

Alabama Sentencing Commission

Minutes of Commission Meeting
January 28, 2005

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, January 28, 2005. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa
Vernon Barnett, Legal Advisor to the Governor, Montgomery
Terri Bozeman, District Judge, Lowndes
Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Donal Campbell, Commissioner, Department of Corrections, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
Lou Harris, D.P.A., Faulkner University, Montgomery
Hon. Ben McLaughlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark
Steve Nodine, County Commissioner, Mobile
Hon. David Rains, Circuit Judge, 9th Judicial Circuit, Fort Payne
Bill Segrest, Executive Director, Pardons and Paroles, Montgomery
Joe Reed, Jr., Faulk & Reed L.L.P., Montgomery

Advisory Council:
Denis Devane, Birmingham

Others Attending:
Annette Brown, Alabama CURE
Dot Burrells, Alabama CURE
Rosemary Collins, Alabama CURE
Cynthia Dillard, Pardons and Paroles, Montgomery
Gene Forrester, citizen
Steve Hayes, Department of Corrections, Montgomery
Shelley Linderman, VOCAL
Miriam Shehane, Executive Director, VOCAL, Montgomery
Diana Summerford, Alabama CURE

Staff:
Lynda Flynt, Executive Director
Chris Booth, Staff Attorney
Melisa Morrison, Senior Research Analyst

Welcome and Introductory Remarks

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

He introduced the governor's new appointees to the Commission: Ms Rhonda Hardedge, a victim's advocate replacing Emily Landers; Vernon Barnett, deputy legal advisor replacing Ken Wallis and County Commissioner Steve Nodine from Mobile who replaces Commissioner Sam Jones. Judge Colquitt also informed the Commission that Joe Mahoney, Director of Mobile Community Corrections and President of the Alabama Association of Community Corrections was recently appointed by the Chief Justice to take Doug Parker's place on the Advisory Council. He mentioned that there were several advisory council members whose terms were expiring on February 1st and that the Commission staff was sending out a second notice asking that various organizations make new appointments - New appointments need to be made by the Sheriff's Association (current member Sheriff Prince Arnold), by the President of the Alabama Association of Police Chief (current member Chief Charles Trucks) and the Department of Corrections (current member Willia Kate Mathew Richardson).

Judge Colquitt thanked the new members for coming to the meeting and encouraged their active participation in the Commission's work. He explained that the Commission's work often involved a lot of detailed research and discussion and that it was very important that they provide input to allow the Commission to create the best work product possible to submit to the Legislature good legislation and supply the governor, attorney general and courts with reliable information.

Judge Colquitt noted that there were 2 or 3 important items on the agenda - one of which was the Commission's annual report. He asked that the members of the Commission review the report and send in their comments and recommendations with regard to changes, insertions, or deletions.

Report of Judge Colquitt on Columbia Law Review Symposium Presentations

Judge Colquitt told the Commission member about his recent trip to a sentencing symposium conducted by Columbia Law School, which is one of the top law schools in the country. He noted that this symposium was the result of two or three years of planning and conducted because Columbia recognized the importance of state sentencing - that between 95 and 97% of all criminal cases are in state courts, not federal. The symposium was planned well before the United States Supreme Court's decisions in *Blakely v. Washington*, or the *Booker/Fan Fan* case and dealt with what was happening among the states in regard to sentencing and sentencing reform. He stated that it was virtually a Who's Who in terms of sentencing with regards to the academic community; with the leaders in criminal sentencing among all law schools participating.

The keynote speaker and the highlight of the entire conference was former Attorney General, now Judge Bill Pryor. Judge Colquitt praised his speech for substance and delivery and told the members that Judge Pryor talked about Alabama and what the Sentencing Commission is doing, describing the problems we had encountered and explaining how the Commission has worked through them. Everyone was interested, but he added that not all that was said about Alabama was good. Judge Pryor explained our situation with overcrowding in prisons, the fact that we did not have enough money and

how Commissioner Campbell and others were trying to make do with one of the worst budgets. He noted that Barbara Tombs, the Director of the Minnesota Sentencing Commission (former director of the Kansas Sentencing Commission) also was there and talked about her work with Alabama as a Vera Associate.

