

# Alabama Sentencing Commission

## Minutes of Commission Meeting January 18, 2008

The Alabama Sentencing Commission met in the Large Classroom of the Judicial Building in Montgomery on Friday, January 18, 2008. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, 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  
Cynthia Dillard, Director, Alabama Board of Pardons and Paroles, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Joel Sogol, Esq., Tuscaloosa

### **Advisory Council:**

Bill Cole, Circuit Judge, 10<sup>th</sup> Judicial Circuit, Birmingham  
Kent Hunt, Associate Commissioner, Alabama Department of Mental Health, Montgomery  
Justice Hugh Maddox, Retired Associate Justice, Supreme Court of Alabama

### **Staff:**

Lynda Flynt, Executive Director  
Melisa Morrison, Research Analyst  
Bennet Wright, Statistician

### **Others Attending:**

Carolyn Bowdin, AL Cure  
Annette Brown, AL Cure  
Ashley Cannon, VERA  
Ken Collins  
Rosemary Collins, AL Cure  
Callie Dietz, Administrative Director of Courts  
Jennifer Fahey, Deputy Director, Crime and Justice Institute  
John Hamm  
Ralph Hendrix, TASC  
Gary Knight, Houston County Community Corrections  
Lisa Kung, AWRN  
Christine Scott-Hayward, Vera Institute of Justice  
Barb Tombs, VERA  
Alexia Ward, AWRN

### **Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and thanked everyone for attending. He mentioned that Barb Tombs of Vera Institute of Justice is attending the meeting today. Ms. Tombs has visited Alabama a number of times and has worked with the Commission on several issues. Also attending the meeting from Vera were Christine Scott-Hayward and Ashley Cannon. Jennifer Fayhey, Deputy Director, of the Crime and Justice Institute is also joining the Commission today. This is her first visit and she will assist the Commission with regard to community sentencing.

Chairman Colquitt stated that Chief Justice Sue Bell Cobb could not attend the meeting today. Callie Dietz, administrative director of courts, is attending. He asked Ms. Dietz to make some remarks and bring the Commission up to date.

Ms. Dietz thanked everyone for attending. She noted that the work of the sentencing commission is very important to our judicial system. She recognized that the work of the sentencing commission, the staff, community corrections, and all of the agencies that are represented and interested in this program and the amount of progress that has been made is phenomenal.

Ms. Dietz mentioned that she attended the Denver Conference that was held in November and had an opportunity to see and actually compare the work of Alabama with several other states. She stated that she was extremely proud and that Alabama looked great and it's because of all of the work of all of the people that have dedicated themselves to sentencing reform in this state. She further stated that the AOC will do anything that it can to continue to assist that.

Chairman Colquitt stated that Representative John Rogers is not attending the meeting, because his grandson was killed and the trial is being held today.

Chairman Colquitt recognized and welcomed Judge Bill Cole a new member of the advisory council. Judge Cole is a circuit judge from Jefferson County.

### **Report from the Joint Legislative Prison Oversight Committee**

John Hamm, Consultant, thanked the commission staff for inviting him to speak to the Commission. He noted that the Prison Oversight Committee has been a permanent joint legislative committee for years. Representative John Rogers is the chairman of that committee.

Representative Rogers has taken a keen interest in corrections and the criminal justice system. The Joint Legislative Committee consists of three representatives and three senators: Representative John Rogers, Representative Henry White from Limestone County, Representative Jim McClendon of St Clair, Senator Myron Penn from Bullock County, Senator Parker Griffith from Madison and Senator Pat Lindsey from Butler which is Washington and Hale County. He represents probably more counties than anyone in the senate. All of the members are new except for John Rogers and Pat

Lindsey. The committee has met monthly since January. They are seeing what type of issues that face corrections today.

Mr. Hamm stated that the entire parole board has attended the committee's last two meetings. Representative Rogers is starting to reach out and get a lot of people involved in what's going on in corrections--the issues. Mr. Hamm explained that what he used to get frustrated with in his other endeavors in this is that Pardons and Paroles would do something, because it was a good idea for them. They didn't realize what kind of effect it had on corrections, the courts or prosecutors. Representative Rogers is involving all of these people and one thing that is going to be a top priority which hasn't been done in the past is trying to pass legislation. It is extremely difficult to have legislation passed in Alabama.

The committee has met with corrections with the help of the commission staff and has come up with two bills that corrections wants passed. One is the Prison Industry Enhancement Act and the other is the Geriatric Release Bill. All of the committee members on the Prison Oversight Committee have signed on. They are going to actually sponsor the legislation and push to have it passed. The other legislation that the committee has also come on board with is the legislation for the sentencing commission, all of the bills that are truth in sentencing and community corrections bills.

#### *Prison Industry Enhancement Bill*

This bill allows correctional agencies to contract with private industries to locate industry inside the walls of prisons. It is going to be a great inmate management tool, because you have got inmates that cannot go on the outside. They are classified life without parole and murder. What do they do in prison all day? They think of ways to mess with the staff and get around the rules and regulations. This is going to give them meaningful opportunities to do something with their time rather than try to mess with the system. Also, they will be producing a product that will be sold on the outside. Mr. Hamm noted that's actually a federal program where at the time when he was researching it many years ago there were only 50 slots that the federal government would allow people to do the Prison Industry Enhancement Act. The federal government will recognize the Alabama Department of Corrections in the Prison Industry Enhancement Act.

#### *The Geriatric Release Bill*

Basically it is terminally ill inmates that are no threat to society and may be released back to family to basically die.

Mr. Hamm noted that the next issue on Representative Rogers' agenda for corrections is money. The budgets are about \$1 billion short—\$500 million in the general fund and \$500 million in the education trust fund. The bill that Representative Rogers has drafted and is probably going to introduce it before the session is \$15 million in workforce development money. That \$15 million for workforce development will basically be for job training pre-release programs community corrections type activities. The community education center in Columbiana is where the money would be going, because

Representative Rogers knows that there are not enough funds to build a prison at this time. Also, he is looking at \$25 million from oil/gas windfall to help corrections.

