

Alabama Sentencing Commission

Minutes of Commission Meeting
January 9, 2004

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, January 9, 2004. Present at the meeting were:

Commission Members:

Honorable Joseph Colquitt, Chairman, Retired Circuit Judge, Professor,
University of Alabama School of Law, Tuscaloosa
Honorable Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
Stephen Glassroth, Esquire, The Glassroth Law Firm, P.C., Montgomery
Dr. Lou Harris, D. P. A., Faulkner University, Montgomery
Emily Landers, Montgomery
Honorable P. B. McLaughlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark
Honorable David A. Rains, Circuit Judge, 9th Judicial Circuit, DeKalb

Advisory Council:

Adolph South, Tuscaloosa

Others Attending:

Sharon Bivens, Legislative Fiscal Office, Montgomery
Becki Goggins, The Sentencing Institute, Montgomery
John Hamm, Montgomery Community Corrections
Steve Hayes, Department of Corrections, Montgomery
Eugenia Loggins, District Attorney, 22nd Circuit
Joe Mahoney, Director, Mobile County Community Corrections
Chris McCool, District Attorney, 24th Circuit, Carrollton, AL

Staff:

Lynda Flynt, Director
Melisa Morrison, Research Analyst
Mark Dowdy, Intern, Sentencing Commission

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m., with nine members, including the Chair, present. Chairman Colquitt called the meeting to order and made introductory remarks. He thanked members for their attendance, noting that there were many bills on the agenda that had to be voted on, which were the result of the hard work of the Legislative Committee and Standards and Worksheet Committee. Judge Colquitt also thanked Mark Dowdy, the Commission's intern, for his research on the three strike laws and drug statutes, noting that he had put in many hours on these projects. He advised the members

that Mark would present an overview of his findings to the Commission on other states' three strikes laws compared to Alabama's Habitual Offender statute later during the day and a handout summarizing these laws would be distributed.

To ensure that all items on the agenda were addressed, Chairman Colquitt stated that he was invoking Roberts Rules Order for today's meeting and indicated that the Commission would first consider only the bills approved by the Legislative Committee. Emphasizing the need for a vote, all members were requested to stay for the entire meeting to maintain a quorum. He stated that the bills that are approved today will be included in the Commission's 2004 Legislative package and would be an integral part of the Commission's Annual Report to the Legislature. Judge Colquitt reminded the members of the Commission and others in attendance that the copies of the bills that would be distributed today for their review were still in draft for and were not for distribution. He asked that these bills be returned to the staff at the end of the meeting to avoid problems that may occur if these "draft" proposals were circulated before the final changes were made.

In addition to the 16 bills that were included on the agenda, the Commission members were reminded that pursuant to the provisions of last year's Sentencing Reform Act, Act 2003-354, the Commission would be introducing a bill proposing voluntary historically-based sentencing standards for the Legislature's approval. If approved, these standards would become effective October 1, 2004. Rosa Davis, Chair of the Sentencing Standards and Worksheets Committee was then asked to report on the progress that her committee had made developing the standards and worksheets.

Sentencing Standards and Worksheets Committee **Rosa Davis, Chair**

Ms. Davis thanked the committee members for all their hard work and noted that several judges, two defense lawyers and two district attorneys, Tommy Smith and Virginia Loggins (who were present at the Commission meeting), had been added to the Committee. She explained that work had been delayed awaiting the results of our latest PSI survey, but that we were now in the process of finalizing the data on drug and alcohol offenses, and had entered the data on all property offenses, which was now being reviewed and analyzed.

The next meeting of the Committee has been scheduled for February 5th and 6th, at which time the committee will look at property and finalize the drug standards and worksheets. Ms. Davis stated that a bill will be presented to the Legislature after the Commission's next meeting (February 20, 2004), but it will only include standards for drug and property offenses. Due to the time necessary to analyze the personal offense data, we will have to amend the bill to add the standards for personal offenses when the data is complete.

