

# **Alabama Sentencing Commission**

Minutes of Commission Meeting  
September 5, 2008

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

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Richard Allen, Commissioner, Alabama Department of Corrections  
Vernon Barnett, Deputy Director, Department of Corrections, Montgomery  
Rosa Davis, Chief Assistant Attorney General  
Cynthia Dillard, Director, Alabama Board of Pardons and Paroles, Montgomery  
Terri Bozeman-Lovell, District Judge, Lowndes  
Joel Sogol, Esq., Tuscaloosa  
Hon. Ben McLauchlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark

## **Advisory Council:**

Chaplin Adolph South, Tuscaloosa  
Denis Devane, Birmingham  
David Horn, Director, Shelby County Community Corrections and President of the Alabama Association of Community Corrections  
Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery  
Shelly Linderman, VOCAL  
Walter Wood, Executive Director, Alabama Department of Youth Services

## **Staff:**

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

## **Others Attending:**

Annette Brown, AL CURE  
Carolyn Bowdin, AL CURE  
Rosemary Collins, AL CURE  
Robert Oakes, Board of Pardons and Paroles

## **Welcome and Introductory Remarks**

Chairman Colquitt called the meeting to order at 10:00 a.m. and made introductory remarks. He stated that the Commission has had several committees meeting in the last

few months and those committee reports will be made by Rosa Davis, Lynda Flynt, Bennet Wright and various people. He mentioned that Commissioner Richard Allen will address the Commission on Prison Overcrowding and the Nationalization of Prison Beds.

**Report from Commissioner Richard Allen  
Prison Overcrowding and Nationalization of Prison Beds**

Commissioner Allen explained that last month he hosted a roundtable at the National Association of Sentencing Commissions' (NASC) Conference in San Francisco on The Nationalization of Prison Beds. In preparation for that meeting, Commissioner Allen conducted a survey through the Organization of State Prison Commissioners, to find out just what the situation was like in other states, where their capacity was, whether they were overcrowded, and their ability to take other state's inmates.

Before describing the typical dorms in Alabama, he noted that a canning factory at Stanton prison was converted to bed space and that the Department had converted warehouses, factories, gymnasiums and anything that could hold beds to meet Alabama's current capacity issues. Commissioner Allen highlighted that the dorms in Alabama have double bunk beds that are extremely close together. He stated that there are usually only one or two correctional officers trying to supervise these massive 300 or so beds and that they often can't see from the front to the back of the dorm. He noted that in the mid 70's the Department actually had more bed space than it had inmates. The Department has been cramming more and more inmates in the same space over all these years.

Commissioner Allen stated that a little over a third of the inmates that come into the Department of Corrections every year are from drug convictions - primarily possession offenses. Many of them are just addicts who could be treated somewhere else besides in prison. It is estimated between 75 to 80% of the offenders that come into ADOC either have a drug problem or an alcohol problem, or both. The Commissioner surmised that drugs are fueling the capacity of the Department.

Mental health patients are now a big portion of ADOC's population. Back in the early 1970's, the Department of Mental Health had about 8,000 beds for mental health patients. There was a major effort to deinstitutionalize the mental health facilities, which was successful because at the time ADOC also had about 3,900 beds for inmates and only a couple hundred of those folks were considered to be mentally ill. Now the Department of Mental Health has about 800 beds and of those, 114 are beds for those that are criminally insane. Commissioner Allen stated that the ADOC has about 25,000 inmates and over 5,000 of them are getting mental treatment in the prisons instead of in the community or in a state mental health facility. It is a strong indication that in Alabama the prison system has become a default mental health treatment facility. They are coming to prison instead of going to some sort of treatment center. Just about 36% of the women and 20% men incarcerated have mental health issues today.

The ADOC is about 186% of its capacity. Commissioner Allen reported that he conducted a survey of other states and 27 states responded, with most of the states stating that they are overcrowded. California has 203% of their capacity inside their facilities,

with Oklahoma at 243% of their capacity incarcerated. Forty-five percent of their population is contracted out to private facilities. The survey reported that a couple of states do not exceed capacity because of contracts with private facilities. Commissioner Allen stated that Alabama, like most states, initially tried to keep up with the expanding prison population by building more prisons. Between 1976 and 1990, the Department opened 10 major facilities and 9 work center facilities. Between 1976 and 1988, due to litigation, the Department was under Federal court supervision and had a federal receiver actually running the prison system. Because of the focus of federal courts, the Department received resources, hired staff, built facilities and did a fairly good job of keeping up. However, the litigation ended in 1988. There were a couple of prisons in the pipeline that were opened between 1988 and 1998. The Department brought on one more major facility and that was a work release facility. Other states have had the same pattern; they have tried to build prisons and tried to keep up, but it is too expensive.