### **Report of Community Corrections Survey Results**

Christine Scott Hayward of Vera Institute of Justice stated that the sentencing commission and Vera put together a survey last year trying to obtain some information about community corrections programs in Alabama. Ms. Hayward presented some of the highlights of the survey. She began by reminding everyone what the purpose of the survey was. She also talked about some of the obstacles that they ran into in collecting information, and then presented some results on admissions and program contents, training collaboration with other agencies, use of intermediate sanctions, and some of the programs strengths and weaknesses according to the programs themselves. Ms. Hayward concluded with a discussion about some of the limitations of their findings and talked about some of their recommendations as to what to do with these results.

#### *The Purpose of the Survey*

The general purpose was to conduct an inventory of community corrections programs across the state. Ms. Hayward noted that they were not trying to evaluate or assess any of the individual programs. They did have some specific questions on how each program operates, who is served by the program, what kind of services and treatments are offered to clients in the programs and what kind of incomes do clients have. The big picture subsequently is to inform community corrections expansion efforts. The idea was that the baseline information collected through the survey can be used to address the state of community corrections and identify where the gaps occur.

#### *Obstacles*

The main one was the low response rate that was received. There were 33 programs surveyed and only 10 completed responses were received by the deadline. Ms. Hayward noted that they have received a few more subsequent to that. They will be able to work on that information later. She stated that the programs that they do have information on those programs are representative of the results that they present today.

Ms. Hayward stated that they do have some quality information on how the programs are structured and on what they do. They don't have reliable information on the numbers of clients served either overall or by subpopulation. There are a couple of reasons for this: There were some incomplete responses even among the programs that did respond. There was also some inconsistency in the numbers within responses, because of that they have limited reporting of their data findings. They only report numbers where at least five programs presented accurate information.

Ms. Hayward noted that the most important point that they wanted to make here is due to the low response rate. They didn't want to draw any overall conclusions about community corrections programs in Alabama.

### *The Results*

Starting with program structure and funding the most common type of agency is a private nonprofit organization, 6 of the 10 programs. Three were county agencies and one was a nonprofit authority.

### *Operating Capacity*

Of the programs that responded, the average capacity was 611 clients. Shelby County was the largest program that responded to this survey, which has a capacity of 1800. Ms. Hayward noted referring to the chart that most programs serve fewer than 500 clients. The programs serve a variety of courts. All of them serve circuit courts and most district courts. About half of the programs serve drug courts.

### *FY07 Operating Budget*

Of the programs that responded to the question of the total operating budget in FY07, the budget ranged from a low of \$113,000 for Cherokee County to a high of about \$1.5 million for Shelby County. Most programs have a budget of less than \$500,000. This funding comes from a variety of sources. Most programs are funded by multiple sources. Of the 8 programs that responded, they all receive funding from the DOC and client fees.

### *Admissions and Program Content*

The programs served a wide variety of client type the most common being frontend diversions from prison, institutional diversions from prison, and clients who are serving as a condition of probation. Three of the programs serve clients who are on work release and two serve clients who on community service.

### *Risk and Needs Assessments*

Four programs said that they utilize a risk assessment tool intake. None of those programs used any of the commonly used validated risk instruments such as the LSIR. Similarly, five programs utilize needs assessment tools at intake.

### *Admissions and Eligibility*

In terms of admissions and eligibility to the program, the most common reason that a client will not be admitted to the program is because of violence. Four programs restricted admission based on either a current violent offense or a prior violent offense. Some other reasons include not meeting 10 point criteria, judicial opposition, mental issues, and lack of space or resources. These are reasons that the programs themselves cite as to why somebody might not get into the program. Nine of 10 the programs commit readmission to someone who has previously failed the program, but in addition, Ms. Hayward noted that one of the things that they want to point out is that a program may not know whether a client has failed a different program. They will only know if the client has failed their own program, because there is no statewide database.

### *Drug Testing*

All of the 10 programs drug test clients at intake. Five of the programs indicated what percentage of clients had a positive drug test at intake in 07. That percentage ranged from 5% in Houston County to 70% in Cherokee. Most of the programs test at some

point not just at intake, but throughout the course of the program. They test at different times some every week and some once a month. The cost of the drug test range from \$5.00 in Cullman County to \$28.00 in Franklin County.

#### *Treatment Offered*

Substance abuse treatment was offered by most of the programs. Of the eight programs that responded, six offer pretty much all forms of drug and alcohol treatment both in and out patient, group, and individual treatment. Most of the programs sent their clients to outside agencies for this treatment. There was just one program that offered it in house and that was Houston County Community Corrections.

#### *Services Offered*

Other types of services were less frequent. All of them offer a GED literacy program and most offered some kind of education and job placement or counseling. Life skills, housing assistance and health care assistance were less frequently offered. Three programs offer housing assistance. One program (Franklin County) offers gender specific programs. Three of the 10 programs offered faith-based programs: Shelby, Cherokee, and Cullman counties.

#### *Staffing and Training*

Six of the 10 programs offered training to direct service staff members. Four of these programs require certain trainings and these vary significantly by program. Some of them involve AOC drug court. A lot of them describe their training as conferences. They would send their employees to conferences. State and national conferences were frequently cited as well as computer classes, first aid, and safety.

#### *Collaboration between Community Corrections Programs and Other Agencies*

Ms. Hayward stated that they found out that there was significant variation ranging from describing it as fair to excellent. Two programs specifically said that they collaborate under a sheriff's services with the Department of Pardons and Paroles. Shelby County said they had a very good relationship. They will occasionally do drug testing for the Department of Pardons and Paroles. Similarly, Franklin County said they had a very good relationship. They will share services frequently.

In terms of local probation departments, two counties mentioned their collaboration in service sharing. Cherokee County has an excellent relationship and they mentioned a few things that they do including collaboration of case management. Their probation department will use their drug testing lab. They will provide the program with information on clients, and similarly Franklin County assist with drug testing and information sharing. Those that indicated that they collaborate with other agencies generally have a positive relationship.

#### *Intermediate Sanctions*

Nine of the programs did utilize intermediate sanctions for program noncompliance. Types of sanctions that they use varied by programs, but the most common ones were jail stays, increase reporting or meetings, and community service. Five programs actually

used positive reinforcement or rewards for progress that's made in the program and these include decreased reporting, early release or reduced visits with case managers.