Booker/Fan Fan Decisions

Judge Colquitt brought the Commission members up-to-date on the fallout from the United States Supreme Court's rulings in Booker and Fan Fan – the two cases holding the mandatory portions of the federal guidelines unconstitutional. He stated that everyone still doesn't know what is going to happen in the federal system. As for state sentencing systems, he said that many people believe that these decisions are not likely to greatly impact people who are developing new sentencing systems because of the fact that they are factoring these decisions into their decision-making process. Most people are saying that voluntary standard type approaches, like Alabama is proposing, are not implicated and will not be affected by these decisions. He did not that there was a lot of interest in matters like what to do about mandatory minimum habitual offender sentencing. He explained that so far, the federal rulings didn't seem to greatly impact what Alabama is trying to do; however, states like North Carolina, Minnesota, Washington and others that have mandatory guideline sentencing are in trouble. They are having to revisit their old scheme and see what they can do.

Commission's 2005 Legislative Package

Lynda Flynt, the Director of the Alabama Sentencing Commission addressed the Commission members, reminding them that they voted on 10 bills to submit to the Legislature at their last meeting. She announced that these bills had been finalized, submitted to Legislative Reference Service and given to the sponsors in both houses, with several prefiled. She announced that all of these bills had received the support of the Unified Judicial System's Legislative Council and the Governor. Lynda advised the members that the Attorney General was still reviewing our bills and, except for the theft 2nd correction, had not deciding which of the Commission bills he was going to back this year.

Lynda explained that the sentencing bill would be given priority in the staff's lobbying efforts. She said that the annual report was being written to include an explanation of the Legislative mandates to the Commission (through provisions of the enabling act and the Sentencing Reform Act of 2003), explaining what the Commission has done or is recommending to fulfill each. With the Commission's recommendations, we want to demonstrate to the Legislature that we have done what they have asked and that now it is the time for them to give their approval. In regard to the sentencing standards, Lynda said that the staff has tried to make it clear in the report that although the sentencing standards are not THE answer (because there is no one answer to resolve all the problems in our criminal justice system), it is a major step toward accomplishing our goals.

Alabama Sentencing Commission's 2005 Legislative Package

Briefly reviewing each bill, Lynda provided the following synopsis of each bill:

1. Sentencing Standards Bill (HB 791 – M. Black SB 525- Smitherman)

This bill proposes the adoption of voluntary sentencing standards for 26 felony offenses in compliance with the directives included in the Sentencing Reform Act of 2003. These sentencing recommendations are historically-based voluntary, non-appealable sentencing standards developed for 26 felony offenses, representing 87% of all felony convictions and sentences imposed in Alabama over a five year-period. These standards provide recommended sentence ranges and dispositions for the covered offenses in lieu of the wider ranges under existing statutory law.

This legislation is the same as the sentencing standards bill that was introduced during the 2004 Regular Session, with the exception that dates were changed for implementation effective October 1, 2005 and minor corrections were made. In addition, a provision was added to require filing of the standards with the Clerks of the Senate and House, as well as the Clerk of the Alabama Supreme Court.

***2. Access to Juvenile and YO Records (New Bill)**

This bill amends §§ 12-15-100 and 15-19-7 of the *Code of Alabama 1975*, to provide statewide access to juvenile and youthful offender records for judges, prosecutors, victim service officers, probation and parole officers and court personnel, which is essential for the completion of worksheets required for the implementation of the sentencing standards. Lynda told the Commission members that she thought we would get strong support from everyone on this bill because they understood that statewide access of this information is needed by judges and prosecutors.

3. Supplemental Appropriations for Community Corrections (HB 607 - M. Black, SB 338 – Smitherman)

The Commission voted to pursue supplemental funding to DOC for Community Corrections programs again this year because funding has been a major part of our reform efforts and \$5.5 million is the minimum amount that must be appropriated (and deposited in the State-County Community Punishment Partnership Fund) before DOC establishes a Community Corrections Division and appoints a full-time Director. This bill was a priority in last year's legislative package and continues to be essential for the state-wide expansion of community corrections and the development of adequate alternatives to incarceration for non-violent offenders. The bill expressly provides that this money is supplemental to, and will not supplant General Fund appropriations to DOC for FY 2005 and that these monies shall be deposited into the State County Community Partnership Fund.