**Legislative Committee
Dr. Lou Harris, Chair**

Dr. Lou Harris addressed the Commission members, thanking those that had served on the Legislative Committee for their time and their input. Working down the agenda and presenting only those that were approved by the Legislative Committee, the following bills were considered and approved, tabled until the next meeting, or rejected:

BILLS APPROVED

1. Supplemental Appropriations for Community Corrections

The Commission encouraged that this bill be a priority in the legislative package presented this year because funding is essential for state-wide expansion of community corrections programs and is a fundamental part of the Commission's sentencing reform efforts. Funding in the amount of \$5.5 million was a major part of the Commission's recommendation in 2003 for full implementation of the Community Punishment and Corrections Act (2003-353), and is required before the Department of Corrections (DOC) establishes a Community Corrections Division and appoints a full-time Director. An appropriation of \$2.9 million was included as a line item in DOC's budget for Community Corrections and the \$2.6 million requested in this bill will provide DOC with the \$5.5 million originally requested.

THE COMMISSION UNANIMOUSLY APPROVED THE PROPOSED BILL TO INCLUDE IN THE 2004 LEGISLATIVE PACKAGE.

The ASC Legislative Committee discussed the need to pursue this bill because funding had been a major part of our Community Corrections bill and is required before DOC establishes a Community Corrections Division and appoints a full-time Director. An appropriation of \$2.9 million was included as a line item in DOC's budget for Community Corrections and the \$2.6 million requested in this bill will provide DOC with the \$5.5 million originally requested. APPROVED

**2. Bondsman's Process Fee for Community Corrections
*Contingent on Clerk's Approval***

This bill amends § 15-13-125, Code of Alabama 1975, to authorize the assessment of a \$15 fee for the issuance of bondsman's process and to provide for distribution of \$15 of this fee collected in district and circuit courts to the State-County Community Corrections Partnership Fund created by Act 2003-353. Bondsman's process fees collected in municipal courts are to be distributed to the Corrections Fund of the municipality and earmarked for the funding of community corrections and work release programs. Under existing law, bondsman's process must be issued by the court clerk upon the request of any bondsman and there are no fees assessed upon

application for, or issuance of, the process. By assessing a fee, this bill will not only raise revenue, but should also reduce the number of requests, and hopefully decrease some of the clerk's workload. (Subsequently changed to \$20, with \$5 of the fee earmarked for the Clerk's fund, at the request of the Clerks during the UJS Legislative committee meeting.)

This bill also provides for the distribution of the \$50 penalty that is now authorized to be assessed for tardy returns of bondsman's process. Although current law authorizes assessment of this penalty, no fund is established for distribution of this fee when collected in district or circuit court. Under the provisions of this bill, (as changed, based on the clerk's recommendation) fees collected in district and circuit courts are authorized to be distributed to the clerk's fund created by § 12-17-225.4 or, for counties that do not have a Clerk's fund established, the Clerk's Administrative Fund established by this bill. The \$50 penalty collected in municipal courts is to be deposited into the municipal general fund, which is now authorized under existing law.

THE COMMISSION UNANIMOUSLY APPROVED THE PROPOSED BILL TO INCLUDE IN THE 2004 LEGISLATIVE PACKAGE, PROVIDED THAT THE CIRCUIT CLERK'S ASSOCIATION APPROVED.

The ASC Legislative Committee recommended that the Code section, establishing the State-County Community Corrections Partnership Fund [§ 15-13-125, Code of Alabama 1975 (2004 Cum. Supp.)] be referenced rather than Act 2003-353, throughout the bill.

3. Parole Reform Act

This bill amends § 15-23-36 to provide that the notice of hearings shall:

- 1) be sent to victims named in the indictment (or, if the victim is deceased, the victim's immediate family) by certified mail, return receipt requested, at the last address contained in the Board's files;
- 2) contain the actual time the prisoner has been held in confinement as computed by the Department of Corrections;
- 3) contain The date of "sentence" rather than the date of "conviction";
and
be provided to the Chief of Police of the city or town only if the crime was committed in an incorporated area with a police department.

After an explanation of the bill's provisions by Bill Segrest, Director of the Board of Pardons and Paroles, and after addressing some of the questions raised by the Commission members and attendees, the Commission approved this bill as drafted by the Board. APPROVED

ASC Legislative Committee - It was noted that a copy of this bill was provided to the Sentencing Commission members at their last meeting. Bill Segrest explained the major provisions of this bill, (noted in the summary attached to the front) and emphasized the importance of changing the notice provisions to authorize that notice be provided to victim's named in the indictment at their last known address in the Board's files by certified mail. He strongly encouraged the committee to recommend that this bill be a part of its legislative package.