### *Strengths and Weaknesses*

One of the things asked towards the end of the survey was what are your top three strengths and your top 3 weaknesses. Everything is under one roof and you can get everything in one place. The program is self supporting and they had really good drug and alcohol assessment treatment and counseling. The other type of response received was dealing with program effect. One program emphasized the potential to rehabilitate offenders through strict accountability reducing prison overcrowding. Another program cited their good client success rate just to be able to give judges or prosecutors an alternative to traditional sentencing.

### *Weaknesses*

The most common problem listed was the lack of resources. Most programs mentioned the need for additional staff or manpower, the lack of funding for indigent clients--just generally needing more state funding. Another weakness included the lack of personal information captured on clients, difficulty finding employment for clients, and lack of risk and needs assessment.

### *Limitations*

Ms. Hayward stated that she mentioned in the beginning some of the obstacles that they had to analyze in the survey results. She focused on a couple of limitations. One of the main purposes of the survey was to obtain information on the number of clients served and to breakdown the number of felons, misdemeanors, municipal violators, and to get information on how long people were staying in the program. Unfortunately, these questions remain unanswered largely, because of the low response rate and the problems that many programs had with data. The low overall response rate prohibits VERA from making generalization about community corrections in Alabama. Ms. Hayward noted that they do have information, but it's on specific programs. These programs may not be representative of the rest of the programs that did not respond.

### *A Summary of Findings*

Ms. Hayward gave the Commission a brief summary of their findings. She stated that they found significant variation among programs in terms of size, the amount of funding and services that were offered to clients, and very limited use of assessment tools. While most programs do require direct service dialed numbers to be changed it is unclear how this training actually relates to the services that staff members provide. There's no standardized method of data collection. Not all programs even collect individual level data. Very few programs have been evaluated. Successful completion rates are not a measure of effectiveness.

### *Recommendations*

Ms. Hayward noted that they have a couple of recommendations recognizing that programs need to be able to run their programs, but also to note that the Commission needs information on who is being served by the programs and how they are doing to

make positive benefits both the individual corrections programs as well as the justice system as a whole. She stated that they think that standardized data elements should be collected by all community corrections programs. This can be done by identifying a list of key demographic and program-related data elements and designate a standard format to be used by all community corrections programs. Determine a schedule for data collection and reporting. It could be monthly, quarterly, or annually making sure that it is regular and to monitor for data validity and reliability. Relating to this is improving program data collection methods: They are exploring a little more why all programs are not utilizing MIDAS and improving MIDAS to allow for queries of individual level data; develop collaborative efforts among the programs, so that they can share data with each other and establish some kind of process to address any data-related issues that come up.

Ms. Hayward stated that they think that an evaluation protocol should be established for community corrections programs, so that the goal standard for evaluating programs is to do an external evaluation that includes both process and outcome components, so that if you identify key programs it doesn't have to be done all at once, but starting to make sure that all programs are evaluated externally. Review the formal assessment process. There are not very many formal risk/needs assessment tools used by programs. The use of these tools should be increased and ensure that all of the tools used are validated for Alabama's community corrections target population.

Finally, Ms. Hayward noted the things that they have learned in terms of distributing the survey. For future information gathering, they think that a combined approach should be used. Use surveys or interviews to obtain information on program features, but this should be supplemented with site visits to obtain data and other important information that can't always be got from a survey.

Chairman Colquitt noted that Ms. Hayward mentioned MIDAS. He asked her to tell the Commission what MIDAS is and how many of these organizations do use them.

Ms. Hayward stated that seven out of the 10 said that they use it. MIDAS is a case management system. While individual level data is collected by the system, it is not possible for programs to get that data back out of it in a report form.

Chairman Colquitt noted that we put data in, but we can't get it out. He asked why do we put it in it.

Ms. Flynt stated for individual case management.

Ms. Dietz stated they are working on a new version of MIDAS that will, hopefully, be able to extract the data that is needed. It was designed originally looking short term trying to get something out there that the CROs, community corrections, and drug courts could do to manage the defendants that they had in their cases. She further stated that when they developed it, they didn't look long term that we needed to be able to extract this on a statewide basis.

Ms. Tombs stated that's one of the issues that they see a lot times. The systems have case management systems, which are designed to do exactly that track cases. She further stated that they try to use those case management systems for data analysis and so forth and the systems don't necessarily mesh well. The information that's in the case management system does not always answer the types of questions or provide the information needed to do population analysis and those types of things. You are asking a system to do something it is not designed to do.

Question: What incentive would one of these programs have to respond to your survey? Are there any thoughts about why those that didn't respond didn't give an answer?

Ms. Tombs noted that what they were trying to obtain from this was just an idea of what's out there as they were looking at how to improve the role and process of community corrections as a whole for the state. As the state moves towards truth in sentencing and a lot of other things, community corrections plays a vital role in trying to say how can you improve something if you don't know what your baseline is. Ms. Tombs mentioned that an earlier survey had been distributed that they were not aware of. That survey was sent out a couple of months before Vera sent theirs out. That may have been part of the reason that they felt that it was duplicate of something that they had already filled out. A lot of them felt that information was available in MIDAS, because they had input it into MIDAS and Vera should have been able to pull it from MIDAS.

Ms. Tombs stated that in their recommendations they think that the survey is one approach, but either doing some site visits, focus groups, and other added approaches may give a better comprehension of what these programs are doing.

Question: What are your recommendations? What's the incentive for me to take the time to do this?

Ms. Hayward stated that what she said earlier in terms of recognizing that programs need to run the programs themselves. As Ms. Tombs stated the role of community corrections in the justice system as a whole and moving towards truth in sentencing if community corrections are going to be one of these key elements. She further stated that if they don't know what's going on trying to get them to realize that it is a system where everybody is working together and that their information needs to be there in order to help the system as a whole. A lot the programs themselves realize that was important and were happy to answer the survey and provide the information.

