

# ALABAMA SENTENCING COMMISSION

## Minutes

November 6, 2009

The meeting was called to Order by the Chairman.

**Commission members** present were: Vernon Barnett, Ellen Brooks, Rosa Davis, Cynthia Dillard, County Commissioner Joe Faulk, Dr. Lou Harris, Judge Ben McLauchlin, Judge David Rains, and Joel Sogol

**Staff** attending included: Executive Director Lynda Flynt, Melisa Morrison and Bennet Wright.

**Advisory Council Members** attending included Judge Bill Cole, Adolf South, Walter Wood, Retired Justice Hugh Maddox, and Jeffrey Williams.

### *Welcome and Introductions*

Judge Colquitt welcomed the Commission members, members of the Advisory Council and guests to the meeting. He introduced and gave a special welcome to the newest member of the Commission, County Commissioner Joe Faulk of the Elmore County Commission, appointed by Governor Bob Riley as the County Commission representative on the Sentencing Commission. Judge Colquitt also gave a special welcome to Dr. Eddie Lancaster, reentry coordinator for Alabama Department of Corrections who attended to give a special presentation of the Department's re-entry program.

In introductory comments, the chair took a point of personal privilege to review some matters with the Commission. He noted that the Fall is the beginning of an especially busy time of year when the demands made upon the Commission's staff are particularly high and challenged to do all that they are required to do. He advised that the staff was struggling to complete the report the Commission is required to file annually during the legislative session. In addition, the Legislative Fiscal Office is beginning to review legislation and asking the Commission for impact statements. The Commission staff must also continue to work on Sentencing Standards and educational efforts, teaching the use of the standards. Judge Colquitt explained that completing this work is challenging, especially when you consider we are the leanest, smallest Sentencing Commission in the United States. What we have is a very small staff that has to work hard and do a lot of tasks. The Chair gave examples of the things that have happened since the last meeting. He advised that Lynda and Rosa, along with Commission members, serve on a lot of Committees, Commissions, and Boards and are out and about across the State talking and visiting with people. Lynda and members have met with the Supreme Court Advisory Committee on the Criminal Rules and the Bar's Criminal Code Revision Committee convened by ALI and the Bar to look at the Alabama Criminal Code which is about 28-29 years old. Some people think it is about time to revisit it and see if changes are warranted. Judge Colquitt advised that four people from the Commission were appointed to that committee and it has already started relying on the Commission staff. The Committee has been reminded that the Commission staff consists of 3 overworked people.

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Commission staff has also met with the Warrant and Indictment Manual Revision Committee, the Cooperative Community Alternative Sentencing Project, conducted a seminar for defense attorneys in Birmingham, met with the Chief Justice and representatives from the Vera Institute and Pew Charitable Trusts and talked about some legislative initiatives out of Chief's office, met with Montgomery Judges in October to talk about educational opportunities on risk and needs assessments, met with the Uniform Sentencing Order Committee, met with both the Sentencing Standards Committee and the Legislative Committee, filed the Commissions SMART budget request and is preparing to meet with the Finance Director next week. In addition, Lynda meets with the NASC 2010 Conference Planning Committee and the NASC Executive Board by conference call at least once each month and is coordinating the National Conference in Point Clear Alabama in August 2010, which the Alabama Sentencing Commission is hosting.

In addition, Judge Colquitt noted, Rosa set up and worked with a 4-day workshop on risk needs assessment training at TASC in Birmingham as part of CCASP. Lynda met with Dr. Lancaster, and Daryl Morgan, new director of LIFE Tech Wetumpka, and scheduled a Montgomery workshop November 9 & 10. As part of the CCASP project, the Vera Institute technical assistance advisors met with focus groups in Montgomery November 4-6, with Judges, DA representatives, and defense lawyers. Judge Colquitt indicated that he spoke to the Montgomery Bar at a defense seminar in Prattville.

The Chair also commented on the role of the Alabama Sentencing Commission as to certain matters. He reminded the Commission members that the Sentencing Commission has a statute that is a legislative directive which tells the Commission what we are supposed to do. We are an agency of the State, funded through State monies, and we answer to virtually everybody. We are under the judiciary and we work with everyone - the courts, the DA's the Legislature, and a lot of other groups that are not governmental, ie. victims groups and defense attorneys. We also work with Pardons & Paroles and ADOC. The Commission is for all of these groups. We have some technical expertise that these groups do not have. We have databases, trained professionals, a depth of knowledge, contacts and liaisons across the country with organizations like Pew and Vera, the Crime and Justice Institute, and NASC, that have associations with other groups. We can pull in people like Dr. Rick Kern, the Director of the Virginia Sentencing Commission or Barbara Tombs, Director of the Washington DC Sentencing Commission.