The Committee recommended amendment of the bill to include a provision to notify victims at the time of sentencing of the Board's notification procedure for future actions (perhaps with victim impact statement). It was also recommended that the Board undertake a public notice campaign for 12 months after passage of the act to publicize the board's new victim notification process.

APPROVED WITH AMENDMENTS

4. Amendment of § 15-22-30 – Increase in P & P Residential Facility Fees

This bill increases the amount the Board of Pardons and Paroles can deduct from the wages of residents of their community residential facilities from 25% to 45%, with the additional 20% designated for the payment of court costs, fines, fees, assessments and victim restitution. This is consistent with the amount now authorized to be deducted in § 15-18-180, 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 incident to the person's supervision and upkeep, 10% to court costs, fines, court-ordered fees and assessments, and 10% to 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.

This bill, drafted based on the recommendation of the ASC Legislative Committee, was approved with amendments to ensure that the entire 45% always be deducted for fines, costs, fees, assessments and restitution, and costs incident to confinement. APPROVED with Amendment.

5. Increased Fines for Felony Offenses

Fine increase by 300%

This bill amends § 13A-5-11 and § 13A-5-12 of the Code of Alabama (which has not been amended since 1977) to increase, based on the inflation index, the maximum amount of fines authorized to be assessed upon conviction for a felony or misdemeanor offense as follows:

	<u>Current/1977 Amt.</u>	<u>New Proposed</u>	<u>Present Value*</u>
Class A felony	from \$20,000 to	\$60,000	\$61,046.10

Class B felony	from \$10,000 to	\$30,000	\$30,523.05
Class C felony	from \$5,000 to	\$15,000	\$15,264.03
Class A Misd.	from \$2,000 to	\$6,000	\$6,105.61
Class B Misd.	from \$1,000 to	\$3,000	\$3,052.81
Class C Misd.	from \$500 to	\$1,500	\$1,526.40

**Based on consumer inflation index*

These fine amounts are the maximum *authorized* (not required) to be assessed upon conviction. Pursuant to § 12-19-152 of the Code of Alabama 1975, all fines collected in state courts, with the exception of municipal ordinance violations and where otherwise designated for use by state agencies or departments, are deposited in the State General Fund.

Definition of “Gain” - Exception for drugs

Under current law, a fine in the amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by commission of the offense is authorized to be assessed against a defendant. This bill proposes to amend the definition of “gain” as defined in § 13A-5-11 and §13A-5-12, excepting controlled sentences from the definition of “gain,” since as presently worded (“the value of property derived from the commission of the crime, less the ...value of property....seized or surrendered to lawful authority prior to the time sentence is imposed”), there would never be a gain derived for any drugs seized.

This bill was approved, with an amendment deleting the proposed provisions relating to fines being not less than the full street value of drugs or marihuana involved in the offense. The vote of the Commission was 6 yeas, 1 nay, and 1 abstention. **APPROVED**

*The ASC Legislative Committee discussed increasing the fine amount to present value, which would be 300% of the current amount. It was pointed out that even with this increase the judge retains discretion to impose any amount of fine and that this amendment would simply authorize a larger fine in appropriate cases. Some committee members objected to this large of an increase because nonpayment of a large fine would make it impossible for the offender to have his voting rights restored. The Committee approved the fine amounts in the bill as drafted, with increase justified based on inflation index. **APPROVED***

Fine Authorized Not Less than full Street Value of Drug Involved
While approving the provision relating to the authorization of a fine not less than the full street value of the drug involved in an offense (drafted based on an Illinois statute that had a mandatory provision), the committee noted that this would require testimony on the street value and may be opposed by prosecutors

and attorneys. **APPROVED**

Definition of “Gain” - Exception for drugs

*The legislative committee reviewed and approved the amendments to section (1)(a)(4) of § 13A-5-11, excepting controlled sentences from the definition of “gain,” since as presently worded (“the value of property derived from the commission of the crime, less the ...value of property....seized or surrendered to lawful authority prior to the time sentence is imposed”), there would never be a gain derived for any drugs seized. A similar exception was noted in the statute setting fines for misdemeanors (p. 3, lines 7-8) for marihuana seized and involved in the commission of an offense. **APPROVED***