Ms. Davis commented that the bottom line is the state funding of community corrections comes through the Alabama Department of Corrections. There is local funding out there for many of the agencies also. If local community corrections programs cannot step up to the plate and handle alternative sentencing so that we have a truth continuum of sanctions in Alabama, then somebody else is going to step up to the plate. She stated that we have to figure out what we have got out there and let those programs build. The incentive is this is part of that building process, so that you provide the services that are needed and you remain a part of the statewide program.

Chairman Colquitt announced that the next report will be on the Chief Justice and Alabama Sentencing Commission Statewide Steering Committee on Community Sentencing Alternatives. There are several people present representing that organization. Rosa Davis is co-chair with Chief Justice Sue Bell Cobb. Barb Tombs, Jennifer Fahey, Callie Dietz are also involved in this and may be reporting.

### **Chief Justice and Alabama Sentencing Commission Statewide Steering Committee on Community Sentencing Alternatives**

Rosa Davis reported that last year in November a group from Alabama attended a multistate meeting in Denver, Colorado. Attending from Alabama were: Chief Justice Sue Bell Cobb, Rosa Davis from the Attorney General's Office and the Sentencing Commission, Ellen Brooks represented Alabama District Attorney's Association, Callie Dietz from AOC, Cynthia Dillard from Pardons and Paroles, Vernon Barnett from DOC, Scott Rouse from the Governors Office and Lynda Flynt, Director of the Alabama Sentencing Commission. There were a number of other states represented at that conference.

Ms. Davis noted that a tremendous value that they got out of that conference was everyone visiting for two days and being able to network with each other and also with the experts who were there. There were people from sentencing commissions established much longer than Alabama around the country who had a good deal of input into how to provide alternative sentencing and how to address issues in the corrections system.

Ms. Davis stated that part of this conference was each delegation met on the last morning to come up with ideas and plans for what that state could accomplish. What could these national organizations who want to help do for Alabama, and how could they work together to make a difference within the corrections system in Alabama.

Ms. Davis noted that one of the areas struggled with over the last few years has been establishing the capacity needed to have alternative sentencing programs in Alabama. What can we do about it? How can we divert more divertible offenders to effective community alternatives? What they came up with in Denver was to setup local pilot projects, and pick four communities in Alabama that want to establish a model alternative sentencing program for their community. Establish a state steering committee to work with those programs to set some guidelines, and work with those programs to establish those model programs, and involve all of the stakeholders at the local and state level.

The state committee will include state and local representatives, so that all of the players that need to be involved will be involved. They will use the expertise of the Vera Institute of Justice and the Crime and Justice Institute, and they will assist in drawing on other expertise in community punishment alternative. Community punishment alternative includes all of the alternatives/sanctions that are occurring in each community.

Ms. Davis stated that she is excited about the fact that all of the stakeholders in the communities will be selected based on criteria that the committee will establish. Pardons

and Paroles in Montgomery who direct their field services is a state central authority that is involved at the state level. Mental Health is another group that would be involved at both the state and local level. Ms. Davis has made up a list of potential members to be included at the state level. As part of truth in sentencing that's one of the sentencing commission's very highest priorities. Ms. Davis stated, "We cannot get to truth in sentencing until we have capacity." This is an effort to develop capacity, to identify who can be handled outside the wall and make firm recommendation of how many walls we need. All of this is an essential part of developing truth in sentencing in Alabama. This is the program that people from Alabama came up with at the Denver Conference.

Ms. Tombs informed the Commission that the name of the program which they decided is Community Sentencing Alternatives Cooperation Explanation Program. She stated that Vera has been working with Alabama for a number of years. This state has taken a very methodical approach to looking at prison overcrowding, trying to identify what the sources are, and trying to develop the voluntary sentencing standards that goal all moving toward truth in sentencing. What happens when you implement truth in sentencing is some sentences become very long, because these are people that the state of Alabama decides they want to incarcerate for a long time, because they pose a very significant threat to public safety. In order to be able to financially public safety wise and in order to deal with that population you need to look at the low risk nonviolent offenders. People who are identified by current sentencing standards as people who could be punished in the community, if the programs and the supervision was there that would allow that public safety. They don't necessarily need to be incarcerated. There's a population that needs to be moved out in order to increase in sentencing to happen with more serious offenders otherwise you have a prison crisis and overcrowding crisis.

Ms. Tombs stated that the sentencing standards have gone into place now, and they are starting to work through this and are seeing that there is a population that could be punished in the community. There are still some issues with prison overcrowding and trying to determine how many prisons Alabama may or may not need to construct, etc. She further stated that initially when looking at this they are thinking how do you identify. The populations are pretty well identified by the sentencing system and by statute. What seems to be the issues? How do we get the community to provide the services and the supervision that is needed for these offenders to be safely taken care of at the community level?

Ms. Tombs noted that there has been a lot of discussion with the term community corrections. She stated that this is not a community corrections issue, it is a community punishment issue which involves not just community corrections, but it involves probation, parole, and drug courts. The community corrections at times may have thought that they were being targeted themselves where it's really a name issue or may be it's the way that it is presented. Ms. Tombs stated that they are looking outside the walls and involving all of these organizations that will provide a continuum of appropriate punishment option for that community. That includes treatment, supervision, and different rehabilitation services.

In the pilot project, Vera has a lot of research experience in a lot of things. CJI has a lot of experience at the community punishment and community reentry issue also. Vera and CJI are going to combine their expertise to look at these communities. Ms. Tombs noted that this is still very much in the planning stage. They need to have a broad structure at the state levels of what they want these programs to do. The four pilot sites will be selected based on a number of criteria, which will be finalized by the state steering committee. Vera and CJI are going to help work through some of the issues to make sure that they are addressed properly. Communities looking at what contributions are the communities to make to the prison population. Alabama is like every other state it has big urban areas and small rural areas. How are they making an impact? Also what's the leadership capacity in that community? What's the data availability? The hope is to use these pilot projects to serve as mentors and models.

Ms. Tombs stated that once they get the four pilot projects done those projects will work with the other community corrections within the state to develop that, so there is a consistency. Ms. Tombs noted that when they say consistency they mean consistency in deliverables not necessarily consistency in structure. In each state steering committee, there will be a local steering committee, and they will look at their needs.