***4. Split Sentence Statute – Revocation of Probation Options (New Bill)**

This bill amends Alabama's split sentencing statute to grant trial judges authority to impose various sanctions upon revocation of probation, including modifying any condition of probation, ordering the offender to participate in a substance abuse or

community corrections program or incarcerating the offender for any portion of his suspended sentence or for the entire term. It also amends § 15-22-54, the general statute governing probation and the termination of probation generally, to eliminate the provision authorizing the granting of half-credit for time spent by an offender while serving intermittent terms of incarceration or while on home detention or work release, consistent with Alabama's Community Punishment and Corrections Act.

In *Hollis v. State*, 845 So.2d 5 (Ala.Crim.App. 2002), the Court of Criminal Appeals held that under the provisions of the existing statute, if a defendant has completed his term of incarceration and has begun serving his probationary sentence, upon revocation of probation, the judge's only option is to impose the remainder of the sentence that was suspended, because he has no jurisdiction to amend the sentence. This amendment will specifically provide that a judge has other options upon revocation of probation, allowing him to revoke a sentence and impose all or a part of the suspended sentence.

Rosa Davis stated that it was important to note that a split sentence is the only truth-in-sentencing that we have right now and a split sentence also allows the judge to stay in control of the case instead of transferring the case to the Board of Pardons and Paroles. It leaves the case in the community where the community has control - which is a selling point for the use of a split sentence.

5. Pardon and Parole Facility Fees (HB 531 – Ward, M. Black and Wood)

This bill was included in last year's Legislative package at the request of Bill Segrest, Director of the Board of Pardons and Paroles and Sentencing Commission member. It amends § 15-22-30 of the *Code of Alabama* 1975, to increase the amount that can be deducted from the wages of residents of residential facilities operated by the Board, from 25% to 45%, designated for the payment of court costs, fines, fees, assessments and victim restitution. This comports with the amounts now authorized to be deducted in 15-18-180 *Code of Alabama* 1975, as amended by Act 2003-353, for defendants assigned to a work release or other residential program operated by a community corrections provider. Of the person's earnings, 25% of the gross wages are to be applied to costs incidental to the person's supervision and upkeep, 10% to court costs, fines, court-ordered fees and assessments and 10% to victim restitution. After the full 45% is deducted for these expenses, the remainder of the wages is to be credited to an account established for the person by the Board and may be paid out for dependent care, savings and spending money.

Changes were made from last year's bill to specifically provide that if either fines, costs or court-ordered fees are paid in full, then the 10% shall continue to be deducted and applied to restitution, or vice versa. Based on the recommendation of the Budget office, the provision directing distribution to the General Fund for expenditure by the Board of Pardons and Paroles was changed to reference the Probationer's Upkeep Fund operated by the Board of Pardons and Paroles.

***6. Amendment of Burglary 1st and 2nd Statutes to Eliminate Loot Rule for Deadly Weapons. (New Bill)**

This bill amends §§ 13-7-5 and 13-7-6 of the *Code of Alabama* 1975, relating to burglary in the 1st and 2nd degrees to require the offender to either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to commit these crimes. It is specifically provided that the fact that a deadly weapon or dangerous instrument is one of the items stolen in the burglary does *not* constitute “use” or “threaten the use” of the deadly weapon or dangerous instrument.

7. Maximum Fine Increase (HB 608-M. Black, SB 341 – Smitherman)

Increase of *Authorized* (not mandated) Fine - 300% Increase

This bill amends §13A-5-11 and § 13A-5-12 of the *Code of Alabama* 1975, to increase (based on the inflation index), the maximum amount of fines authorized to be assessed upon conviction for a felony, misdemeanor or state violation. The judge retains discretion to impose any fine amount; the amendment simply authorizes a larger fine in appropriate cases.

The fine amounts in the Criminal Code have not been revised since they were originally set in 1977. The Commission included this bill in its Legislative package last year, justifying the increase based on the inflation index, the fact that the fine amounts in the Criminal Code have not been revised since they were originally set in 1977, and that the increased amounts are similar to those authorized to be imposed in surrounding states. The proposed fines are comparable to those authorized in Tennessee, Georgia and Virginia and to the fines imposed for new offenses in Florida, Mississippi and South Carolina (states that do not have a general fine statute or that have not revised their statutes in many years.)