6. Medical and Geriatric Release

This bill provides for discretionary medical and geriatric release by the Board of Pardons and Paroles of “terminally ill,” “permanently incapacitated,” and “geriatric inmates,”* who do not constitute a danger to themselves or society and establishes procedures for submitting applications for consideration of eligibility and time frames for the Board and the Department of Corrections. The authority to grant medical or geriatric release is within the Board’s discretion and not subject to judicial review in either the exercise of authority or the manner in which it is exercised. In determining an inmate’s eligibility for release the Board is to consider the inmate’s 1) risk for violence; 2) criminal history; 3) institutional behavior, 4) age (currently and at the time of the offense); 5) the severity of the illness, disease or infirmities; 6) all available medical and mental health records; and release plans, which include alternatives to caring for terminally ill, permanently ill, or geriatric inmates in traditional prison settings. Inmates convicted of capital murder or sentenced to life without parole are not eligible for release under the provisions of this bill.

**A geriatric inmate is defined as an inmate convicted of a non-capital felony offense sentenced to the penitentiary (for less than life without parole, is 65 years of age or older, and “who suffers from a chronic infirmity, illness, or disease related to aging and poses a low risk to the community (does not constitute a danger to himself or society).”*

The Commission approved the amendments made by the ASC Legislative Committee and made several other amendments. **APPROVED AS AMENDED. 6 years and 2 nays**

Amendment 1. Factors for consideration in both medical and geriatric release should be consistent and with “Level of risk of violence” and “Criminal history” elevated to #1 and #2 respectively. Unanimously approved.

Amendment 2. Consideration of “Mental condition” should not be included in the definition of “permanently incapacitated inmate. 6 years and 2 abstentions

Amendment 3. The notice provision in Section 5 F should be amended to be consistent with the notice provision in the Parole Reform Act that is being proposed by the Commission.

Amendment 4. Amend definition of “permanently incapacitated inmate to read ...is permanently and irreversibly incapacitated and (rather than “or”) requires long term residential care.”

Amendment 5. Amend definition of “geriatric inmate” to apply to persons 65 (rather than 60) years of age or older.

Amendment 6. Amend definition of “terminally ill inmate” to apply to eligible inmates who have “an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 12 months (rather than 6 months) and does not constitute a danger to himself or society.”

Amendment 7. Amend eligibility factors for both medical and geriatric release to provide that the age of the inmate now and at the time of the crime should be considered.

Amendment 8. Add a specific provision that will ensure the Act does not grant any right to parole.

**Amendment 9. Add a provision to address revocations of release to allow review and reincarceration for medical or geriatric inmates whose medical condition improves or who becomes a danger to themselves or others. Address as a rescission of parole rather than revocation of parole.
5 years, 2 nays and 1 abstention**

Amendment 10. Change the time frame in Section 5 D for DOC to submit an application form for medical parole of a terminally ill inmate to the Board from 5 days to 30 days.

Amendment 11. Amend Section 6C relating to the time within which DOC shall submit an application for geriatric release to the Board from 30 days to 60 days. 6 years and 2 abstentions

Amendment 12. Amend Section 5C relating to medical parole of an inmate that is permanently incapacitated to change the time frame for

submission of the application form by DOC to the Board from 15 days to 30 days.

Amendment 13. Amend bill to provide that medical or geriatric parole shall not be granted to any inmate convicted of capital murder or inmates sentenced to life without parole.

The bill presented to the ASC Legislative Committee was a revised bill, amended in attempt to address some of the concerns that had previously been noted by Pardon and Paroles and the Department of Corrections. In reviewing this new proposal, Bill Segrest advised the Committee that staff attorneys for the Board had noted several problems with this draft. Some of the specific problems mentioned were: 1) It creates a liberty interest in release; 2) Time constraints are mandatory and would result in liability of the department if unable to comply; 3) Inadequate provision for defendant's with existing conditions at the time of the offense 4) Would require the Board to approve medical care plans; 5) mandates parole conditions 6) time limits are unrealistic in view of existing requirements for notifying victims and victims families since often time there is not name and/or address for the victim; 7) Medical and geriatric release is now authorized for most inmates (not those serving life without parole and there are no time limits set upon receipt of applications); and this bill is really just shifting the expenses of inmates from DOC to federal and state agencies.