Ms. Tombs reported that one of the things that they will do is assist with a data diagnostic of the community. What is going on and what do your offenders really look like, not just their crime, but what are their criminal histories? What are their needs? How are they moving through the system? So that community itself will have a really good understanding of and a really good picture in their mind of who their offenders are, because before you have that it is hard to make or design a system to address the needs. Do you have high mental health? Are there a lot of issues around education? Are there issues with substance abuse? Do you have a large dual diagnostic population? Do you have people who have physical impairments that are high and creating problems, etc.? Getting a good picture of who your offenders are, and then taking that steering committee, and say what services do we have available, and what do we really need to address this population.

Ms. Tombs stated that when you bring all the groups together, and are at the table, and you are working in collaboration with each other and pulling from the services available through probation, community corrections, and drugs courts, etc. you get a nice continue in helping you to work to develop that through. Think it through, and then submit a plan or develop a comprehensive plan which will be the work of that pilot jurisdiction. What do you need to address this, and how it should be it structured? That plan will be approved by the state steering committee first, and then submitted to the DOC for potential funding. There are resources available through the Department of Corrections. As everybody has limited resources you want to make sure that the money is being used in the most effective way. What will your plan do to help divert people from prison? What will your plan do to help recidivism? What will your plan do to assure the confidence in the judiciary and public safety in the community?

Ms. Tombs noted that they are encouraging that local ability to look at what your plan needs to be for your county, but also at the same time having an overall structure of what your goals and objectives are. CJI and Vera will work very closely together, and then they will decide how they are going to deal with the other three sites. She stated that they are looking at this to be about an 18 to 24 month process with the data diagnostic being about 4 to 6 months.

Question: How do you see the victim involved in this process?

Ms. Tombs stated that when we say the community and criminal justice community the victim is a part of the criminal justice community. They need to be at the table, so that the programs and alternatives are addressing them. That's why in each community you are going to have what your community feels is important.

In regard to the committee, someone commented that he sees an overwhelming amount of representatives from the offender and the state standpoint, but you only have one victim representative for this proposed.

Ms. Davis stated that there is a specific victim's representative. Once the steering committee is formed, it can add additional representatives to it if necessary to complete the whole process to make this work. That's the whole idea to get everybody at the table that is needed to make this work at the state and local level. There has got to be a willingness to participate in this by the pilot sites that are chosen. Ms. Davis noted that this is the first time in several years that we have tried to do this together with some resources to get it done.

Ms. Tombs stated that it is so important that it be an Alabama project, and have each of the local steering committees actually made up of different compositions of people. It's whatever is important in that locality will be the people who meet at the table. For instance, you may have a locality where you have three victim's representatives, because of the issues there. There may be another one where they choose to have one person representing victims.

Jennifer Fahey, Deputy Director, of the CJI (Crime Justice Institute) stated that they are a nonprofit organization. The organization does consulting policy analysis and technical assistance as well as some research, primarily the criminal justice and juvenile justice organizations throughout the country. The organization assist them in doing an analysis of their organizations, and what their own needs are, what their strengths and weaknesses are, and really look at individually whether it is a county or a state of how it can best assist them in developing better capacity.

Ms. Fahey mentioned that she met the representatives of Alabama at the multistate meeting that was held in Denver, and learned about the good work that the Commission has been doing. She was a prosecutor for a number of years before joining the CJI. Ms. Fahey commented that she thought that it was about punishment not necessarily about rehabilitation. The more she learned about the criminal justice system the more she

realized it's really comprehensive. She noted that punishment is definitely a component and people deserve to be in prison. There is also a component of rehabilitation. Ms. Fahey stated that in looking at the needs of Alabama we have to keep that full spectrum in mind. There is a need for punishment and there is also a need for rehabilitation. She noted that we have to look at what our own needs are in these counties, states, and across the country, and really come together, and include all aspects, and all stakeholders of the system.

Ms. Davis asked everyone to look at the list that was passed out on potential committee members. Ms. Davis stated that she is co-chair of the committee. Chief Justice Cobb is also co-chair of the committee. The committee will consist of a circuit judge's representative, a district judge's representative, a community corrections association representative, community corrections program representative, district attorney, Pardons and Paroles representative at the state level, Department of Correction's representative and victim's representative, sheriff, chief, a representative for the AOC IT Division (may need other representatives from the AOC) defense attorney representative (may come from one or two different sources), Association of County Commissions (a county commissioner representative at the state and county level), Mental Health representative, Department of Human Resources, post secondary education representative and court referral representative. The committee might also need a representative of a victim of violent crime, and a victim of property crime. There is a discussion of whether or not to put the local committee chairs on the state steering committee.

Ms. Flynt suggested that Jeff Williams of the Department of Corrections and Lana Parker should be on the committee also.

Ms. Davis noted that any time she says corrections (referring to the handout) she's talking about the entire criminal justice system dedicated to corrections. In some states, it would be the Department of Prisons and the Department of Probations. In Alabama, the Department of Corrections means prison and some community release programs.

Ms. Brooks noted that if you start mixing a lot of local people with these state associations she's concerned that there is going to be too many people to get anything done, and maybe the commission is making it a little heavy. She asked if there was another way to create the steering committee that can bring in as consultants/advisors much like what has been done on the sentencing commission, and get their input as needed. Ms. Brooks questioned do you really want a local sheriff or do you want a representative of the Sheriff's Association, and let them pick based on the input the Commission gives them as to the kind of expertise it wants.

Ms. Davis stated that she thinks that's a valid issue and it may vary. She asked Ms. Brooks is she saying that it would be better to go to the association and say give us a member.

Ms. Brooks suggested telling them the kinds of entities that the Commission wants them to bring to the table, but otherwise she's concerned that the Commission will end up in

some real territory battles. She's concerned that the committee is going to waste a lot of time worrying about local issues as opposed to the bigger picture, and then letting the smaller groups work out what they need. Ms. Brooks stated that she likes the idea of the local chairs coming, if not official members at least ex-officio.

Justice Hugh Maddox, Retired Justice and advisory council member, stated that he was on the Supreme Court for over 31 years and prior to that he was legal advisor to three governors of Alabama. He worked as an assistant district attorney in Montgomery in 1964.