Judge Colquitt noted that one of the biggest things the Sentencing Commission can do is to provide, authoritative reliable information in an objective way. He emphasized that the Sentencing Commission is not a political organization, nor does it promote a particular agenda. He explained that the Sentencing Commission was not here to empty prisons, indicating that if the State chose to do that, it was up to the State. Finally, he advised, the Sentencing Commission is not here to do anything that would work against the safety of the public. Judge Colquitt reminded the Commission members that one of

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the very first acts of this Commission was to state that we place public safety as our number one mandate. As a Commission, we have to work to ensure that we do not become the load bearers for other organizations or entities and their packages. Our role is to stand off from some of that and advise people on what those packages mean. If the Governor has a crime package or DA's Association or Defense Lawyers have a package, these organizations should feel comfortable in calling the Alabama Sentencing Commission and asking what impact it will have on the Criminal Justice System, i.e., will it increase prison population or reduce prison population? Will it change the funding necessary to run these programs and shift the cost from state to county or vice versa? All of these organizations need to have confidence we will give them reliable objective answers to their questions.

Chairman Colquitt noted that in providing information, the Commission doesn't adopt the policies of others. They have their plans and programs. What we are doing is answering questions about the meaning of proposed bills. He acknowledged that some bills were circulated recently among the members of the Legislative committee and other committees that were not Commission bills; however, these were shared with the Commission because we need to know what is going on. Just because we are looking at other bills and maybe researching and advising on their meaning and impact does not mean that they are Commission bills. He warned that the Commission and staff must take care that these bills are not confused with Commission proposals. Just because the Commission staff answers questions about a proposal doesn't mean the Commission is promoting the bill. We must be careful to remind people that everything we discuss is not an ASC bill. We do, however, take ownership of our bills.

Colquitt said that most of the time, when people ask if a bill is ours, the answer is no. Most of the time when we get something it is DOA, not because of politics, but because of costs or negative impacts. Many times our legislative mandate keeps us from promoting the idea, i.e. if someone comes to us with a bill that takes away discretion in sentencing we cannot promote it because it is against our mandate to maintain judicial discretion. He noted that the Commission's Legislative Committee Chair may bring a report on a bill to the Commission simply to let the Commission know someone other than the Commission is considering the measure. That does not mean it is the Commission's bill or proposal. Judge Colquitt stated that, as Chair of the Commission, he spends a fair amount of time explaining to others that certain legislative proposals are not the Commission's. He advised the Commission that they do not need to get branded with political decisions that affect Commission's objective advice. He emphasized that the Commission was an independent agency that tries to maintain its independence. For the first time in this State, we can provide data and information that affects the people and tell them what legislation will or will not do, from an impartial point of view. The Commission must protect its neutrality.

The Chair invited responses from anyone who disagreed with his statements and offered to take time to discuss these matters further.

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### *Standards Modifications*

Rosa Davis, as Chair of the Sentencing Standards Committee, reported on the work of the Committee. She advised that the Standards Committee has met twice this year and that she reported on the first meeting at last Commission meeting. Since that time the Committee met again and made a number of recommendations that are contained in a handout titled “Modifications to the Standards and Worksheets” and presented to Commission members for this meeting. Ms. Davis reminded the Commission that at the last meeting the Commission voted to continue with the changes adopted made last year but not approved by the Legislature.

Ms. Davis advised that all proposed modifications are noted in footnotes. If these are approved, Ms. Davis will ask the Commission to approve the Standards as modified, including all of the modifications. She indicated that the Committee had received a copy of the document containing changes suggested at the last Committee meeting but because there was not enough time for the Committee to meet and approve the document, the document with new changes will not be submitted as a committee report and there will need to be a motion and a second before adoption by the Commission at this meeting. Mrs. Davis then reviewed the new proposals as set out in the attachment to these minutes. The proposals of major significance new to the standards this year are:

- Page 3, footnote 6 –This change addresses whether a judge can designate the probation officer or the district attorney as a worksheet preparer for his or her courtroom. The statute says a “probation officer, prosecutor, or other person designated by the trial court judge” will be preparer. The phrase “...or other person designated by the trial court judge” was added to the bill as it went to the legislature upon original passage. The original intent of the drafters was that this language would allow the judge to designate the prosecutor, probation officer, or some other person as the worksheet preparer. The committee decided to make this point clear in the instructions to the worksheets. The instructions are changed to read “The worksheets may be completed by any person designated by the trial court judge including the prosecutor, a probation officer, or any other person.” This wording is to make sure the judge, who is ultimately responsible for considering the worksheets, has full authority to make sure some one does them and presents them prior to sentencing. Commission members had no questions about this change.
- Page 3, footnote 8 – This change simply clarifies the responsibility of the worksheet preparer to use the standards to recommend a sentence range, rather than a specific sentence. The judge determines where in the recommended range the sentence will fall. The prosecutor can still recommend a specific sentence within the range but the worksheet recommends a range for which the sentence is to be chosen.