The general consensus of the committee was that a Medical/Geriatric Release bill was needed, but the Board should be given the opportunity to suggest changes in the provisions with which they have problems. The committee requested Bill Segrest to ask the Board lawyer(s) to review and provide specific language that could be added to address their concerns. It was suggested that the time provisions on page 5, section G could be remedied if the notice provisions they are proposing in their Parole Reform bill were included. It was also suggested that language be included to ensure that notice is provided to the prosecutors and judges and that an adequate provision is included addressing revocations of medical and/or geriatric parole.

Age 60 or 65?

There was a discussion on whether the term "geriatric inmate" should be defined as an inmate who is 60 or 65 years of age or older (along with the other qualifying requirements, i.e. chronic infirmity, illness or disease relating to aging). The committee unanimously voted for age 65.

The committee asked how many of the active inmate population are 60 or over. David Horn of the Department of Corrections advised the staff of the Sentencing Commission that, as of this week, there were 620 inmates 60 years of age or older and 356 inmates 65 years of age or older. David is researching the number of ill and infirm inmates, and attempting to determine how many might be considered terminally ill. He advised that between 8-12 inmates die per month from natural causes. He will provide further data to the Commission, including the costs incurred

by the Department in caring for inmates that might qualify for release under the provisions of this bill

Death within 6 months or 12 months?

The majority voted that the definition of “terminally ill inmate” should be one with an incurable condition that would, within reasonable medical judgment, produce death within 12 months. Judge Fielding voiced a strong dissent, and requested that it be noted in the minutes.

APPROVED CONCEPT – REVISED PROPOSAL FROM BOARD TO BE PRESENTED TO COMMISSION

The Legislative Committee of the Association of Community Corrections approved the bill but requested that David Horn of the Department of Corrections provide the Committee and Association with data regarding the number of inmates and costs incurred by the Department for those that may qualify for release under the bill’s provisions. APPROVED

7. Trafficking – Clean-up – Fines for serious offenders

This bill amends § 13A-12-231, Alabama’s Drug Trafficking statute, to authorize assessment of mandatory fines upon conviction of the highest level drug trafficking offense (those in which the largest drug amounts are involved), to be consistent with the other provisions of the statute and corrects the fine for possessing more than 4000, but not more than 10,000 pills of hydromorphone to increase the fine from \$100,000 to \$250,000. APPROVED

The Legislative Committee approved the amendments to the drug trafficking statute.
APPROVED

Since this statute was ruled unconstitutional as applied in the case of Wilson v. State, 830 So.2d 765 (Ala.Crim.App. 2001), if this statute is going to be amended it was recommended that the Sentencing Commission may want to consider amendments that would 1) define the term “mixture” to prohibit dilution or require that the a certain percentage of the drug be represented in the mixture and 2) provide that trafficking would have to contain an additional element and not just depend on the amount of the drug. It was also recommended that all provisions referencing drug amounts by kilo or grams be amended to specify one or the other, not both, since these are not equivalent measurements.

BILLS TABLED UNTIL NEXT MEETING OF COMMISSION
Scheduled for Friday, February 20, 2004

1. Amendment of Split Sentence – Hollis Case

The Alabama Sentencing Commission reviewed the opinion of *Hollis v. State*, 845 So. 2d 5, and agreed that amendment was necessary to clarify the continuing jurisdiction of the trial court over defendants who have completed their incarceration term and are now serving the probation part of the split sentence; to ensure that the judge has options on revocation other than simply revoking and incarcerating the parolee for the remainder of the sentence. Also, based on dicta (?) in another appellate case that brought into question the authority to impose a reverse split sentence (probation before incarceration), the bill will ensure that a reverse split is authorized.

This bill was tabled until the Commission’s next meeting. Judges and members of the Commission and Justice Hugh Maddox, member of the Advisory Council, were asked to review this proposal and make recommendations for amendment at the Commission meeting scheduled for February 20, 2004.