Justice Maddox stated that the issue that the Commission is working on is very important. After hearing all of the presentations and discussions, he recommended that the Commission establish a citizen's conference. He referred to a committee that Howell Heflin appointed when he was president of the Alabama State Bar. The court system in Alabama was in bad shape. He had a committee appointed called The Feasibility of having a Citizen's Conference on State Courts. That Citizen's Conference on State's Courts was created and met in Montgomery in December of 1966. Justice Pelham Merrill made the keynote address. The American Judicature Society provided assistance, and invited several experts to come, and address this group of citizens from several states, and from all walks of life. Several newspaper reporters attended also.

Justice Maddox suggested that the Commission establish the same conference, bring in a lot of citizens, and make them aware of what goes on in the grand jury, and what is happening in the criminal justice system. He stated that once the citizens are aware of it, they will recognize the problem, and could probably offer a lot of good suggestions about corrections. That would require some funding. A lot of these citizens dedicated their time and effort to come to Montgomery. They spent about three days, and came up with a consensus statement that was the blue print for the unified judicial system that was considered to be a model for the nation back in the 1970s. The whole reform that occurred within the judicial system grew out of the first Citizen's Conference on State Courts. Justice Maddox noted that there was only one thing that the legislature did not enact that was recommended by that citizen's conference and it was judicial selection. That is the problem that is being addressed at the present time.

Question: Are you planning to have any ex-offenders?

Ms. Davis answered yes and that a successful ex-offender is an idea too.

Chairman Colquitt stated that one problem for sentencing judges, and for those people who work with people within the system probation officers, Department of Corrections, and various local programs, community corrections and community alternatives is the idea that some of these people that come into the system are challenged. He further stated that he heard another one of those reports about a week or two ago where some judges were saying that 75% of the people coming before them had drug problems and that's not uncommon. Sometimes they have a lot of other issues too and some of those issues are mental. Kent Hunt is the associate commissioner of the Department of Mental

Health and he is going to talk to the Commission from the prospective of mental health and how it overlaps and joins into some of the Commission's issues.

### **Report from Department of Mental Health**

Kent Hunt, Associate Commissioner, of Department of Mental Health stated that he appreciates attending the commission meeting. Mr. Hunt further stated that he is getting the opportunity to talk to groups that 15 or 20 years ago nobody representing substance abuse services would be talking to. Substance abuse would not have even been a topic, if those groups were even being considered in conducting their business.

Mr. Hunt stated that they are getting support from legislators where before legislators didn't pay very much attention to substance abuse and mental health issues. He has a good working relationship with the Department of Corrections, Pardons and Paroles, and the Administrative Office of Courts. Mr. Hunt believes that they are beginning to see some results from these conversations that are happening in many different arenas.

Mr. Hunt noted that there are new monies being made available for substance abuse treatments and prevention support. Mental Health is in the process of expanding access allowing more access to care, because there are not enough substance abuse prevention services in the communities around the state. There are 22 counties in Alabama that offer out patient substance abuse services. Mr. Hunt stated that if you happen to be running a drug court or community corrections or if you happen to be a district attorney in that particular area you are going to be hard pressed to find substance abuse services there. They are just not available. He stated that they are partnering very closely with the AOC and Chief Justice Cobb in her effort to add new drug courts. Mr. Hunt mentioned that on the last list he saw Chief Justice Cobb sat a goal for having a drug court in every court by 2012.

The Department of Mental Health and Mental Retardation's part of this partnership is that it will make available funding for outpatient treatment support for those new drug courts. The amount of money that the department has said that it can make available is not enough for all 67 counties. One of Mental Health's goals is to make available substance abuse treatment in every county. Mr. Hunt stated that he thinks that this partnership would be a great thing for both agencies, but at the same time it is great for tax payers and people out there who are suffering with substance abuse problems/addiction problems, and those people who don't have the problem, but feel the pain from other people's problems.

Mr. Hunt referring to Washington State's annual report stated that they evaluate everything that's done. He noted that two years ago there was a Medicaid funding problem. They showed the legislature where appropriately applied substance abuse treatment will reduce overall medical expenses for those individuals who suffer with addiction. The legislature took money that they were going to give to a Medicaid agency struggling, and they assigned it to substance abuse area for Medicaid eligible individuals to receive treatment services. Substance abuse estimated that they were going to save \$190.00 per month in medical expenditures. Over the year's period of time, they saved

\$238.00 per month. They not only could convince the legislature that they thought that they knew what they were doing, they did it in the long run. They did that by just providing the same service that they had always been providing. They used the best approaches, and made sure the appropriate treatment approaches were given to people after very detailed and thorough clinical assessments to determine level of care.

The Department of Mental Health is doing the best that it can to maintain a listing of certified programs that meet a minimum set of criteria. Mr. Hunt stated that Mental Health is trying to move the whole system towards something conquerable to Washington State, where they can assure commission as partners that these particular treatment programs are doing the best that anybody in the country knows how to do with the substance abuse population. He asked the Commission as a partner to help him plug the need for certified evidence based outcome driven substance abuse treatment programs.

### **Legislation and Annual Report**

Lynda Flynt, Executive Director, stated that she was pleased to hear about Kent Hunt wanting to partnership with the Commission. The Commission really appreciates Kent Hunt and Mental Health's efforts. Mr. Hunt is a one the Commission's new advisory council members.

Commission and advisory council members were provided with a copy of the sentencing commission's report. Ms. Flynt asked members not to distribute, because this is just an outline of what the Commission wants to include. The report basically follows last year's outline. Members were asked to look over the report during the lunch break, and to let Ms. Flynt know if they have any suggestions, comments, or changes.

Ms. Flynt recognized Lisa Kung and Lexia Ward. They have been working with the Women and Girls in the Criminal Justice System. The commission staff has been working with the Legislative Oversight Committee and other groups. Ms. Flynt stated that she wanted to mention those particularly, because when attending that commission meeting some of the suggestions dovetail so good into the juvenile justice bill that Ms. Dietz is introducing from the AOC and that she has been working on so hard for 3 years. Also, the Chief Justice's drug court endeavor.