The Department of Corrections has designed bed space for 13,000 inmates. In order to get adequate bed space, i.e., something that would meet ADA standards, Commissioner Allen noted that the Department would need to build about 10,000 to 12,000 more beds, which would cost about a billion dollars for construction. In addition to construction costs, operating costs are extremely expensive. Commissioner Allen stated that the survey he conducted showed that costs run from a high of \$130 per inmate per day, down to the cheapest - \$39.46 per inmate per day in Alabama. Alabama and Louisiana are usually a few cents apart for the daily cost an inmate. The Commissioner highlighted that the way that the Department keeps its cost low is that it puts more and more inmates in the same facilities. The Department has not expanded its correctional officer staff so they are stretched to the limit.

On the idea of leasing space from other states, Commissioner Allen asked the question on the survey, "Do you have excess space, and if you do, would you be willing to lease it to other states?" About a half dozen states reported excess space, but only three of them said that they would be interesting in leasing space to other states. In summary, the Commissioner's survey showed that the idea of the nationalization of prison beds, by having an interstate system that moved prisoners back and forth between state facilities, is just not a concept that is feasible because there are not enough empty beds.

The alternative to building more prisons and hiring more staff is to contract out. Most of the states that have contracted out said the primary reason for contracting is overcrowding and not to save money. Commissioner Allen noted that if you look at the average daily cost verses what you are paying in the private market in most places it's significantly cheaper to contract out. However, numbers like this can be a little deceiving because for as long as you can put one more inmate in existing space you don't incur your average daily cost for that inmate. You have a marginal cost at probably less than five or six dollars a day. When you have to start leasing out, then your marginal cost is the cost of the contract. In any event, in almost every case, the cost for leasing space and farming inmates out is less than the average daily cost that is reported by the states.

Some of the reasons why the costs to contract for bed space is cheaper is that many private prisons don't pay their staff as well and they don't incur the cost of retirement benefits and medical benefits, etc. He noted that eighty percent of ADOC's cost is personnel cost. Private prisons are able to get by with less personnel costs and some suggest they don't have the same quality of people that ADOC hires.

Alabama has used private prisons out of necessity on several occasions. The first time was back in 2003; arising from a federal lawsuit filed at the Tutwiler facility for women in Wetumpka. At that time, Tutwiler had over 1,000 women crammed into space designed for 400 prisoners. Tutwiler was described as the most violent prison in Alabama. It had more incidents of inmate on inmate assaults and inmate on guard assault than any of the dangerous male facilities. It was an old facility, it was so inadequate and so crowded it was just about the worst in the country. They were forced to contract with private out-of-state prisons, sending 300 women (which eventually grew to about 400 women) to Louisiana.

In 2003, ADOC also sent 1,400 men to private facilities in Mississippi. This move was precipitated by the fact that the Department had been engaged in litigation between the counties and sheriffs since the early 90s over state inmates backed up in the county jails awaiting transfer to the penitentiary. The law suit was settled in the mid 90s with the understanding that once the Department had a transcript from an inmate that has been convicted and sentenced; it had 30 days to move him from the county jails into the ADOC facilities. Commissioner Allen noted that at times there have been over 1,000 inmates backed up in the county jails beyond the 30 day limit. The pressure of contempt petitions stemming from that litigation in 2003 led the State to move 1,400 men to facilities in Mississippi. It also led the State to create the second parole board that did a great job in trying to pull the numbers down during its existence. Because there was no money to keep Alabama's prisoners in Mississippi, the Department moved the men back in August 2004, and at the same time got the numbers down in the county jails.

In 2006, ADOC was in a position where it had to have more bed space because of the pressure from the litigation. There was federal money available, so the Department leased bed space in Louisiana; sending 500 men to Louisiana in February of 2006, and another 400 in August of 2006. The Department began to get its numbers down on the county jails and has been able to keep it down to the single digits since then.

Commissioner Allen stated that the Department was up to 860 backed up in the county jails when he took over in February. By August, ADOC got the backlogs down to zero and has kept it pretty close to zero since that time. The money ran out again and ADOC had to start bringing inmates home again last year. By the end of this month the Department will have all inmates home from Louisiana and out of out-of-state private facilities. There are about 150 inmates in the private facility in Perry County.

The Department will have one private facility that will continue to operate, the Therapeutic Education Facility in Columbiana, which will be in full operation as of October 1st of this year. This is a joint venture between the ADOC and Post Secondary

Education. Commissioner Allen explained that this was a new project and a new idea for Alabama, based on an idea that was conceived a couple of years ago when the State had a lot of money for job training and special projects. The idea was to take inmates who were medium level inmates and put them through a very intense program to decriminalize their thinking and also give them hard skills that they could use when they get out of prison and put them into work release for a year or two and let them get actual hands-on experience in vocations such as welding, carpentry, etc. The idea was that the project would be funded basically with education money. The first inmates were placed in this program in April of this year. Commissioner Allen stated that the Department thinks that it will help to rebuild the work release program. At one time there were almost 3,000 inmates in work release, but now they are down to about 1,900. The ADOC will need about 2,400 working inmates on work release next year to balance its budget.

