified by the Department of Mental Health/Mental Retardation to provide substance abuse treatment. The Department has a list of programs that have been identified to it from families, consumers, and other programs. Mental Health has a list of 115 non- certified programs that operate residential programs around the State.

The Department of Mental Health's website address is www.mh.alabama.gov.
There is a list of certified programs are on that website. If they are not on that list, they are not certified by the Department of Mental Health**.** The Department will continue to update that website.

Cynthia Dillard, Executive Director
Board of Pardons and Paroles

Cynthia Dillard, Executive Director, provided members with copies of the Board's fiscal year 2008 annual report statistics. She stated that of all the paroles granted between last year and this year, there were over a thousand more granted. There were almost 7,000 more probationers supervised and over 700 more parolees supervised. There were fewer revocations in all categories. There were 19,000 more investigations done by the officers**.** There were over 1,300 more voting rights restorations done because it was an election year. They almost stopped pardons because there is not a deadline for pardons**;** there is not a time constraint, but there is for voting rights restoration. Pardons were reduced. Voting rights restorations increased tremendously. Basically, they supervised almost 8,000 more people on probation and parole. The Board's caseloads were higher. The Board revoked fewer people that were on probation and parole. The Board did much more paperwork.

Ms. Dillard mentioned that a probation parole officer was shot for the first time while in the line of duty, two weeks ago. Ms. Dillard stated that she has always encouraged officers to be more social worker type, i.e., helping people find jobs, working with their substance abuse program, working with their problems, working to refer them to people to get those problems dealt with, as opposed to those who are strictly police officers who came to work for the Board as a retirement job who were not as likely to work with the people and wanted to lock probationers or parolees up and send them back to prison The offender was killed, but both officers were very lucky to be alive.

Ms. Dillard stated that she believes that different categories of people are needed who provide community supervision. Arrest teams are needed and people who are well versed in arrest and safety go out and perform arrest**,** the people who are good writers should be assigned to write the pre-sentence investigation reports and reports for the courts, Board, etc., and people who are better supervisors should be supervisors.

Vernon Barnett, Deputy Commissioner
Department of Corrections

Vernon Barnett, Deputy Commissioner, stated that the biggest breakthrough that ADOC has had recently is in dealing with Medicaid, making sure that Medicaid benefits are going to be extended to everyone in the community custody arena. He stated that the Department of Corrections has more inmates behind the walls than it has ever had in history--a little over 25,000. All of the facilities are maxed out at 200% capacity**.**

Mr. Barnett advised that ADOC's reentry programs are running very smoothly. The Department now has the ability to place people in the community with a full set of services, basically anywhere in the State. Mr. Barnett stated that with the partnerships that the Department has with the other state departments and agencies and in the various counties he is continually amazed at what is being brought to the table. Also, with the SRP program the Department has now successfully placed almost 1,500 inmates back into the community through that program.

Mr. Barnett stated that the bad economy helps the ADOC on one hand and hurts it on the other. On the manpower levels, with the economy in recession the Department is receiving more applications from better people for its officer core. On the flipside of that, inmates at work release are being laid off in mass.

Cynthia Dillard stated that one way that the ADOC calculates the inmate population would be 29,000. She asked what would that be now. Mr. Barnett explained that what Ms. Dillard is talking about is that in the past when people would tell you how many inmates were in DOC, they would tell you the "jurisdictional population" the amount which is always about 4,000 or 5,000 more than the actual amount, for whatever reason. This population is a little over 30,000. The actual in-house population, "custodial population" is almost 26,000. Mr. Barnett explained that the Department has expanded a couple of work release facilities and has also opened a new dorm at the Limestone facility that it transformed out of an old canning factory. ADOC has actually created over 1,500 new beds in the system in the last couple of years just by converting other space. The Department still has a paint factory and a box factory to switch over. That will be another 600 medium security beds.

Mr. Barnett announced that Dr. Austin will visit Alabama in middle of this month to assist with the classification tool. The new classification system will be implemented on January 1st and will bring the Department's classification program in line with national standards, which it hasn't been in line with in 20 years.

All of the inmates have been brought in from out-of-state private facilities. The last of them came back in February. At this time, ADOC has no more out-of-state contracts. Mr. Barnett stated that as far as he knows that will not be a relief for Alabama for many years to come, because with states like California and Texas flooding the private prison market and willing and able to pay $60 per inmate, Alabama is never going to be able to afford something like that again. The ADOC was paying $28 per inmate per bed**.**

Report on Cooperative Community Alternative Sentencing Project
Rosa Davis, Co.-Chair with Chief Justice

Ms. Davis stated that there are several committees that have been working with the Cooperative Alternative Sentencing Project. The committee is looking at what seems to be a real possibility of a risk and needs assessment instrument to be used statewide that an offender can be assessed. The cost apparently is going to be prohibitive, maybe $100,000 or $150,000. This tool has the possibility of being a really exciting project for establishing everything that is needed in a real community alternative sentencing program.

New Business
Ms. Flynt mentioned that a committee of the Judicial Study Commission was going to look at the Consolidation of Field Services. Members on that committee include Lynda Flynt, Rosa Davis, Vernon Barnett, Cynthia Dillard, and David Horn. Ms. Flynt asked members to contact her if they are interested in volunteering to serve on that committee.

Ms. Flynt advised that the staff is working on a final grant report which is very time intensive and requires an article suitable for publication and data. The Commission will be getting that grant report completed and submitted at the end of this month, but it doesn't have any more federal funds. She noted that the Commission is working on a tight budget for FY 09.

Schedule Next Commission Meeting
Motion: That the next Commission meeting be held on January 16, 2009. The motion was seconded. The majority favored.

Adjourn
There being no further business the meeting was adjourned.