The Legislative Prison Oversight Committee wants to support the sentencing commission's bills. The commission staff is also working with other groups. Ms. Flynt is a member of the Judicial Study Commission, Criminal Rules Committee, and Alabama Law Institute (Warrant and Indictment Manual). Rosa Davis also serves on several committees.

Ms. Flynt asked members to look at the legislative package which includes the 2007 sentencing commission legislation and the crime bills that passed in 2007. The sentencing commission has already voted on the split sentencing amendment which will prohibit stacking of mandatory splits, prohibit consecutive splits, eliminate the booth camp provisions since it's no longer operative and limit probation to 5 years even for split sentences. There is a specific provision included in there for the courts continuing

jurisdiction of the split. Two of these the stacking of mandatory splits, the consecutive split, and the 5 year limit were the Chief Justice's recommendations. She asked that it be brought before the sentencing commission and the commission voted to approve it.

The illumination of the boot camp provision was a suggestion that was made by Commissioner Allen at DOC. That bill as well as the other bills that were approved by the sentencing commission have already been sent to the Legislative Reference Service, and have been provided to commission members Representative Marcel Black and Senator Smitherman to sponsor. Ms. Flynt stated that the commission will probably get cosponsors from Representative Rogers and Senator Penn on the Legislative Oversight Committee.

#### *Community Corrections Act*

The committee voted to amend to allow the striking out of that prohibition against any offender convicted of selling drugs. The committee talked about the distribution statute that includes sales and transfer of drugs, and it was hard to determine which it was as far as reimbursement purposes. The main reason is that you have got the discretion with the judges and the district attorneys. They are going to consider these, and if it is a first offender they are going to determine whether it is somebody that should go to community corrections or not. They are still going to have that discretion, and they can oppose it or they can allow it. If it is a small amount and a first offender some of the judges did want to go ahead and use community corrections in those instances.

#### *Theft of Property*

The Warrant and Indictment Committee when they were trying to draft the warrant and indictment form looked at this and said that this was the sentencing commission's bill. Ms. Flynt noted that it was commission's bill, but this was an amendment that was tacked on. Instead of putting this under the Theft I, II or III, they put it in the definitional section. There was confusion about if it is a theft of property from a charitable institution or law enforcement does that mean that is still has to come under the value amount. The majority said yes it does and that's why they put it in there; because that's the way they read it. The committee put it in there for clarification in the legislature and if that's not what they meant they will change it.

Ms. Flynt stated that the Commission approved the Prison Industry Bill that the DOC had asked that it look at. The bills are before the Legislative Reference Service being prepared/drafted. The Commission hopes to get them prefiled before the legislature begins. The truth in sentencing bill is also included in the package. There's a timeline stating why the Commission needs to delay implementation. Ms. Flynt asked members to look over the package during lunch and then at the end of lunch the Commission will vote on it. Ms. Flynt mentioned that she has copy of the bill that was handed out and then one of the members did not remember that the Commission had spelled out a blue print for truth in sentencing. That statute was copied and handed out.

## **Report of Sentencing Standards Committee and Subcommittee on Uniform Sentencing Order**

Rosa Davis, co-chair stated that the committee will meet within the month.

The members of the committee that have not been asked whether or not they can serve are: the Jefferson County judge, Tuscaloosa, Lawrence County, Montgomery County district attorney, Lee County district attorney, and two defense lawyers. Joel Sogol and Bob Williams from Shelby are interested in serving on the committee. Ms. Davis asked members to let her know, if they know of anyone who would like to serve on this committee. There will be assignments and legal research that will need to be done. Brandon Falls from Jefferson County wants to work on the committee and two people from the clerk's offices. Ms. Davis stated that this is not only how to sentence it's how to enter the sentences into the data system. For that the clerk's office is needed and two suggestions were Montgomery County clerk and Corine Hurst from Lee County, who was involved in the development of the AOC data system and understands it, and was involved in the initial training. Because he had worked on developing the sentencing order in Jefferson County Ms. Davis stated that she volunteered Vaughan Branch and someone from AOC legal to serve on the committee. The committee will be come up a suggested uniform sentencing order and then work with judicial education again on sentencing issues.

Ms. Flynt stated that she hopes that everyone has had a chance to look over the timeline and the legislation. It is fairly simple legislation to extend truth-in-sentencing from October 1, 2009 to October 1, 2011. She noted that it is up for a vote. She asked if there was any discussion.

Ms. Davis stated that she has discussed this with the attorney general's office. The Attorney General is very much in favor of truth-in-sentencing. He does not wish to see the implementation of truth-in-sentencing in Alabama delayed. The Attorney General would very much like to stick to the original deadline, however, he has reviewed the time line and what needs to be done before the Commission gets there, and he wants it to be effective when the Commission get there. While he doesn't like it, Ms. Davis stated that the Attorney General authorized her to vote in favor of the legislation.

The majority favored the legislation.

Chairman Colquitt stated that the Alabama sentencing commission is a very small organization in terms of staffing. The staff works really hard and the Commission appreciates that. Melisa Morrison, Senior Research Analyst, and Bennet Wright, Statistician, will present a report on developments in data and training. One of the things that the sentencing commission really has been able to do is begin to compile good data sets that tell it things about the system that no one really knew before. Chairman Colquitt further stated that the Commission had ideas and some of those ideas were just flat out wrong about what Alabama looks like, what the Commission was doing, and how the Commission was doing it. The Commission has been in a process for years building data in order to tell it what's going on, so that it can predict results and things of that nature. There are also the necessary training components to all of this. The Commission has had

all kind of training in the past, but it is going to need a lot more training in the future for everyone in the system.

### **Developments in Data and Training**

Bennet Wright gave the Commission an update about some of the data projects that he and Melisa Morrison are involved in. One of the things that he talked about was a trip that was organized by Vera Institute of Justice (Barb Tombs and Ashley Cannon). Mr. Wright stated that he and Melisa had an opportunity to visit the Virginia Criminal Sentencing Commission. Virginia has a very mature sentencing commission and they have a very elaborate sentencing scheme. This is the scheme that Alabama's current worksheet system is based on.