8. Trafficking Statute (HB 533 – J. Robinson and Black)

Alabama’s current trafficking statute fails to provide a fine for the most serious trafficking offense. This bill, introduced in last year’s legislative session, amends Alabama’s trafficking statute, §13A-12-231, to provide a fine for the most serious trafficking offense and to correct the fine for trafficking in hydromorphone involving 4,000-9,999 pills to impose a graduated increase consistent with the other provisions of the statute. As now written the fine for this offense is the same as trafficking in hydromorphone involving 1,000-3,999 pills. Lynda acknowledged that this bill may not bring in much in the way of additional revenue; however, she said that there could be drug dealers that do have money, and there have been instances in which defendant’s charged with drug trafficking have been released on a half million dollar bond. This bill would simply allow a judge to assess a fine on these defendants when they are convicted.

***9. Correction of Theft of Property 2nd Degree, Statute (New Bill)**

This bill is needed to change the theft of property 2nd statute to reflect the value changes made by the Legislature in 2003 as recommended by the Sentencing Commission. The statute was inadvertently amended in 2004 using the prior values of \$250 -\$1000 rather than \$500-\$2500 and grammatically changed to spell out the amounts, thereby amending that part of the statute. Lynda explained that the correction of the theft of property

second degree statute was a bill the Commission was requested to include in its legislative package by the Attorney General and Legislative Reference Service.

***10. DUI Statute – Out of State Convictions (New Bill)**

This bill amends Alabama’s DUI statute to specifically authorize the use of out-of-state DUI convictions for enhanced punishment under the provisions of Alabama’s DUI, as well as in-state or out-of-state convictions pursuant to municipal ordinance violations. In *Ex parte Bertram*, 884 So.2d 889 (Ala. 2003), the Alabama Supreme Court held that, as currently written, prior out-of-state convictions for DUI cannot be considered for enhancement purposes, only convictions of DUI in Alabama can be considered as prior convictions. *See also, Altherr v. State*, 2004 WL 1909277 (Ala.Crim.App. 2004). Lynda explained that when she was drafting the bill to amend the statute to authorize the use of out-of-state convictions for enhancement purposes, she also looked for cases regarding the use of DUI convictions charged as municipal ordinance violations. She stated that she couldn’t find where the issue had been raised in the appellate courts. Although they have used municipal ordinance violations to enhance punishment under the DUI statute, to avoid an adverse ruling in the future, the bill was drafted to specifically authorize consideration of prior DUI convictions charged as municipal ordinance violations, whether in-state or in another jurisdiction.

**11. Medical and Geriatric Release
(HB 603 – L. Coleman, SB 339 – Smitherman)**

This bill is patterned after the bill that was introduced last year; however the bill’s provisions were changed substantially in the House after discussions with the Office of Prosecution Services and representatives of the departments and agencies that would be affected. Lynda acknowledged that the Commission had originally voted not to pursue this bill during this legislative session, but rather, requested that the Board of Pardons and Paroles adopt and publish administrative procedures for medical and geriatric release and get with DOC to determine which inmates that would be eligible. Lynda told the Commission that last year we forecast that there were 311 that could be eligible under the permanent incapacitated provision and 52 terminally ill inmates that might be eligible, for a total of 363 geriatric and medical inmates that it could affect.

Although the Commission voted not to pursue this bill, Lynda requested that the Commission reconsider whether it should be included in this year’s legislative package. She explained that Senator Smitherman had already prefiled the bill, under the assumption that the Commission would pursue the same bills as last year. The Commission voted to include the bill in its legislative package this year but asked that the staff be sure that it has the same provisions as in the engrossed version of HB 603, sponsored by Representative Linda Coleman last year.

Lynda explained that the bill provides for discretionary medical and geriatric release by the Board of Pardons and Paroles of “terminally ill, “permanently incapacitated,” and geriatric inmates. It defines a geriatric inmate as an inmate convicted of a non-capital felony offense and sentenced to the penitentiary for less than life without parole who is 70 years of age or older and suffers from a chronic life threatening disease related to

aging and who poses a low risk to the community and does not constitute a danger to himself or herself or society.)

***bills with asterisk are new bills.**

Requests for Commission's Support to Change Good Time Law

Lynda informed the Commission members that she had received at least 5 letters requesting that the Commission recommend amendment of the good time statute to authorize good time credits for inmates sentenced to imprisonment for 20 years or less. She also noted that at least one other member of the Commission had also received a similar form letter which was being circulated by family members of prisoners. She explained that the letter states that they are writing on behalf of a family member that was sentenced to over 20 in prison as a first offender. Lynda told the members that she had been requested to bring the matter to the Commission's attention.