Commissioner Allen noted that Pew Charitable Trusts' latest publication talked about one out of every hundred Americans was in jail or prison. Commissioner Allen mentioned that portion of the report dealing with the level of financial support that the prisons around the country receive from their State General Funds, indicating that Alabama came in number 49 on the portion of the state budget spent on corrections. In fact, Alabama is one of the few states where the amount of money being dedicated to corrections actually dropped in the last years; in most states it has gone up over a period of time. Alabama's percentage of state government funding actually dropped in the last 20 years and is at 2.6%. If the Legislature should somehow find the money to double the Department's appropriation, Alabama still would not reach the national average on the amount of money being spent through the correction system.

#### *How we are going to Survive*

Commissioner Allen stated that he thinks that the only way Alabama is going to survive is by turning the growth from positive to negative. Over the last 25 years ADOC has averaged about a thousand more inmates going in and than coming out. The first program and perhaps the most promising program was the Sentencing Commission's Sentencing reform measures, implementing sentencing reform legislation and the initial sentencing standards. If judges and DAs around the State implement the guidelines, then it is estimated that 75% of the cases that require bed space will drop by 500 in the first year, 1,000 in the second year and as many as 3,000 by the fifth year. The ADOC is in the second year of the program but is unsure what the results are. Commissioner Allen noted that Bennet Wright would provide the Commission members with information on compliance measures.

#### *Community Corrections Programs*

The ADOC has tried to encourage every county in the state to establish and operate a community corrections program. There are now 45 counties that have a community corrections program. The average monthly diversions have gone up from 92 in 2006 to 127. This is the first year that ADOC has actually had to spend all the money that was allocated for community corrections. In previous years they actually had to give money back because there were not enough inmates diverted to community corrections to use all of the money. This year ADOC is going to use all of the money allocated for community

corrections plus some of the Department's money that is not specially allocated for community corrections diversions. Commissioner Allen advised that ADOC is working with Chief Justice Cobb and judges around the state trying to encourage people to implement these programs and to divert more folks to community corrections programs.

#### Pardon and Paroles

When Pardons and Paroles had the two parole boards the prison population reduced considerably but it has fluctuated back and forth. The first six months of this last year, the Board was averaging about 300 paroles a month. In the last six months it dropped down to about 180. The Commissioner commented that the ADOC has a great working relationship with the Parole Board, noting that the Board members and administrative staff have been very supportive in trying to help the ADOC move out inmates that are eligible for parole.

#### SRP

Commissioner Allen advised the Commission members that the Department has established a supervisory reentry program. Last year the Department instituted the program and trained correctional officers to supervise these people when they are released on supervisory reentry. The inmates can go home to get a job or go back to school under ADOC's supervision. There are about 1,400 inmates that have been released early on this program and it is working very well.

#### New Inmate Classification System

The ADOC is in the process of revising its classification system. Commissioner Allen stated that they discovered that they were over-classifying inmates and have asked the National Community Corrections to study the Department's situation. The ADOC is in the process of developing a new classification system that will probably push more inmates into the work release and community work center category rather than the medium category, especially among women inmates who are generally nonviolent. That should take the pressure off medium security facilities which is the Department's real problem.

#### LifeTech

Commissioner Allen stated that Pardons and Paroles has done a good job with the Life Tech program, especially the one in Thomasville, where they take men and actually parole them to this facility and then give them transition training, life skills training, and try to reduce the criminal thinking and give them job skills. He said that the women's program has not taken as many from the prison directly as it should have, but the judges around the state are using that as an alternative to sending women offenders to prison. In addition to saving scarce prison beds for violent offenders, if judges send them to the LifeTech Wetumpka instead of prison, these women can get training and rehabilitation, which could help them to reenter society as a law abiding and productive citizen. .

#### Drug Courts and Mental Health Courts

One of Chief Justice Cobb's top priorities was to implement a drug court in every county of the state. She and Judge Johnson have done tremendous work. There are now 41 counties that have drug courts, compared to 16 when they started about a year ago. Almost every county, except Talladega, says that they have got a program in process.

Pardons and Paroles is trying to establish Technical Violator Centers for people who have been placed on probation or paroled and then commit a technical violation, e.g. they don't show up for their meetings, they don't make their payments like they are supposed to, or they flunk a drug test. Right now about the only option is to revoke these technical violators and send them to prison. Pardons and Paroles would like to establish a Technical Revocation Center in Thomasville. It will take about \$5 million dollars to get a Revocation center up and running, but it would save ADOC a lot of bed space and incarceration costs.

### Split Sentences

Commissioner Allen noted that people who are sentenced to split sentences are not under the jurisdiction of the Parole Board, so they can't be paroled, even though their time in prison indicates that they are ready. The ADOC is in the process of looking at people who are sentenced under the split sentence statute, and if they have been good inmates (have had no disciplinary issues) and if they look like they would have been paroled but for the fact that they are under split sentence, the Department is writing a letter to the sentencing judge asking that they take a look at this person and to see if they would put him/her on probation.