*The Legislative Committee reviewed the opinion of *Hollis v. State*, 845 So.2d 5 and agreed that amendment was necessary to clarify the continuing jurisdiction of the trial court over defendants who have completed their incarceration term and are now serving the probation part of the split sentence, to ensure that the judge has options on revocation other than simply revoking and incarcerating the parolee for the remainder of the sentence. Also, based on (dicta?) in another appellate case the bill will ensure that a reverse split is authorized. **APPROVED***

2. Habitual Felony Offender Act

Mark Dowdy, legal intern for the Sentencing Commission, distributed handouts summarizing 3-strike and repeat offender statutes in all 50 states and U.S. territories and gave a brief presentation of his findings. He noted that Alabama is unlike the vast majority of states, inasmuch as there is no limitation according to type or, degree of the offense or decaying provision (time limits for consideration of the prior convictions). Most states that have repeat offender statutes limit its application to convictions for certain violent and sex offenses. It was noted that Alabama does not even weigh the classification (A,B, or C) of priors convictions except to make an exception for imposition of the most severe penalties for defendants convicted of a Class A felony after having been convicted of three prior felony offenses (in which case those with no prior Class A felony conviction may be sentenced to life without parole.

Two proposals were presented to the Commission:

- Applicable to Violent Repeat Felony Offenders Only

One proposal was to amend the Habitual Felony Offender Act prospectively to apply only to repeat “violent” offenders, applying the definition of “violent offender” as it is now appears in § 12-25-32, [the Sentencing Reform Act, 2003-354, codified § 12-25-30 et seq., Code of Alabama 1975 (2003 Cum. Supp.)]

- Weighing Priors by Classifications

Another proposal was to amend the Habitual Felony Offender Law to weigh the priors, according to classification (A, B, or C) for felons with one and two priors. Because the Legislature recently amended the HFOA for felons with three prior felonies (only considering the classification of priors for those who are subsequently convicted of a Class A felony) and because these type offenders should be sentenced more harshly, the committee suggested that the provisions for defendants with three prior felony convictions not be further amended. Amendment of felons with one or two prior felony convictions with the sentences varying depending on the classification of the prior offense(s) was proposed.

Data was requested on the effect of implementing these provisions and more research conducted on states with decaying provisions, i.e., limiting the consideration of priors to those that occurred within a certain period of time.

Because the members requested more time to review the research material and compare Alabama’s statute with the other states, this bill was tabled until the Commission’s next meeting.

The Legislative Committee - After reviewing both proposals, the majority of the committee voted, as a first preference, to amend the Habitual Felony Offender Act to make it applicable only to violent offenders, as that term is defined in the Sentencing Reform Act. In lieu of listing these offenses in the bill, the committee recommended referring to the statute that defines “violent offender” and “violent offense, ” § 12-25-32. Code of Alabama 1975 (Cum. Supp. 2003). This amendment would be prospective only. APPROVED

Weighing Priors by Classifications

As an alternative, the Legislative Committee approved the idea of amending the Habitual Felony Offender Law to weigh the priors, according to classification (A,B,C) for felons with one and two priors. Because the Legislature recently amended the HFOA for felons with three prior felonies and only considered the classification of priors for those who are subsequently convicted of a Class A felony and because these type offenders should be

sentenced more harshly, the committee suggested that these provisions not be further amended. Data was requested on the affect of implementing both provisions and more research conducted on states with decaying provisions, i.e., limiting the consideration of priors to those that occurred within a certain period of time.

The Legislative Committee of the Community Corrections Association agreed that an amendment to the HFOA was needed and approved the amendments, contingent on approval of the judges.

3. Pretrial Diversion Programs Authorized Statewide

Authorizing DA's to establish in any county (now requires local act)

Establishing General Standards

Encourage to utilize community corrections service

Reporting requirements for all established programs

Provision for Indigent Defendants

This bill was tabled until the Commission's next meeting. Because the District Attorney's Association and Office of Prosecution Services are working on a draft bill for Senator Holley, the Commission members delayed action on this bill, since consideration of a separate bill by the Commission at this time was viewed as premature. Commission staff has provided a copy of our draft bill to Randy Hillman, Director of the Office of Prosecution Services and will meet with him and discuss the provisions we would like to see included in any bill that is introduced.

The Legislative Committee approved a bill incorporating the above concepts and requested that a bill be drafted and presented to the Sentencing Commission for its consideration. Becki Goggins volunteered to review the local acts we had collected and to draft a bill. APPROVED CONCEPT.