Judge Colquitt stated that in the future this type of communication should be referred to the appropriated committee. He cautioned that it would be a mistake to take one item like the good time law and consider changing it without comparing it with the other things that the Commission is working on. If we refer such matters to a committee, it could consider it along with the other changes the Commission is considering.

Lynda said that she would refer this recommendation and others she receives to Dr. Harris's legislative committee. The procedure that would be followed in the future would be that all recommendations for statutory changes would be forwarded to that committee for their consideration. Rosa noted that the Standards Committee might need to look at the recommendations as well.

Board of Pardons and Paroles Update & Recommendations for Annual Report

Bill Segrest, Director of the Board of Pardons and Paroles and the Board's representative on the Sentencing Commission, provided an update on the Board's activities and budget. He advised the Commission that the Board had just made their presentation to the joint legislative body about their budget and he asked the Commission to support some of their requests, namely: 1) Additional money to maintain the same level of probation officers they now have; and 2) Sufficient funding to continue the programs already started. Bill reminded the members that the Board had received a large increase in their 2004 appropriations, which was continued in 2005, plus an additional amount for transition centers. Mr. Segrest told the Commission members that the Board is doing well fiscally in 2004 & 2005, but that they would like to continue to keep the probation officers that were hired, which means they need the money to continue in 2006.

When asked about his officer-to-probationer/parolee ratio, Bill explained that caseload was not really a good measure of the efficiency of a probation/parole officer because there were many things that made up the work of a probation/parole officer. He stated that caseload represents only the number of people that they actually supervise. In Alabama that makes up probably 30 to 40% of the total time that probation/parole officer

spends at work. The balance of his or her time is spent doing what we call workload. That involves all of the paperwork that the officer has to do to meet the demands of the courts and the parole board. Completing all the Pre/Post Sentence Investigation (PSI) reports and violation reports, and conducting counseling sessions all come under the general heading of "workload." Those tasks are further broken down into subtasks. Bill explained that a PSI takes an average of about 5 hours to complete. A violation report takes an average of about an hour to complete, but could take as much as 16 hours or as little as 2 hours.

Mr. Segrest further explained that caseloads are broken down into about 5 different levels of supervision: One level is annual reporting, which means that the officer has to check his email to make sure that the person has not been contacted by a law enforcement officer within the year and make one contact in January with that person. That type of supervision represents one end of the spectrum, which is the least intensive. On the other end of the spectrum is supervision; requiring perhaps 3 face-to-face contacts per week with the offender, contact with employers and family members, etc. The amount of time required from an officer is dependant on many factors, not just caseload. Therefore, when we talk about average caseload, it is not really saying a whole lot, but it is the easiest way to describe the amount of time we have available.

Bill noted that in 2005 the Board has budgeted for the hiring of an additional 35 officers, but receiving that funding depends on whether they can collect more supervision fees than expected. Mr. Segrest told the Commission that the Board was probably not going to be able to get to 35 new officers this year. The Board's goal is to get to reach a 100 to 1 ratio of officers to offenders. In order to do that, the Board would have to hire about 85 additional officers in 2005 and 2006. The Board is asking for an additional \$4 million for staffing in addition to the funds to provide for the hiring of more officers. In regard to L.I.F.E. Tech, Mr. Segrest stated that the transition center for females at the old Tarwater facility has been very effective. Around 300 women were diverted from Tutwiler prison to the Life Tech program. He stated that there are about 160 women parolees there right now and approximately 150 have graduated. He noted that of those that graduated, only 12 have come back for violations and none of those for violations of the law - they were all technical violations. According to the Board's statistics, the transition program is successful and has merit. The Board is now requesting funding to open a transition center for males.

Community Corrections Update

Chris Booth, Legal Research Assistant and Community Corrections Coordinator for the Commission, addressed the members, providing them an update on the expansion of community corrections programs. Chris advised that the Sentencing Commission staff has assumed the tasks relating to community corrections programs that was previously performed by The Sentencing Institute. He explained that our goal is to add new programs, establishing a statewide network, and to improve the programs that already exist. Chris stated that he has been working with Blount County of the 41st Judicial Circuit, who has a plan ready to go but must be signed off by their County Commission. In addition, the second circuit (Butler, Lowndes, Crenshaw) is in the process of getting

approval from their county commissions of plans to be submitted to the Department of Corrections.