### Reentry Program

The ADOC has also established a reentry program. Inmates are released from maximum or medium facilities with almost no preparation for the outside. When they get out they get \$10.00, a suit of clothes, and a one-way bus ticket home. Commissioner Allen stated that from experience, they have found that if you can keep somebody out of trouble for the first year there is a good chance they are not going to come back. The ADOC has developed a reentry program to help inmates before they are released. Through this program the inmates get necessary identity documents, such as a driver's license, birth certificate, social security card, etc. The ADOC has also identified for them every state and federal agency in their home county that they can contact for support. In addition, the Governor has asked the faith-based community around the State to provide volunteers to be mentors and provide support and resources to these people. This Faith-Based Initiative is to setup a community partnership for reentry. Over a thousand individuals and businesses have now volunteered to provide assistance to inmates when they go back into the community.

The ADOC has been reporting total population for years in the Department; the number is now over 30,000. The number of offenders that are actually incarcerated in ADOC facilities (inside the walls) is actually 25,000. The Department is still 186% of design capacity. When the Department reports jurisdictional population it is misleading because that figure includes offenders that were actually diverted to community corrections programs and do not occupy a prison bed. These offenders, while considered under

ADOC's jurisdiction, are out in the community and not in a prison facility. To remedy this problem, ADOC now reports by jurisdictional population (an inmate that has been sentenced and has a transcript sent to ADOC and has a prison number issued to them); and custodial population (offenders that are actually in-house and are incarcerated in a ADOC facility).

In 1976 when ADOC had its first litigation involving overcrowding, Judge Frank Johnson said that Alabama operated a prison system that was not in compliance with constitutional requirements with respect to: overcrowding, segregation and isolation, classification, mental health care, protection from violence, living conditions, food service, correspondence and visitation, educational opportunities, vocational opportunities, work opportunities, recreational opportunities, physical facilities and staff. The ADOC has made significant progress in all of these areas except three. ADOC facilities are still overcrowded (in fact much more overcrowded than they were back in the days of that first litigation; their physical facilities continue to deteriorate. Although a lot has been added since those days, not much has been done to maintain it. The ADOC has identified over \$90 million in deferred maintenance that needs to be done just to bring the facilities back up to some sort of decent standards, everything from locks and security devices to kitchen equipment, etc. The Department is still significantly understaffed and the inmate to prison ratio is about 10:1. In his survey, Commissioner Allen asked what the ratio of staff to inmate was and discovered that there are two states worse than Alabama: Oklahoma reported 18:1 ratio and Montana 12:1.

#### Reentry Grant

Commissioner Allen reported that the Department requested and received a federal grant of \$540,000 on reentry that is going to enable it to expand both in-house and provide some money to halfway houses and provide other institutions around the State that participate. The Department will be setting up criteria for people that operate these facilities like the Alethea House in Birmingham or Lovelady Center. They can actually submit a proposal to ADOC and they will receive some of this federal funding to operate their program. This is going to give the Department the ability to implement the transition program that it wants implemented in-house and also provide a little money to some halfway houses on the outside. Commissioner Allen noted that the requirements that the inmates must meet are the same as those for work release eligibility, e.g., they can't be murderers, sex offenders, etc. The idea is that once they get in this program they will go straight to a work release facility.

Chairman Colquitt recognized that Callie Dietz, Administrative Director of Courts was in attendance. Ms. Dietz spoke to the Commission briefly and thanked everybody for their participation. Chairman Colquitt thanked Ms. Dietz for attending the meeting and recognized the tremendous amount of support that the Commission receives from her and the Administrative Office of Courts.

Judge Colquitt also recognized Christina Van Der Hulst and Paul Sullivan, noting that the Commission appreciates their work Ms. Van Der Hulst and Mr. Sullivan were serving as interns, but are now employees of the Sentencing Commission. Ms. Van Der Hulst is a

legal research assistant for the Commission who has taken the Bar exam and is now awaiting the results. Mr. Sullivan, a math major, from Faulkner is a data entry specialist who enters all the worksheets received by the Commission. Chairman Colquitt mentioned that he did some work researching sentencing commissions and he decided that Alabama might have one of the smallest sentencing commissions in the country, but has one of the best.

## **Felony DUI**

### **History of Alabama Law, Law of Other States**

#### **Judge Joe Colquitt, Chair**

Chairman Colquitt presented the Commission with a report about felony DUI. A handout was provided. He mentioned that he attended the NASC Conference in San Francisco and led a round table discussion group on Felony DUI. He noted that virtually all states have some type of felony DUI.

Chairman Colquitt explained that some of the things that they talked about nationally were: Should states have a felony DUI law? Is it really necessary to have one if the system is working? The answers to these questions really depend on what the Commission is trying to achieve. He further stated that one of the concerns that he has about felony DUI is that it may come too late. We have 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> offenses that have already occurred prior to getting to the level of felony. Chairman Colquitt mentioned that in the Commission's last listing of offense types for people going to prison, felony DUI ranked 13<sup>th</sup>. There were a few hundreds of people in the state penitentiary serving felony DUI. He noted that what appears to be mandatory incarceration doesn't come into being on the local level because of alternative programs.