4. Marihuana Possession

This bill proposed amendment of §13A-12-213, "Unlawful possession of marihuana in the first degree," to provide that a person would be guilty of this offense and convicted as a felon only after possessing marihuana for personal use after having three previous convictions of unlawful possession of marihuana in the second degree." It was noted that according to the Commission's cohort, 328 inmate per year were sentenced for possession of marijuana and of these, perhaps 1/3 were repeat offenders.

After several suggestions for amendment by the district attorneys present, the bill was tabled until the next meeting of the Sentencing Commission. TABLED

The Legislative Committee approved this bill, but requested that the Sentencing Commission provide an impact statement on this bill. It was noted that according to the Commission's cohort, 328 inmate per year were sentenced for possession of marijuana and of these, perhaps 1/3 were repeat offenders. APPROVED

BILLS REJECTED OR NOT CONSIDERED BY THE COMMISSION

1. Probation Revocation Fee for Community Corrections

After an extended discussion about the wording of the bill as proposed, specifically, whether the fee should be assessed upon "filing" or only upon a final revocation being entered; that assessment upon "filing" could lead to abuse with the frivolous filing of revocation petitions; and that this fee would create an additional barrier for the defendant to successfully comply with the terms of his probation; and assessment upon "filing;" the Commission rejected this bill. REJECTED by a vote of 2 yeas, 4 nays, 2 abstentions.

The Legislative Committee made the following recommendations: 1) Change to provide that the fee was to be assessed "upon the filing of a petition for revocation" rather than as originally drafted, "Upon entry of revocation of probation. 2) A provision should be added to make it mandatory that these fees be collected out of an inmate's PMOD account.

Although there was a discussion on whether to include fees for Municipal Courts, to increase funds in the Municipal General Funds and to gain their support for the bill, it was decided that because this bill is primarily to provide monies for the State-County Community Corrections Partnership Fund, it would be preferable for the Commission Staff to notify the Municipal Court Clerk's Association and make them aware of this bill in the event they want to pursue a separate bill of their own.

Staff was requested to check on the number of revocation petitions filed in the last year to help determine an estimate of the amount of money that might be generated from this bill. APPROVED WITH AMENDMENTS

2. Probation/Parole – Limit Prison Term for Technical Violations

The Commission did not consider this bill because it was not recommended for consideration by the Legislative Committee.

Parole Revocations

Bill Segrest advised the ASC Legislative Committee that the Board of Pardons

and Paroles would probably oppose the bill limiting prison terms on parole revocations based on technical violations because they would see it as an erosion of their discretion. Questions were asked as to how many technical violations occurred in a year's time. Bill reported that over the last 12 months their had been 328 revocations for technical violations, however, some of these included violations based on new charges. He said it was difficult to determine those that were strictly technical violations, since many with new criminal charges were revoked in lieu of being prosecuted. The committee members requested that Bill provide the Commission with additional data on the number of parole revocations based on technical violations. TABLED until Bill Segrest can provide more information on the Board's actions for technical violations.

Probation Revocation

ASC Legislative Committee - This bill would limit a judge's discretion on the amount of time (18 month limit) a judge could order a defendant to serve for a technical violation. The provisions of this bill relating to probation revocations was rejected by the committee because it would impinge on judicial discretion and would be counter to the Commission's legislative charge to retain meaningful judicial discretion. REJECTED

½ Credit for Time Credit for Time Spent On Work Release, Home Detention

The Committee approved amendment of § 15-22-54(d)(3) to provide that half credit shall be provided to probationers who are revoked for time spent in work release programs, intermittent confinement, and home detention. As the statute now reads, although there is a specified presumption that ½ time credit be given, it leaves award up to a judge's discretion, which the committee considered could lead to unwarranted sentencing disparity. APPROVED

Although this change was thought to be similar to the change in the Community Corrections Punishment Act passed last year (§ 15-18-175), that bill actually eliminated the discretionary ½ credit for time spent on work release, in intermittent confinement and home detention. If a change is made in this statute it should be consistent with the CCPA.

3. Additional Drug Fee – Amendment of § 36-18-7

Since this proposed bill was rejected by the Commission's Legislative Committee, it did not consider this bill.