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- Page 4, footnote 10 notes the addition of a space on the worksheets for the sentencing judge to sign the final worksheet considered at sentencing. This is needed to identify the final worksheet considered by the judge. When the Commission staff began to work on determining compliance with the standards, there were too many worksheets where the crime of conviction did not match the worksheet. This is a process issue where the worksheet was filled out and later changed in court. These final worksheets did not make it back to the Commission. The committee wanted to clear this up by having the judge initial the worksheet he/she considers in court. This change will make sure the worksheet the judge considers is the one that goes to the Commission.
- Page 4 – Clarifies the statutory responsibility of the court clerk to send final documents to the Sentencing Commission and adds additional instructions to try to make this easier for clerks. See also FN 11 on p. 5 adding additional electronic addresses for the convenience of the clerk to allow use of Alavault materials from the clerk. This is necessary because of the incomplete data contained in e-worksheets and SJIS. The court orders and the final worksheets contain the complete information needed for a clearer picture of the effect of the standards and the degree of the use of the standards.
- Page 5, Footnote 14 - deleted sentence that said clerk would assure the final sentence recorded on the worksheet is the final sentence shown in the Case Action Summary. This is not the clerk's job. The drafters did not intend to add additional burden to the clerk.
- Page 5, Footnote 15 – added footnote for page reference to what constitutes a sentence under the standards.
- Page 6, additional offenses were adopted by the Commission last year.
- Page 7, Footnote 24 – Reworded “Worksheets are offense Specific” paragraph to clarify that worksheets are intended for use only when the most serious offense sentenced is a worksheet offense.
- Page 7 - reordered 2 items “Sentencing Event” and “Most Serious Offense” and changed language under “Sentencing Event” definition to clarify that worksheets are used for an entire sentencing event even where some matters being sentenced are not worksheet offenses. The standards apply to all offenses at that sentencing event. There are some circumstances in which a non-worksheet sentence is guided by the worksheets, if it is part of a sentencing event where the worksheet is the most serious offence. We tried to clarify that in FN 23 also and by adding “not included in a worksheet sentencing event.”

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- Page 8 – words “to the convictions in that sentencing event” added to clarify and again emphasize if the most serious offense in a sentencing event is not a worksheet event, then the worksheet should not be used for any of the convictions.
- Page 9 – add word “final” to emphasize the original sentencing determines if there is an incarceration attached to that sentencing. A probation revocation later on that results in an incarceration counts only as a probation revocation.
- Page 10 – 11
  1. Sentence length - There has been some misunderstanding about the meaning of a sentencing standards sentence. The committee felt this could be clarified with some rewording and by moving the discussion to the front of the Sentence Length Section of the General Instructions. The committee moved the discussion to the front of the section and reordered and reworded some of the paragraphs. This is explained in the footnotes. (Judge Rains stated this could be further clarified by adding a chart that Bennet Wright created showing compliance requirements. Ms. Davis suggested that would be addressed by creating a sheet that could be used by the judge for easy reference. Bennet will work on creating that sentencing aid which will be in addition to these instructions. Lynda Flynt suggested that the sheet could be added to the ASC web site for easy access.
  2. added a paragraph to clarify that a sentencing worksheet score higher than the highest score in the sentence length tables for the worksheet must be sentenced outside the sentencing standards and is not a worksheet sentencing event.
  3. added “A sentence that does not conform to the Initial Voluntary Sentencing Standards, as set out above, is a departure and must be sentenced completely under existing law independent of the Standards recommendations” for clarification .
  4. added felony classes for clarification.
  5. added paragraph to clarify how to sentence for multiple convictions.
- Page 14 -15
  1. added footnote to emphasized that the portion of the worksheet after the score is added merely to record the sentence and give examples of types of sentences available. This portion is not intended to change any law on sentencing options.

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2. Step E – language added to clarify that sentences are either under the standards or outside the standards, and not a combination of the two.
- Page 18 –
    1. Step C - clarified how to sentence splits
    2. Changed the ASC address by adding the email address.

### ***Worksheet Instructions***

The same changes to all of the worksheet instructions, Drug, Property, Personal – Ms. Davis reviewed the changes on the Drug Worksheet Instructions with the Commission members. She advised that by adopting those changes the Commission would adopt the same changes to the Property and Personal worksheets. She noted that going over each set individually would be redundant.