Chairman Colquitt noted that his concern as he looks at the data, is what the courts are doing with misdemeanor DUIs. He sees more need to do something and get these people out of automobiles and sobered up before we reach the point of arguing about what kinds of convictions we are going to count to enhance them to felony punishment. He explained that our emphasis on the number of felony DUIs may have been misplaced; that we should have been emphasizing and looking at misdemeanors and addressing them and eventually we might have to deal with felons, but a lot of these people will never get to the felony level perhaps, if we did an adequate job to begin with.

He stated when you talk about felony DUI one of the things that you have got to talk about is credited offenses; what types of convictions count as prior convictions for enhancement purposes. Questions have arisen as to whether we count municipal ordinance convictions, out-of-state convictions – both issues that have recently been raised in Alabama.

In addition to the question about the type of convictions that are counted, e.g., municipal ordinance violations or out-of-state convictions, there is the issue of whether there will be a decaying provision; whether convictions going back 3 years, 5 years or life are considered for enhancement purposes. He noted that depending upon how we make those decisions we may see somebody that goes through their whole life as a drunk driver

and never qualify for felony DUI because their early convictions are not considered. For example, if a State only counts convictions occurring over the last 5 years and the defendant is getting caught every 2 years then he never qualify as a felony DUI offender. He will never get that fourth conviction for DUI within that 5 year period. If we don't count municipal ordinance violations or we don't count out-of-state conviction we are likely to never address the DUI problem.

What types of limits should be imposed was also discussed at the NASC Conference. Another concern is mandatory minimums, etc. and maximum lengths of sentences. Judge Colquitt noted that one state had up to 20 year's imprisonment. In some of the states if you also have diversions from prison to probation, which raises the question of whether we should impose controls on plea bargains. He noted that most attorneys would say that some type of plea bargaining should be allowed. Sometimes a charge of felony conviction on the 4<sup>th</sup> DUI is pled down to something else.

Chairman Colquitt noted that based on the data presented, there is a real need for an objective logical assessment of not just felony DUI but misdemeanor DUI.

One of the Commission members commented that as someone who handles a lot of DUIs and sees a lot of people charged with DUI, many of these cases involve defendants charged with possession of other drugs whatever it may be marijuana, cocaine, etc. Drug Courts were created from the recognition that punishment does not address drug and alcohol addiction. On a first DUI the defendant is sent to Level I DUI School, which is only education. The system is going to have to make some changes and do away or reconstruct Level I and Level II program, which is called pretreatment. These should be the baseline only. When there is a second DUI conviction within 5, 6 or 7 years, treatment should be mandatory. Until the court system makes that change and everybody else understands that treatment has got to be provided for early intervention, it is not going to make an impact and we are going to continue to see an increase in DUI convictions.

In response to the question whether DUI defendants would go into Drug Court, it was explained that not all Drug Courts allow these defendants to be considered for participation. There are some courts diverting first offense DUIs; however, Alabama needs some kind of standardized policy across the state providing that first offense DUI should be eligible to participate in Drug Court. It should be consistent across the State and not vary depending on locale.

Chairman Colquitt noted that the Commission probably needs to think in terms of creating a committee to look at felony DUIs and DUI. We are talking about counselors, treatment, rehabilitation and deterrence, etc., and we need to get early intervention in some of these.

Ms. Flynt mentioned that the all of research and information distributed at the NASC Conference on Felony DUI can be found on Commission's website under "publications".

**Working Lunch:**  
**Report on Sentencing Workshops**  
**Bennet Wright, ASC Statistician**

Mr. Bennet Wright reported that sentencing worksheets can be received at the Sentencing Commission in two ways; (1) designated worksheet users can complete them electronically via E-Worksheets or (2) on paper worksheets that are to be mailed directly to the Sentencing Commission. The vast majority of worksheets are completed via E-Worksheets, but some counties do utilize the colored paper worksheets.

Mr. Wright explained that in the Commission's 2008 Report, the first stage of reporting judicial compliance with the standards & worksheets is usage compliance. The method employed to measure usage compliance was to call the different jurisdictions around the State and speak with judges, prosecutors, clerks, and probation officers to determine if the worksheets were being completed.

The second stage in reporting judicial compliance with the standards & worksheets is submission compliance. Mr. Wright explained that to demonstrate submission compliance, the Commission staff selected three counties to include as examples: Madison County, Lee County, and Chambers County.

Mr. Wright reported that in figure 1 of the Commission's 2008 Annual Report, there are two columns listed. The first column represents the number of sentencing events (a worksheet applicable sentencing event) where the Commission should have received a completed worksheet. For example, in FY 2007 Lee County had 287 applicable worksheet sentencing events. Mr. Wright indicated that the second column of figure 1 represents the number of worksheets that the Commission received from these jurisdictions. In Madison County, the Commission received 1,739 completed worksheets in which the county had only 999 sentencing events. Mr. Wright stated that Madison County had almost double the number of submitted worksheets, which raised the questions why some jurisdictions were completing more worksheets than actual sentencing events and why other jurisdictions were completing the required number of worksheets for sentencing events.