The Sentencing Commission's Legislative Committee reviewed the provisions of § 36-18-7 which now assesses an additional fee of \$100 on all convictions for drug possession, drug sale, drug trafficking and drug paraphernalia offenses for deposit in the Forensic Services Trust Fund, to determine if an additional amount might be added

as a separate fee to help support the statewide expansion of Community Corrections programs. After considering the needs of the Department of Forensic Sciences, the additional fees also assessed on these defendants by the Demand Reduction Assessment fees, along with the court costs that are assessed, the Committee voted not to pursue assessing an additional drug fee. REJECTED

4. Amendments to Community Corrections Punishment Act (CCPA)

This bill was not considered by the Commission because the ASC Legislative Committee rejected the proposed amendments.

Increase in % Deducted from Wages for Community Corrections - REJECTED

The Legislative Committee discussed the need to amend § 15-18-180 of the CCPA to increase the % now authorized to be deducted from an inmate's wages for costs of confinement in a residential facility. After discussing the fact that a total of 45% is now deducted [an additional 20% is deducted for fines, court costs, attorney fees and restitution (10% for costs and fees and 10% for restitution) and comparing the percentages now authorized to be deducted for state work release (40%) county work release (25%) and municipal work release (20%), the committee voted not to increase the amount now authorized. REJECTED

Administrative Expenses of DOC specified in § 3

The Legislative Committee reviewed the provisions of Section 3 contained on page 16 of the handout to determine if specific wording needed to be added to ensure the administrative costs associated with Community Corrections programs incurred by the Department of Corrections could be paid from the funds in the State-County Community Corrections Partnership Fund. The committee determined that the existing language is broad enough to authorize payment of these costs.

The Committee also reviewed this section for other needed changes and determined that none were needed.

NO CHANGES RECOMMENDED

An amendment of § 15-18-175 (d)((3) to authorize reduction of Good Time by Judge and authorize judge to restore GT was recommended by the Legislative Committee of the Alabama Association of Community Corrections. This amendment was a recommended based on the fact that the committee members thought a judge should have as much authority as the DOC over these defendants. The recommendation was made after a discussion of the problems encountered when community corrections offenders with a short release date (due to Good

Time) violate a condition of participation in the program.

The ASC Legislative Committee abstained from voting on this bill, indicating that they needed more input from trial judges. It was agreed that this bill would be presented to the Commission for consideration. TABLED

5. First Felony Offender Bill

After reviewing the bill and expressing their concerns, the Commission members rejected this bill by a unanimous vote. Some of the concerns included were that the bill did not provide an exception for those defendants who had been previously been in drug court and there was no provision for unsealing of the records. REJECTED

The ASC Legislative Committee approved a previous version of this bill and recommended that it be revised to 1) specifically provide that the provisions would not be applicable to offenders who had previously been granted YO status; 2) include a provision to specifically allows judges to take into consideration the nature of the offense (there were 2 objections, favoring an amendment to limit eligibility to only non-violent offenders, which would avoid unwarranted sentencing disparity)) and; 3) include a provision to ensure that the Alabama Sentencing Commission has access to all case information pertaining to first offender adjudications for data analysis purposes. These changes have been made and are noted in italics in the copies distributed to the Commission members.

OTHER PROPOSED TOPICS DISCUSSED BY THE LEGISLATIVE COMMITTEES BUT NOT CONSIDERED BY THE COMMISSION

1. Drug Courts - Reporting component

Central Reporting on Defendants Who Are Approved, Succeed, or Fail|

Both legislative committees agreed that some type of central reporting was needed for drug courts (and community correction programs) for data analysis and to inform judges and prosecutors throughout the state on the defendants that had been approved for these programs and whether the failed or succeeded. Rather than pursue legislative requiring reporting, it was suggested that we work out a procedure through the Supreme Court's Drug Court Committee and through AOC's Midas system.

2. Misdemeanor level for small amounts of drugs

The Legislative committee for ASC voted to consider next year after researching statutes from other states.

3. Steering Wheel Interlock device as alternative for Felony DUI offenders – in conjunction with mandatory treatment and substantial civil penalties for owner who provides access to vehicle.

The committee voted not to pursue.

The Legislative Committee for the Association of Community Corrections indicated that the Commission should pursue the costs of the interlock device and other state statutes, but not necessarily this year.

Judge Colquitt expressed his appreciation for everyone's attendance and announced that the next Sentencing Commission meeting was scheduled for Friday, February 20th.

There being no further business the meeting was adjourned.