- Drug Prison IN/OUT worksheet instructions
  1. Footnote that the Commission added additional language to pages 10, 11, and 12 to clarify what is part of the recommendation and to emphasize the shaded part on the worksheet is not part of the recommendation
  2. Added language to clarify that a sentence to the county jail or to community corrections is considered a non-prison sentence. (Community Corrections may also be considered a prison sentence)
  3. Added language to emphasize that the judge may record the reasons for a departure from the recommended sentence.
  4. Added additional examples for departures.

Ms Davis asked the Commission to take a minute to look at the changes to the IN/OUT Worksheet instructions, noting the following:

- Prison Sentence Length Worksheet Instructions
  1. Added language to Instruction #10 to emphasize that where there are multiple convictions constituting the sentencing event, a sentence still must be entered and recorded for each conviction. That is just general law under our sentencing statutes.
  2. Added additional reasons for departure, same as the preceding worksheet.
  3. Added sentence, “After the sentencing recommendations are completed and sentence has been imposed, the sentencing judge should sign or initial the worksheet to identify and acknowledge the worksheet as that reviewed

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and considered during sentencing, pursuant to Section 12-25-35(b), at sentencing.” This is added to correct the process issue with variances between worksheet offenses and actual conviction offenses.

- The new worksheet with the place on the Prison Sentence Length Worksheet was amended for the judge to initial the final worksheet considered because we had more space there.

Judge Rains noted attempts, conspiracies, and solicitations are added as worksheet eligible cases. Ms. Davis reminded the Commission that change had been approved last year by the Sentencing Commission and as such, is again included as part of this year’s proposal because the Legislature has not yet approved the change.

There being no additional questions or comments, Ms. Davis moved that the Commission members adopt the changes as presented, approve the worksheets and instructions as presented to the Commission (with the addition of the sentence length pages and the offense list dividers as published in the current manuals), along with the corrections to the offense list dividers to reflect the new offenses. Joel Sogol seconded the motion. The motion was carried by a unanimous vote of the Commission. A copy of the document as adopted by the Commission is attached to these minutes.

### ***Cooperative Community Alternative Sentencing Project (CCASP)***

Ms. Davis reported on the progress of the CCASP. Ms. Davis reported the project is beginning to do what it was designed to do - bring together the players on community supervision, community corrections and probation, to discuss mutual issues and solutions to move toward a true continuum of community sanctions. She said that she was encouraged by the degree of communication beginning to take place, noting that the project is trying to build systems based on evidence-based practices, looking at what works and what doesn’t and making decisions based on evidence.

Ms. Davis reported a successful four day training session on the use of risk and needs assessment instruments was held for probation and community corrections officers in October at TASC. The risk tools provide a more in depth assessment than is currently used. They provide guidance toward addressing the dynamic criminogenic needs that can change offender behavior. She explained that as we adopt and learn to use these tools they can help change outcomes in community supervision by building a case plan for each offender based on risk and needs. These tools are an aid in directing the offender to appropriate placements and supervision levels. Evidence shows mixing low risk with high risk offenders creates more high risk offenders. If low risk offenders can be separated from the higher risk offenders, they don’t get to make the criminal connections they would have made if put in with their higher risk colleagues. The instruments currently being used are now being collected by the Commission and the staff will look at the results when enough of the results have been collected.

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Ms. Davis reported she was tremendously impressed with both the community correction supervisors and probation officers who attended the training. She noted that most of them started the first day with crossed arms saying this is just more work for us, but left after the last day saying this is great, how can we implement, how can we overcome barriers?

The University of Cincinnati created these Risk and Needs Instruments and Alabama's initial training is provided by that entity. Brian Lovins, a researcher and trainer at the University of Cincinnati, was outstanding in the first training. In January, he will train 10 of those trained to become trainers in Alabama. The second training will also be in Birmingham at TASC. The new trainees will train an additional 50 to 60 officers at that time. Ms. Davis emphasized that Ohio does not want anyone to use the instruments without training since this could affect their data on the effectiveness of the instruments.

Ms. Davis reported that Lawrence County is now working on their comprehensive plan for community supervision and hopefully we will have a report in the next couple of months. The project has begun working in Montgomery and is gathering data to build a report for January.

### ***Legislative Committee Report.***

Lou Harris, Legislative Committee Chair reported for the Committee. He reported the Committee met on October 20, 2009. There was spirited debate and consideration of each of the four bills presented to the Commission for approval. Dr. Harris commended Lynda Flynt for her assistance with this committee. .

1. Community Corrections: The Committee recommended several changes, including deleting the prohibition against sending any offender convicted of selling drugs to community corrections; changing the definition of "board" throughout the Act to include non-profits since they are not consistently included in all provisions which also refer to authorities. In addition, a provision was added authorizing the County Commissions to provide liability insurance to all types of community corrections programs, the same county agencies. The insurance provision was suggested by the Association of County Commissioners. The Commission voted to approve the changes – with Rosa Davis, representing the Attorney General, dissenting.