Mr. Wright reported that in Chambers County, there were 188 sentencing events and almost exactly the same number of received worksheets. He stated that after speaking with worksheet users in that county and other counties around the State, it was discovered that the worksheets are being completed at different points in the criminal justice process, e.g. some jurisdictions complete the worksheets at indictment and others complete the worksheet literally in the courtroom during the sentencing decision.

Mr. Wright stated that today's presentation will include the case disposition for those worksheets completed and submitted to the Commission to determine the outcome of the case, noting that it is important to determine why certain jurisdictions have either low or high numbers of completed and submitted worksheets. Mr. Wright explained that the Commission received nearly 21,000 worksheets – via E-Worksheets or paper copy - from

October 1, 2006 through June 20, 2008. Of the primary worksheets received, approximately two thirds have only resulted in a conviction for a worksheet offense, 5% resulted in a conviction for a non-worksheet offense, roughly 5% resulted in a misdemeanor conviction, 11% have no disposition, 8% resulted in a nolle prossed or dismissal, 2.3% resulted in a youthful offender adjudication, and a small percentage resulted in a not guilty disposition or “other” category.

Mr. Wright stated that there are basically three indicators of when the worksheets are completed for the different jurisdictions: (1) the percentage of worksheets resulting in a worksheet offense conviction, (2) the percentage of worksheets resulting in a nolle prossed or dismissed disposition, and (3) percentage of worksheets currently with no disposition. Mr. Wright explained that if worksheets are completed in the courtroom just prior to sentencing, the majority of these worksheets will result in a conviction for the worksheet offense. However, if a worksheet is completed at indictment, there is a greater probability that the worksheet offense will be nolle prossed, dismissed, referred to pretrial, adjudicated a youthful offense status, or have no disposition.

In the 19<sup>th</sup> Judicial Circuit, of the 614 worksheets submitted to the Commission, 98.4% resulted in a worksheet offense conviction. Four judicial circuits (2<sup>nd</sup>, 25<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup> Circuits) reported a low number of total worksheets, but their percentage of worksheets that resulted in a worksheet conviction is rather high. Mr. Wright noted that five circuits (3<sup>rd</sup>, 14<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 39<sup>th</sup> Circuits) were excluded from the analysis because they have less than 100 total submitted worksheets. Out of the remaining 36 judicial circuits, fifteen of the judicial circuits had 90% or above percentages for the percentage of submitted worksheets resulting in a worksheet conviction. Mr. Wright reported that Madison County submitted 3,100 completed worksheets and 755 worksheets resulted in the charge being nolle prossed or dismissed.

A comment was made regarding the fact that some jurisdictions complete a worksheet when the case is transferred to drug court; therefore, most of these cases are being dismissed.

A question was asked regarding how the cases are being handled when a worksheet is completed for Robbery 1<sup>st</sup> at indictment but the defendant pleads down to Robbery 2<sup>nd</sup>, whether a second worksheet is being completed for Robbery 2<sup>nd</sup>? Mr. Wright responded that the worksheet is still considered as one completed worksheet, especially if the user completes the worksheet on E-Worksheets. The user should simply change the offense at conviction from Robbery 1<sup>st</sup> to Robbery 2<sup>nd</sup> and save the worksheet. But, if a user completes an electronic worksheet for Possession of Marijuana 1<sup>st</sup> and the defendant pleads down to Possession of Marijuana 2<sup>nd</sup> (a misdemeanor offense), the Commission will not consider that worksheet for compliance purposes since the offense of conviction is a misdemeanor offense rather than a felony worksheet offense.

Chairman Colquitt stated he understood why the Commission would want to receive a worksheet is every case regardless of the outcome of the case to be able to track what actually happening in the system. He asked why the Commission wants the worksheet

submitted before the case is terminated. Mr. Wright explained that the worksheet should only be completed and submitted after final disposition, adding that Alabama is unique in the fact that it is one of the only states that has an electronic submission process for completion of the sentencing worksheets. In the vast majority of other states, the paper worksheets are mailed to the Sentencing Commission upon conviction. Alabama's E-Worksheets application allows the designated user to complete the worksheet electronically and the worksheet is considered "completed" by the Commission when the user hits the save button. Chairman Colquitt commented that we are discussing the creation of the worksheet and not the submission of the worksheet. In other words, the Commission is accepting the worksheet when they are created instead of when the case is disposed at conviction.

Mr. Wright explained that once the user completes the In/Out worksheet and the Sentence Length worksheet electronically, the worksheets are validated in the computer application and that worksheet now becomes counted as a completed worksheet. He further stated that submitted means it is an electronic submission to the Sentencing Commission. Chairman Colquitt stated that it's an incomplete electronic submission in a lot of instances. Mr. Wright noted that the actual worksheet itself is complete, but the case disposition would be incomplete, since E-worksheets will not allow a worksheet to be classified as completed until all factors on both worksheets have been filled in.