Mr. Wright noted that one of the things that he and Ms. Morrison were extremely interested in was how Virginia measures the effectiveness of their worksheet recommendations. Virginia's worksheets are very similar to Alabama's in that they have an in/out recommendation. In Virginia's sentencing commission, it's very effective and they have a very high rate of success in measuring the effectiveness of judicial compliance with their worksheets. Alabama and Virginia's systems are not entirely alike, but they are similar enough that they were able to offer a lot of good guidance about how the sentencing commission should measure the effectiveness of the worksheets.

Mr. Wright informed the Commission that primarily what he and Ms. Morrison have been doing since the last commission meeting is combing through available data developing data checks/reliability validity checks for the data when the time is right to actually report compliance about ways that the Commission can measure effectiveness with the standards.

Mr. Wright noted that one of the overall things that he and Ms. Morrison generally do is they are involved with the electronic data that comes from a variety of sources. The two sources of information that they look at the most right now are records from the Administrative Office of Courts and electronic worksheet records. The AOC electronic information dovetails into a lot of projects from the uniform sentencing order to MIDAS, and to a lot of other programs.

The court specialist have not had a lot of training, therefore, when you actually go around the state the court specialist in every county have their own unique ways that they enter different information not just criminal sentencing information but civil, etc. The commission's major concern is criminal sentencing information. Mr. Wright noted that what they have found as they looked through the data is that there are 67 different ways that people enter sentences. The court specialist had entered 215 different variations of criminal sentences. The commission has to get that down to a more manageable and more reasonable amount of sentences so that it can really track what the initial sentence was that was given by the judge. Mr. Wright and Ms. Morrison have been very active in training court specialists whether it is in person, court specialist calls on the phone, email, etc.

Mr. Wright mentioned that Ms. Morrison has just completed the AOC cohort. What that means is that every year the commission always extracts data on the fiscal year for May break. That cohort once the commission gets the data requires an enormous amount of work. The staff has to go through a couple of hundred pages of computer programming to recode variables to validity reliability checks to get that data ready to be put into the commission's annual report. That data is not only used for the commission's annual report, this is the information that the staff uses to respond to the Legislative Fiscal Office with their request for fiscal impact statements, and a lot of the ad hoc request that the commission receives that show the effects of Alabama criminal sentencing.

The commission staff has been very active with AOC IT staff with modifying the e-worksheets program. The e-worksheet program allows designated users to go online and fill out electronic worksheets, and then if that is done there is no need for the court clerk to forward a copy of the sentencing order to the sentencing commission. If the judge designates these users to fill out the worksheets, they also have access to criminal history information on line for Alabama only. They also have access to YO and juvenile information for worksheet purposes only.

Mr. Wright mentioned that John Speir of Applied Research Services is in the process of revising the simulation model. Mr. Speir has been able to put the simulation model on a desktop engine. What in essence he has done with the simulation model is completely revamped the actual interface of the model. It's a revamp of the frontend process rather than revamping on the backend of it.

Ms. Flynt stated that project is continually funded this year through the Department of Justice. That grant will run out. The sentencing commission will have to provide them with an extensive final report which includes staff. That report is due in March for the Commission's grant that has been over a four year period.

### **New Business**

Ms. Flynt stated that the Legislative Committee will need to meet again. She asked members if they had any legislation that they want introduced. She stated that the issue about amending the truth-in-sentencing will be included. Truth-in-sentencing has been delayed to 2011 with the commission's vote today. The Legislative Committee will look at that change. Ms. Flynt asked if anyone had any other changes that they think might need to be brought before the Commission at its next meeting. The legislative session starts February 5<sup>th</sup>.

Ms. Flynt stated that she needed to get a vote on whether the Commission has any recommendations for the annual report first, and then a vote whether the Commission will give the commission staff the authority to go ahead and finish the draft of the report and then mail that to members for final approval.

Chairman Colquitt reminded members that this is what the Commission has to do every year. The Commission has such a complex annual report that it has to give the staff approval to go ahead and compile it so that they can send it out to the commission

members. The legislative session starts in February and the Commission can't duplicate its efforts. The staff can't prepare the report and then get the Commission's approval to continue to work on it. The staff will have to get the Commission's approval to do that and then the Commission approves it before it is sent out.

The motion was seconded and approved.

### **Scheduling of Next Sentencing Commission Meeting**

The next commission meeting has been tentatively scheduled for April 11<sup>th</sup>.

Cynthia Dillard announced that Pardons and Paroles has a new board member who needs to be confirmed. His name is Bill Wynne. If Mr. Wynne is not confirmed the Board will have two board members. The Board really can't operate well with two board members. Mr. Wynne has to be confirmed within five legislative days or he comes off. Ms. Dillard stated that any support that the Commission can give to help with the confirmation process will be greatly appreciated.

Ms. Flynt noted that the Commission had looked at a bill that was introduced 2 years in a row about shortening probationary terms. There were several concerns. The Commission ignored it before and it almost passed last year. She felt that the Commission could no longer afford to ignore and not take a position. She provided committee members with a copy of the bill and asked them to look over it. Ms. Flynt stated that they went back and tried to address some of the concerns that the district attorneys and Commission had, and they sent her a preliminary copy just this week. Their proposed amendment conflicted with the Commission's bills, specifically, some of the provisions of the split sentencing. Ms. Flynt stated that she sent them a copy of the Commission's bills and basically told them that they will talk. Someone from Drug Policy Alliance will be in town the first of February and wants to meet with Ms. Flynt. She stated that she will be getting in touch with Pardons and Paroles, the Department of Corrections, and district attorneys.

Ms. Flynt stated that she thinks that it is better for the Commission to look at legislation that is being presented. This bill was introduced and people were saying it was the sentencing commission's bill. They have gone to the sponsors that the Commission used that are members of the sentencing Commission, and asked them to introduce in the legislature, and people automatically think it is a sentencing commission's bill. They have addressed some of the Commission's major concerns, not all of them. Ms. Flynt is hoping to meet with them, and at least tell them where else the Commission might have some concerns over their revised copy. She will give the Commission an update after that meeting.

### **Adjourn**

There being no further business the meeting was adjourned.