Judge Rains noted there were additional issues concerning who ADOC will allow as an institutional diversion. He noted that ADOC excludes manufacturing convictions from institutional diversion even though those convictions are not excluded by statute – ADOC uses different set of Rules from the statute – Judge Rains noted that for someone to come out on an Institutional Diversion, the offender must be approved by both the ADOC and the sentencing judge. ADOC will not recommend anyone who is serving on manufacturing. There are times when a judge may want someone to get a taste of inside of prison but feels that CCP would be a good result. Judge Rains is willing to consider putting someone in CCP if and when they are recommended by ADOC. He expressed the

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opinion that if ADOC is going to operate by its own rules that are contrary to the statute that frustrates if not defeats that approach. Lynda Flynt suggested that the Commission staff could update its side by side comparison of ADOC rules and the statutes. Judge Rains thanked Lynda for doing that.

2. Split Sentence bill – This proposal recommends (a) prohibiting stacking splits at one sentencing event; (b) changing probation limits on splits to be the same as regular probation, and dropping to 3 years for felonies and 1 year for misdemeanants. The Commission received a number of comments adverse to this proposal from Judge Haddock, Rains and McLauchlin and the District Attorneys. Their concern was that the shortened lengths would not allow enough time for rehabilitation, restitution, court costs or fines. Judge McLauchlin felt the court should retain discretion to use the 5 and 2 year limits, noting that the court could terminate someone early when appropriate. He noted that this limitation could tip the scales toward sending some people to prison. Judge Colquitt also expressed disagreement with additional shortening of the limits. He agreed that shortening below 5 and 2 years would be counterproductive.

Ms. Davis moved to amend the proposal to leave current probation terms in straight cases at 2 and 5 years and to shorten the probation terms on splits to the same as straight probation. The motion was seconded by Ellen Brooks. Ms. Brooks called the question and the motion carried unanimously to leave probation limits at 5 and 2 years.

Judge Rains moved to delete the language “notwithstanding any law to the contrary” because this language can have unintended consequences. Ms. Brooks seconded the motion and the motion carried unanimously. Judge Rains moved to delete the added language “while the defendant is serving any portion of his or her sentence”. Ms. Brooks seconded his motion and the motion unanimously carried to delete the language.

The bill also allows time spent in inpatient substance abuse to count as the incarceration portion of a split and clarified that the three years minimum on a 15 year split was not subject to good time or parole consideration. The language was inadvertently omitted from this part of the statute when the bill was amended to authorize split sentences when the total sentence imposed is over 15 and up to 20 years.

The proposal as amended was unanimously approved by the Commission.

3. Standards bill – Rosa Davis presented a proposal for the Legislature to approve the modifications to the Sentencing Standards, Worksheets and Instructions; adding attempts, conspiracies, and solicitations for murder and drugs; and adding a provision to make worksheets a part of the record in each case. Ms. Davis moved the adoption of this proposal and Sogol seconded the motion.

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After some discussion, Dr. Harris moved, seconded my Mr. Sogol that the words “notwithstanding any law to the contrary” be added to the proposal for making the worksheets a part of the record. This language would take out any confusion over whether the worksheets’ inclusion of references to YO and Juvenile adjudications requires they be maintained in a private file. The motion carried unanimously. Ms. Davis then moved, seconded by Ms. Brooks, to amend the proposed bill by taking out the reference to the date for filing the modified standards, worksheets, and instructions with Legislature and Supreme Court. The amendment carried unanimously.

Ellen called for question on the bill as amended. The bill was approved unanimously.

### Review and Reporting of Value-Based Crimes

There was a discussion of whether the Commission should propose a bill requiring the Commission to review all value based crimes for appropriate inflationary adjustments on a scheduled basis. Chairman Colquitt noted this type of review should be undertaken; however, the Commission should not be under a mandate to do so. The proposal was not accepted by the Commission.

### Alabama Drug Accountability Act

Lynda Flynt asked the Commission to review the proposed UJS Drug Court bill, noting that this bill was very similar to the one proposed last year. The Commission suggested taking out any reference to expungement for two reasons, (1) data is important for evaluating the effectiveness of drug courts, and (2) expungement may affect the receipt of federal funds by Alabama. The other Commission suggestion was to change the name of the Department of Mental Health and Retardation to simply “Mental Health” to conform to the existing practice. Ms. Flynt noted the Commission was not being asked to make the bill a part of its legislative package, but was being asked to support the bill. It was noted the bill had not received final approval by the Drug Court Task Force. Ellen Brooks moved to table consideration of support until a final bill is approved by the Task Force. Lou Harris provided the second and further consideration of the bill was tabled.