Chairman Colquitt asked Mr. Wright what is the indication in E-Worksheets of when a case is disposed? Mr. Wright stated that E-worksheets do not indicate when a case is disposed; the Commission has to match the E-Worksheet data to the Court's mainframe system (SJIS) to determine the case's disposition. For example, if a worksheet user in Lee County has a circuit court case number and completes the worksheet electronically, the Commission staff has to match that case number to the SJIS case number to determine the case disposition. If that case number does not have a disposition, then that particular case gets categorized as "no disposition"; subsequently, if that case number does have a disposition, it is categorized accordingly.

**Report from the Uniform Sentencing Order Committee  
Rosa Davis, Chief Assistant Attorney General**

Rosa Davis stated that the Uniform Sentencing Order Committee has met two times. Ms. Davis noted that the committee started out with a proposal that Lynda Flynt had spent several days working on and drafting and several other options that other people had presented. The Sentencing Order that the committee decided upon is a combination of what Lynda had been working on, what Shelby County and Jefferson County had been working on, with input from other judges and people on the committee.

Ms. Davis stated that she appreciates the work of the people who are serving on the committee. She noted that there were several goals for the Sentencing Order: First, to try to come up with those things that directly affect sentencing or need to be said in the Sentencing Order, those things that need to be captured in SJIS, and lastly, trying to keep it simple. The committee tried, but was unable, to get the Order down to one page. Ms.

Davis stated that she has since received another Order that does only cover one page and the Committee may take a look at that next time it meets, along with the results of how using this Order has worked out. There are judges who are looking at this Order in criminal cases in Tuscaloosa, Birmingham, DeKalb, Geneva, and Dale County. These are the judges who are on the Sentencing Order Committee. Those judges will offer further suggestions on things that need to be done to try to improve the Order.

On the second page of the draft Order is the application for probation. If the person is not going to apply for probation or if no probation is going to be allowed, the judge can just sign this order at the bottom of page one. If there is an application for probation or consideration of a split sentence or other special circumstances, all that shows up on the next page of the Order. The committee did add boxes indicating whether the sentencing standards have been considered, a space for describing what the standards recommendation was, and whether the sentence imposed is in compliance with the standards recommendation. The plan is to have the judges look at the order, approve it, and it will be sent out again to obtain more judicial input. The committee hopes to have the Uniform Sentencing Order finalized by the end of 2008.

### **Report from the Cooperative Community Alternatives Sentencing Project Rosa Davis, Co-Chair**

Ms. Davis provided the Commission with copies of the minutes from the first, second and third meetings of the Statewide Steering Committee. She noted that on August 1<sup>st</sup>, or prior to the July meeting, letters were sent out to all the jurisdictions in the State of Alabama. The letters were sent to the chairman of the county commission, presiding circuit judge, district attorneys and to the community corrections programs. In addition, Cynthia Dillard sent out a group-wide email to let all the district probation and parole supervisors and the chief probation officers in the communities to let them know what was going on.

In the letter that was sent to all counties, the committee asked whether or not the jurisdiction was interested in receiving an application to be a pilot project under the Cooperative Community Alternative Sentencing Project. Everyone who works with community supervision and the community stakeholders were contacted to make sure that a true continuum of community alternative sentencing options could be established in every county. Originally, the committee wants to set up four pilot projects to develop model supervision and treatment programs in four communities. Twenty-four jurisdictions wrote back advising that they were interested in receiving the packet or application. The applications were sent out to those 24 jurisdictions and the deadline for submitting the applications is September 15<sup>th</sup>. The next step after the applications are received is to distribute them to a Site Selection Committee and that committee will choose four sites to recommend to the Statewide Steering Committee as pilot sites.

Ms. Davis stated that a Retreat was held on July 23<sup>rd</sup> thru July 25<sup>th</sup> at Point Clear. At the Retreat, which was entirely funded by The Pew Charitable Trusts and Vera Institute of Justice, the members of the Statewide Steering Committee came up with a plan to

approve the application that jurisdictions would fill out and send in, and began a work plan for the future. The committee also heard from the Director of Kansas Community Corrections program for the 28<sup>th</sup> Judicial District, who really energized the group.

The committee came up with four working groups that will come together to make recommendations on October 3, 2008, at the next meeting of the State Steering Committee, as to particular aspects of each jurisdiction. Once the pilot sites are selected, they will be asked to come up with a plan and the plans will include certain elements. Ms. Davis noted that at the Retreat the committee identified elements that were included in packets sent out. The four work groups will further develop the elements that need to go into the plan or that need to be given to the pilot sites so that they know where they are going and how they will be evaluated.

Included in the material that was distributed was a copy of the charge for each of the workgroups. One of the workgroups is the ***Data Workgroup***, consisting of Bennet Wright, Melisa Morrison, and Neal Armstrong from AOC. The committee has asked for a representative from ADOC and one from Pardons and Paroles to all work together on looking at data issues. Most of the data that is available is from State sources. While there may be some local data, it was noted that pulling the data together raises integration issues. Steve Green from Mobile is also on the committee and will be representing the local data participants. Ms. Davis noted that he has real data issues with the State and local data so he is a good person to bring into the discussions.