Chris also told the Commission members that he had been working with a committee of the Alabama Association of Community Corrections established to develop uniform standards for their programs. He advised them that he had just attended a two day meeting of the committee in Shelby County this week.

Reviewing the success of community corrections programs, Chris advised the members that there had been an increase in the number of paid-for felony diversions by DOC since last year when diversions only represented 13% of the total inmates convicted and sentenced. In 2003 community corrections programs had 1700 diversions and in 2004 they did 2000. He noted that these programs have not reached their capacity limits and can continue taking more inmates or more non-paid for inmates.

In response to a question regarding the supplemental appropriations for diversion, Chris advised that with the appropriations requested an additional 1500 offenders could be diverted. Chris stated that it would basically double the ability to pay for these felony diversions. He did caution that it might not be possible to immediately fill programs up to their capacity limits because there are inmates that are not suitable for community corrections, i.e., they don't fit the requirements - they are charged with a crime that is excluded or they are considered violent or dangerous. Chris noted that having enough disciplinary matters in DOC could also exclude an inmate from participating in a community corrections program. In addition, it is required that the sentencing judge grant approval and the community corrections program must accept the referral before an inmate is diverted from the penitentiary. He stated he didn't foresee getting supplemental appropriations for the entire amount requested the first year, but stated that some of the additional money approved could be used start-up programs that don't exist.

Rosa noted that the purpose of the appropriation request is to increase diversions and at the same time provide start-up cost for other jurisdictions that want to establish community corrections programs. She noted that the state can not, and should not be expected to provide all of the needed funding, but could at least assist so that every county in Alabama had a community corrections program.

Chris stated that it was his understanding that the money would be used for existing programs and also to provide start-up funds for new programs. He said that in previous years DOC had provided start-up funds and that some of the funds that became available through the supplemental appropriations could be used to start up or expand programs.

Sentencing Commission Funding

Providing a brief update as to the financial situation of the Sentencing Commission, Lynda stated the Commission is still surviving on a grant, and along with state appropriations granted for FY 05 has enough money to get through this year. She told the members that the Commission's reform efforts have been noted nationally, and that fact is reflected by the funding received from Congress.

Update District Attorneys Association's Meeting

Ellen Brooks gave an update on the district attorneys association meeting. Ms. Brooks addressed the Commission, stating that she has periodically updated district attorneys at their business meeting. Ms. Brooks stated that they did not take a formal vote on any of the Commission bills but they opened it up for discussion and did a survey, as Lynda had requested. Ms. Brooks further stated that she thinks that there is a much better understanding among the district attorneys of what the Commission is about and why the Commission is proceeding the way that it is. She advised that there are 14 new district attorneys in the state of Alabama, which provides a wonderful opportunity, as well as a challenge, because many of them surprisingly were not in DAs offices immediately prior to being elected. Ms. Brooks stated that it has been an educational chore and with Lynda's and Rosa's help they were able to give them all a copy of the proposed worksheets and guidelines.

Ms. Brooks stated that she felt the district attorneys now had a better understanding of the sentencing standards and are, therefore, supporting them more publicly than they ever did before. Ms. Brooks stated that some of the Commission's recommendations such as adding fines to crimes that never had them, the use of the DUI out-of-state convictions were favored by the district attorneys. Ms. Brooks also advised the Commission that she has actively supported the sentencing standards by telling the district attorneys how they are going to help prosecutors, especially the new ones.

Status of Database and Simulation Model Revisions

Melisa Morrison reported that John Speir, data consultant of Applied Research Services, came to Alabama on January 18th and installed the Commission's simulation model. She explained that Dr. Speir also conducted some training on how to use the simulation model and how to adjust cut points. Mrs. Morrison stated that through use of the simulation model we have been able to create different scenarios, changing the cut points for the drug and property worksheets, printing out those results, and analyzing the long-range effects of these changes.