Ms. Flynt noted there were a number of other bills currently under discussion by others for this legislative session. These include bills changing penalties for small amounts of marihuana and a bill prohibiting incarceration in ADOC of persons found to have violated the technical conditions of probation. She noted that these were not Commission proposals but the staff will keep abreast of what is happening and keep the Commission informed.

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### **Alabama Department of Corrections Re-entry programs**

Dr. Eddie Lancaster, a forensic psychologist with the Alabama Department of Corrections (ADOC) reported on the establishment and expansion of re-entry programs operating in ADOC. Dr. Lancaster noted that it appears every day ADOC is required to do more with less, and this applies to ADOC's re-entry programs.

Eight years ago, ADOC simply be locked the gates and just kept offenders until it was time to let them go. Things have changed since General Richard Allen became Commissioner and applied his innovative ideas. Since the State will not authorize new prisons, other ways had to be found to manage the inmate population —providing inmates tools to reduce recidivism, which is very complex.

Dr. Lancaster explained that re-entry begins at intake. The inmate is evaluated, given a Mental Health screen and a physical, and an educational profile is done. The system then directs the inmate to the prison that offers courses they need. He noted that he was particularly proud of the special education offered in ADOC. On the campus behind Staten, there is a program targeting inmates 25 years of age or younger. This program identifies special education needs, then obtains the inmates educational records and targets the inmate to one of the 6 institutions where special education is taught. An individual educational plan (IEP) is developed and a course load is designed based on the plan. When the inmate leaves prison, follow-up is provided to help him get re-established in the free world and continue his education.

Dr. Lancaster stated that recidivism is one of the factors creating overcrowding and that reentry is designed to reduce recidivism. He noted the Bullock County prison was built for 700 inmates and houses 1650.

Another re-entry program of ADOC targets inmates who are within 90 days of release. Inmates must fill out a refusal form not to participate. Everything that can be done to encourage inmates to participate is done. This program attempts to assist the inmates in establishing goals to reduce recidivism. The first group in this program had no idea how to get a new social security card or ID card. This leads to being unable to obtain a driver license or a job. There is no one on the outside to guide them through the maze of decisions and actions required in re-entering the free world. Through this program, ADOC realized that many of these inmates have families who don't want them back when they come out, even those with good visitation while in prison. ADOC tries to give the inmate the tools to survive on re-entry. The program offers referral linkages to inmates transitioning back into community. Governor Riley set up the Community Partners in Release network using churches, businesses and other volunteers. Some have helped. These organizations and volunteers help pick up the ball when a released inmate has no resources.

Re-entry programs collaborate with other agencies. Dr. Lancaster listed numerous public and private non profit programs that have joined the effort. These include the post-

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secondary education system. He noted that the junior colleges set up a computer lab at Kilby and Tutwiler to teach computer skills and Pace Learning Programs is putting some basic life skill programs on the computers for distance learning. Dr. Lancaster noted the Alabama Department of Education and Post Secondary Education are major partners in the ADOC re-entry strategies.

Dr. Lancaster further noted that there is intensive on-going collaboration between ADOC and the Board of Pardons and Paroles that includes the development of the "Restart" Program at the Decatur Work Release facility. He explained that Restart is a program for technical parole violators, allowing the Board to send parolees back to a minimum security prison setting to complete a 90 day program rather than returning to prison for the remainder of the underlying sentence. The program is already starting to cut down on recidivism among parolees.

As another effort to reduce recidivism, ADOC has also started SRP (Supervised Release Program) where inmates are transitioned into the community under ADOC supervision within 90 days of ending their sentence. This allows the inmate an opportunity to learn to live in the free world while remaining under ADOC supervision.

Other areas currently addressed by ADOC as part of re-entry include:

1. Addictions and Recovery Programs – 85% of the prison population are associated with drugs one way or another.
2. Job, career, communications and financial skills – These modules are offered within 90 days of release. The inmate is given the name and contact info for who the inmate needs to contact when they get out.
3. Faith Communication, character building skills. The faith partners are so important. For instance, First Baptist Church in Montgomery has a clothes closet and food closet that assist inmates reentering society. ADOC invites these folks in to speak to inmates. Faith based programs are the primary providers that assist the returning inmates with transportation and a place to go.
4. Health education screening referrals – Re-entry inmates receive 10 days of medicine on release with an appointment with the local Mental Health Center and directions on how to get there. Hospital ER's come in and provide assistance also.
5. Family re-integration – The world changes while a person is in prison and inmates don't know how to function in this new world when they get out. Before we began these programs the frustration on leaving prison with no job application skills and owing back child support could overwhelm the re-entering inmate, causing him to give up go back to what he was doing before he was originally sentenced.
6. Law enforcement – The Re-entry programs bring in seasoned veteran law enforcement officers who tell the inmates how they will view them when they

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get out. The officers tell them, “We are scared of you; scared of what you will do when you get out. If anything happens, you will be my first suspect.” – The presenting officer got a standing ovation from the inmates who said “He is the only one you have had here who told the truth.” After the first program, the next classes wanted to know if the FBI agent was coming back.