The ***Evaluation Workgroup*** will be chaired by Foster Cook. Foster was appointed chairman because in UAB TASC (Birmingham), from time-to-time, they have had to evaluate their local programs and provide reports. This committee will include representative from the Department of Corrections, Probation and Paroles, Community Corrections, and victim advocates. David Horn, President of the Alabama Association of Community Corrections is on this committee. The committee will be looking at how to determine what works and how to determine if we are doing the right things in the community.

Ms. Davis advised that another committee will look at ***Risk/Needs Assessments Workgroup***. The Criminal Justice Institute (CJI) is preparing a paper on the types of Risk/Needs Assessment Instruments. The paper will include cost analysis from different services that provide risk/needs assessment. It was noted that Pardons and Paroles already has a risk/ needs assessment instrument; however, here are issues about whether that instrument would work for everybody in the community or there is need to explore things differently when prison-bound offenders are involved. Those are among the issues that this committee will be reviewing. Serving on the committee are Rosa Davis; Cynthia Dillard, Director of the Board of Pardons and Paroles; Rebecca Johnson, representative from Montgomery County Community Corrections, and Bennet Wright, ASC statistician.

The ***Program and Services Workgroup*** will define critical elements in the community, helping programs and services that need to be utilized in community supervision. The group will be chaired by Judge Clark Hall in Etowah County. Members on the

workgroup include David Horn, who runs a work release program in Shelby County, Judge Bellamy who is working with drug courts out of Russell County and Jerry McQueen from the Montgomery Police Department.

The workgroups are beginning to meet. Vera Institute of Justice will work with the Site Selection Committee that will choose the sites for the pilot projects and help set up the scoring system for the applications. Ms. Davis announced that representatives from Vera and CJJ will be here Thursday and Friday of this week to work with the committee. They will also meet with the Data Workgroup, reviewing what they are doing, and providing technical assistance.

### **Carried Over from Last Meeting**

#### **Vote on Requiring Copies of Sentencing Orders to be Submitted to ASC by Court Clerk for All Worksheets, Including E-Worksheets**

Chairman Colquitt called on Lynda Flynt to talk to the Commission about the item of business that was carried over from the last meeting, i.e. requiring court clerks to send copies of sentencing orders for all worksheet cases.

Ms. Flynt explained that the issue came up at the last meeting and was carried over. Commission members were asked to think about whether they wanted to require all the court clerks to send the Sentencing Commission a copy of all court orders on sentencing worksheets cases, even those that are entered on electronic worksheets (E-worksheets)..

Ms. Flynt noted that there are several other issues and recommendations that will be coming up about the Sentencing Standards and the Sentencing Reform Act. She asked for the Commission's permission to refer that issue to the Standards Committee for consideration with the other recommendations, for later reporting to the entire Commission.

Ms. Flynt thanked Rosa Davis for all the work that she is doing. Ms. Davis advised that she will contact members of the Standards Committee to set the next meeting date. Ms. Flynt announced that the Legislative Committee is scheduled to meet on October 9<sup>th</sup> and that she will send members another reminder.

Ms. Flynt mentioned that dates of meetings were noted on the agenda, including the Community Corrections/CRO Conference in Birmingham and the Judicial Study Commission meeting. She announced that the Sentencing Commission staff attended the National Association of Sentencing Commissions Annual Conference held in San Francisco on August 2-6, 2008. Also attending the meeting were Cynthia Dillard, Judge Colquitt, Commissioner Allen, Melisa Morrison, Bennet Wright, and Rosa Davis. Next year the conference will be held in Baltimore. She noted that the NASC Board has asked Alabama to sponsor the conference, but Ms. Flynt told them that Alabama was not ready to sponsor the conference in 2009. They will be looking to either Alabama or Illinois to sponsor the Conference in 2010. If it is in Alabama in 2010, they want it held at the

Grand Hotel in Point Clear. Ms. Flynt asked Commission members to be thinking about sponsoring NASC for 2010.

Ms. Flynt mentioned that Kent Hunt was supposed to talk to the Commission about certification of mental health programs on substance abuse, but he was unable to attend today's meeting. He has asked to be put on the Sentencing Commission's agenda the next time it meets. Judge Pete Johnson had also asked to be on the Sentencing Commission's agenda at the next scheduled meeting to talk about the Drug Court bill. Ms. Flynt advised him that according to the Commission's established procedure, all legislation would need to go before the Legislative Committee and obtain their approval before being submitted to the Sentencing Commission.

Ms. Flynt asked members for their help on workshops. She noted from the different questions that the Commission gets, that the Commission staff needs to start conducting workshops again. Ms. Flynt asked members for their assistance in contacting the county bars and the State Bar, noting that she had already discussed this with Mark White, the new president of the Alabama Bar.

#### **Scheduling next meeting of the Sentencing Commission**

The next Commission meeting has been tentatively set for December 5, 2008. Members will be provided with final details of that meeting at a later date.

Ms. Davis told the Advisory Council members if they see a committee that they would like to work on, to let her know and she would be happy to get their input and add them to the rosters.

#### **Adjourn**

There being no further business the meeting was adjourned.