Mrs. Morrison noted that another aspect of the simulation model was that other factors could be adjusted. She stated that we can select just one worksheet and analyze the effect that it would have instead of all 3 worksheets, and those offenses not covered under the standards, and determine the impact. Another aspect of the simulation model that John will be continuing to train Mrs. Morrison on is how changes in sentencing practices will affect the current corrections system and in the future. For example, she stated that we are considering the prison impact if the standards were used in 75% of the

cases. In the future Dr. Speir plans to develop and fine tune the probation and parole revocation module which is built into the simulation model.

The Commission members were advised that in September of 2004 the Commission was awarded a Congressional grant through the Department of Justice. With this grant the Commission wants hopes to continue working with Tammy Meredith and John Speir in Atlanta. With this grant, assuming that the standards pass, we would like to have ARS's assistance in analyzing the sentencing data of offenders sentenced on or after the effective date of the time-imposed standards; modify the simulation model that we have now to reflect the new data trend based on the statistics of offenders sentenced under those time imposed standards; and begin development on a second simulation model designed to predict the impact of the implementation of the time served standards which are a couple of years away.

Statistician Position

Mrs. Morrison reported that, with the DOJ grant, the Commission is also hoping to hire a statistician to work fulltime with the Commission. The Commission has received numerous applications for this position, which officially closes on January 31st. She stated that interviewing will begin the first or second week in February.

Jim Austin Report - JFA Research on Alabama Department of Corrections

Lynda briefly mentioned the report completed by Dr. Jim Austin and presented to the Governor, which mentioned that there were approximately 4,000 non-violent offenders now incarcerated in DOC facilities that could safely be diverted to community correction programs or paroled. She said she talked with Paul Whaley with the Department of Corrections who said that Commissioner Campbell had requested a list of these offenders, which he understood would be forthcoming from Dr. Austin this week. He said that DOC would share this list with the Commission when it is received.

Rosa Davis explained that Jim Austin was hired by a non profit group to come in and assess Alabama's prison system. She noted that the Carter Goble report, the Commission's 2003 report, and now one more person who is familiar with the system, has come in and made a study and come out with some of the same recommendations. Rosa stated that Dr. Austin had come out with a recommendation that there were several thousand offenders in the penitentiary right now who would, under his analysis, be considered nonviolent. She told the Commission members that staff has asked to be supplied with the AIS numbers of those offenders in order that the Commission could do a further analysis. A similar analysis would also be done by the Department of Corrections to identify what the characteristics of those offenders are and if they could be directed to community corrections, paroled, or perhaps for those offenders serving a split sentence, reviewed for early release. Rosa noted that one thing that wasn't said about splits was that the number of people in a prison is based on two things primarily: how many people are put in and the length of stay. If adjustments can be and ought to be made in split sentences, then the sentencing standards provide the mechanisms for making those adjustments through recommendations that are made for splits under the standards.

Rosa stated that in looking at the recommendations for splits in the standards that have been proposed by the Commission, there are adjustments made so that the recommendation is not the ordinary 1, 3, 5 years or 1 year and 18 months. There are other alternatives listed, i.e., 6 to 12 months, 9 to 16 months. Under the standards there would be much more variation than we are now experiencing. Once the Legislature adopts the standards, she acknowledged that the Commission would need to work extensively with judges to show them how to use the standards, including those associated with split sentences. Reduction in the amount of time being spent on a split is what has to be done after we implement the first standards.

Dr. Austin made a number of recommendations for Alabama. In looking at these recommendations there are things that the Commission has already accomplished or in the process of accomplishing. Rosa did note that in making one of his recommendations, Dr. Austin stated that Alabama had no population projection for the prison and that it would take him one to two months to fix this. The Alabama Sentencing Commission has been working with population projections for the last 3 years. On January 18th we got the updated simulation model which brings us current through Dec. 2004 for making projections of what the prison population is going to look like in the future. Utilizing this simulation model, when things change it gives us the ability to go in predict the effect of the change. Rosa stated that she thought Dr. Austin's report supports and confirms what the Sentencing Commission has been doing.

Annual Report

Lynda apologized to members for not getting the report to them ahead of time, but she asked that the member look over the draft report during the lunch break and after thoroughly reviewing its contents, email any recommendations or comments back to her. She told the members that the deadline for submitting the report to the Legislature would be February 15th.

Chairman Colquitt announced that the Commission would not hold another meeting until April. Members will be notified of date when confirmed. He thanked members for their attendance.

There being no further business the meeting was adjourned.