In the re-entry program, each class is asked to raise hands based on how many times the offender has been in the penitentiary. Counting the number of times, 1,2,3, 4, 5 times hands still going up. The program is aimed at breaking this cycle, stopping this revolving door. The programs are not touchy-feely; they are essential to reducing recidivism.

Ms. Davis noted that ADOC is attempting to identify dynamic needs that affect criminal behavior and reduce (but do not eliminate) recidivism. She recognized these efforts are in line with risk and needs assessment and used in case planning and evidence-based practices designed to increase public safety.

Dr. Lancaster informed the Commission that now other States are looking to Alabama’s efforts in these areas. Other states are beginning to talk about expanding re-entry initiatives, but Alabama is actually implementing the programs.

### **Uniform Sentencing Order**

Ms. Flynt reported on the latest draft of the Uniform Sentencing Order Committee, noting that the next meeting of that Committee was scheduled for December 10, 2009 in Birmingham. She stated that the phone meetings have worked well but it was felt that another face-to-face meeting was necessary. Several issues have been carried over to that meeting

- 1) The proposed order only covers one offense – The committee voted to finalize this form and then Rosa would draft one for multiple convictions;
- 2) Subsection 4’s provision for collecting a percentage as the payment and forwarding them to the clerk needs more work on wording.
- 3) On the second page under A “distribution of copies” the words “shall forward” were not supposed to be struck out. Ms. Flynt said she would correct that typo and get it back to committee.

### *Burden on Clerks - reporting requirements*

Ms. Flynt noted there has been some discussion of ASC not being cognizant of the workload on court clerk because of the ASC reporting requirements. The staff is looking into ways to ease this burden. Bennet and Melisa are working on ways to make reporting more simple.

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### 2010 annual report

Melisa Morrison and Bennet Wright passed out an outline of the suggested 2010 Report of the Alabama Sentencing Commission. It was explained that this year the Commission staff came up with a different format. Last year and years prior, the report just included detailed reports about different groups in the criminal justice system, legislation passed in the preceding session, the Commission's new legislative package, and a section on data.

This year the staff is proposing a new report format. While the same information will be included, the body of the report will only include highlights from the material. The report will list commission members and set out the goals of the Commission; present achievements and signs of progress over this last year and what achievements we have made and signs of progress (training, alternative sentencing, highlighting CCASP, P&P, community corrections programs re-entry and anything else from ADOC and P&P as to re-entry work). There will be a brief paragraph about the Uniform Sentencing Order and then a section of the 2010 Commission Legislative package and last year's crime bills. The major part of the 2010 report will be a section on how the Sentencing Standards have changed sentencing practices, using an update to the 2003 Top 25 book prepared for the Commission by Applied Research Services. The last part of the report will be an Appendix where detailed information can be found. The idea is that the reader can pick up the report, look at the first couple of pages, and note there are some good things going on this year, then look to the back of the book for additional information. The following Appendices are included, although the order may change and additional appendices may be added:

- A. Timeline;
- B. CCASP and R/N; may or may not include the R/N tool;
- C. Latest draft of the Uniform Sentencing Order
- D. Detailed info about ASC bills; crime bills
- E. The Top 25 data book

This format will shorten the report considerably since the Appendix will be biggest part— Top 25 is an enormous amount of data.

Dr. Harris suggested the Commission produce the report on CDs rather than providing paper copies, noting that this might not be the year to begin that process. However, it was felt that paper was cheaper for the Commission, still more user friendly, and the Commission should continue the practice of paper reports for the full report. Ms. Morrison also pointed out the staff is planning to develop a 2-sided pamphlet that highlights the report that can be passed out to all of the legislators. The pamphlet may peak the interest of its readers so they may want to read the report or look up something in the report. People will know the report is the resource for all the detailed information.

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Ms. Brooks complimented the format but questioned whether the Appendices couldn't simply be listed on the Commission's web site and referenced in the report.

Ms. Flynt noted the major part of the report will be the Top 25 Report. Bennet Wright discussed that part of the report. The two largest projects that Applied Research Serviced completed for the Commission were The Top 25 Data Book and the sentencing data that was included in the first Sentencing Reference Manual. This year the Commission will analyze the effectiveness of the Initial Voluntary Sentencing standards by comparing the Top 25 before and after the Standards were implemented. This is probably the largest data project the Commission has undertaken outside of compliance analysis.

Mr. Wright briefly went over the data portion of the report. On the first page, convictions and admissions to prison – show for example drug possession, how many convicted and what percentage of convictions does possession represent in 2004 and in 2008, and has this percent changed. This is how ARS started the whole ball rolling with the old standards. The next line will show what percentage of drug possessions go to prison and has this changed since the standards. The next block looks at consistency in sentencing, this is where we look at first time offenders (no prior Alabama convictions) and convicted of a single count showing 1) the percent sent to prison; 2) circuit ranges; and 3) prison sentences given to first timers (number of years not percentages). The next page shows at the top two pie charts comparing the percent of the offense that went to prison and the percent that went elsewhere, 3 years before the standards and 3 years after the standards. Then we will do that same analysis by the number of prior convictions if that information is available. The point is to show whether there has been a difference in disposition percentages. The next two pages deal with sentence length by criminal history.

The staff proposes we do this same analysis for each of the "Top 25" offenses.

Ellen Brooks questioned whether the analysis includes enough factors to explain the differences in the before and after sentences. Mr. Wright noted that a lot of what is reported will depend on the data and whether there is enough to be meaningful. Ms. Brooks also asked that the staff try to report on whether consistency in sentencing has improved.

Ms. Flynt noted the staff is recommending the Commission change its report to be more data oriented rather than merely repeating the reports from other agencies. The Chairman agreed that this is more in keeping with what other states do.

Ms. Brooks applauded the new format and noted that the report as presented should be more readable.

Mr. Sogol moved to accept the staff's recommended format. Mr. Harris provided the second and the motion carried by a unanimous vote.

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### **Funding for Commission**

Ms. Flynt reported to the Commission on the uncertainty of funding in the current year. She noted that proration has not been announced, therefore, the actual effect is unknown. She advised that the Commission staff was preparing for proration and reduced appropriations by not filling two positions of employees who have retired or left for other employment – the Commission’s administrative position that has remained unfilled since Mary Duncan retired, and the legal research assistant that was filled by Christina Vanderhulst.

Ms. Flynt indicated that she is currently working on the final budget request for FY 2011 year which must be submitted by November 15. She is requesting \$687,000, including an increase of \$128,964 from the FY 2010 budget. The request will include funding to cover increased staff (filling the vacant position of secretary or legal research assistant) and Ms. Flynt’s separation costs for retirement. She is still working on adjustments to the FY 2010 budget.

### **NASC Conference**

Ms. Flynt also noted that a “Save the Date” notice for the 2010 NASC Conference to be held August 8-10<sup>th</sup> at the Grand Hotel in Point Clear, had been mailed. She informed the Commission that Judge Bill Pryor on the Eleventh Circuit Court of Appeals has agreed to be the welcoming speaker, along with Chief Justice Cobb, and Chairman Joe Colquitt. She explained that the conference will be 2 1/2 days. It begins on Sunday evening with a reception and will end on Tuesday. Ms. Flynt noted she had budgeted money for Alabama to assist with the conference but that money will probably be cut with proration and the Commission will have to find money elsewhere or will have to raise money to cover the cost of the conference.

Ms. Flynt handed out a Sponsor form for contributions in case anyone on the Commission knew anyone who might be willing to contribute. She noted that the room rates for the Grand were \$125 per night and the conference registration fee of \$225 included meals. Ms. Flynt noted the travel money of the Commission is only enough to pay for the three speakers, unless more money is donated. (Chairman Colquitt volunteered to pay his own way) Ms. Flynt noted the Commission will also pay for the Commission staff and for two judicial college employees (unless AOC agrees to pickup that tab) who will assist with the conference. The Hotel rate for the conference at the Grand is \$125 base per night

Ms Flynt added that, as she had previously noted, the host state for the NASC Conference usually spends between \$3,000 and \$30,000. She noted that right now the NASC Board has a surplus from the last conference so there will be a cushion, but we are afraid

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attendance will be down and the Board may be called upon to help cover other expenses under the hotel contract for the conference. Ms. Flynt noted she mainly want the Commission to know that planning the conference is going to take a lot of time but every effort will be made to keep our staff from having to do as much as possible. Ms. Flynt is hopeful the Commission can rely on help from the judicial college.

She stated that most people for the conference will be flying into Mobile or Pensacola. One way from the Mobile airport is \$40 in the hotel van, \$80 for a round trip. Cynthia Dillard noted that Pardons and Paroles might be able to help with transportation. Judge Rains noted that the Courts have two vans that might be used and the hotel has vans for shopping and visiting in Fairhope. Someone noted the ADOC also has buses or vans that might be used.

**Next meeting**

The next meeting of the Commission and Advisory Counsel will be in either February or March, with details of the date and time sent to the members by e-mail.

There being no further business, the meeting was adjourned.