Alabama Sentencing Commission

Minutes of Commission Meeting
December 13, 2002

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, December 13, 2002. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law Tuscaloosa
Sharon Bivens, Legislative Fiscal Office, Montgomery
Ellen Brooks District Attorney, 15th Judicial Circuit
Rosa Davis, Chief Assistant Attorney General, Chair, Drafting Committee, Montgomery
Lynda Flynt, Executive Director, Alabama Sentencing Commission
Bill Pryor, Attorney General, Montgomery
Cynthia Dillard, Pardons and Paroles, Montgomery
Becki Goggins, The Sentencing Institute, Montgomery
Lou Harris, D.P.A., Faulkner University, Montgomery
Edward "Ted" Hosp, Esquire, Legal Advisor to the Governor, Montgomery
O. L. "Pete" Johnson, District Judge, Jefferson County, Birmingham
Emily Landers, Deputy Director of Constituent, Governor's Office, Montgomery
P. B. McLauchlin
Tammy Meredith, Applied Research Services, Inc., Atlanta, Georgia
Honorable David Rains, Circuit Judge, 9th Judicial Circuit, DeKalb
Bill Segrest, Pardons and Paroles, Montgomery
John Speirs, Applied Research Services, Inc., Atlanta, Georgia

Welcome and Introductory Remarks
The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting order, made introductory remarks and thanked members for attending the meeting. He extended a special welcome to Attorney General Bill Pryor and Dr. Rich Hobson, the Administrative Director of Courts.

Judge Colquitt reminded the Commission members that Attorney General Pryor was primarily responsible for the creation of the Alabama Sentencing Commission. It was General Pryor and then-Chief Justice Hooper who sat down and discussed the need for a committee to look at sentencing issues.

Attorney General Pryor
Attorney General Pryor addressed the Commission members, stating that he was here today to give a pep talk and to impress upon you the Commission the importance of their work. He then reviewed the history of the Commission's creation, stating that it all began in January of 1998 when he proposed to then-Chief Justice Hooper that a subcommittee of the Alabama Judicial System Study Commission be created to study sentencing matters. He noted that it was a month short of being 5 years that this project

first began. At that time, although we knew some of the questions, we have learned a lot since then. We have learned a lot more of the questions that needed to be asked and are much further along in finding answers as well. General Pryor thanked the Commission members for the hard work that they have been doing and noted that Alabama have a better, more splendid leader than Judge Colquitt, who is the state's expert on sentencing. I want to speak frankly.

Urgent Need for Reform

Emphasizing the need for reform, the Attorney General stated that all you have to do is pick up the newspaper in Alabama each day and see that our criminal justice system is not working as well as it needs to be and that Alabama has real problems. He noted that with the 30 years of problems that have built up to create what is truly a crisis in the our state's criminal justice system, he understands that these problems will not be resolved by the Commission overnight and remedied by any one change. While he wanted to impress upon the Commission the importance of their task and encourage them to be ready to present proposals for true sentence reform to the Legislature in March of 2003, he assured the members that he did not want to create the impression that he thinks there is a simple solution that can resolve all of our problems.

General Pryor stated that some changes, at least in the short term, may depend on initiatives taken by the various criminal justice agencies and departments and others may be the result of decisions by the federal courts. It is common knowledge that Alabama has real problems and the citizens and leaders of this state are depending on the Sentencing Commission for long-term solutions so that 30 years from now, people will look back and say that this state got its act together. Noting the tremendous responsibility placed on the Commission, General Pryor stated that in the future will hope to be able to say that the leaders of all components of the criminal justice system came together and, for the first time, resolved this problem and created a reformed sentencing system that made sense — an honest, fair and rational system.

Attorney General Pryor stated that he could not overemphasize the urgency of the Sentencing Commission making specific decisions and including these in their report to the legislature. He reminded the Commission members that the Legislature is depending upon them for help and created the Commission because they could not resolve these problems on their own. He noted that this was not a criticism of the Legislature but an acknowledgement of the fact that Alabama's Legislature does not sit permanently and does not have the staff or resources to conduct the research needed to resolve all of the problems facing the criminal justice system and need for sentencing reform.

He stated that the timing for change was at its best. Not only is the public and the Legislature expecting great things from the Commission, next year is a great opportunity since there will be a new administration coming in with a new legislature and it is the first year of the quadrennium, which is an opportune time to really get things accomplished. General Pryor stated that the Speaker of the House, Seth Hammett, is vitally interested in this project, that he has talked about it with him at length and in detail on numerous occasions and he is really is looking forward to seeing the Commission's recommendations

In closing Attorney General Pryor stressed the importance of the Sentencing Commission recommendations, urged the Commission to move forward and stated that there was nothing more important to him as Attorney General, and in his opinion, to the legal system of this state, than the work of this Commission. He thanked the Commission members for their dedication and hard work and Judge Colquitt for his leadership and then stated that if there were any questions that he could answer he would be happy to do so.

Ms. Brooks thanked Attorney General Pryor for his vocal support and leadership, agreed that next year was crucial for the Commission and stated that she knew we could count on his continued vocal leadership, which makes a big difference.

Attorney General Pryor thanked Ms. Brooks for her comments and also for her hard work as a member of the Commission and stated:

> " We prosecutors are going to have to be an important part of selling the work of this Commission. I am prepared to do it. I said not too long ago that Nixon had to go to China and Pryor had to go to sentencing reform. I think that I have an opportunity as Attorney General and many of us who are on the state side of the criminal justice system whose real role isn't to convict but to do justice and to seek the truth we have a real opportunity to be leaders in this and to go to the public and say community corrections is punishment. Locking everybody up isn't always the answer. We've got to lock of the right folks up and do it for a long time, but we have got to be honest with victims of crime when we do it. We have got to be fair in how we do it, but we have got to be rational. We have got to utilize a lot of alternative punishment programs. In some areas of the state we are using them but not in enough areas. We have got to be creative about this.
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> We have the 5th highest incarceration rate in the United States of America. We spend fewer dollars per inmate then any state in the country. I was recently in New Orleans for a conference of attorney generals and I met with a gentlemen who is the CEO of a company that does privatization of prisons. I'm not trying to get us into the issue of privatization of prisons. He said to me that there have been occasions when officials from Alabama have talked to him about the possibility of coming into our state. He told them that his company does this for a number of states . When they go in, they save the states lots of tax payers dollars and they run the system from what I understand about their reputation reasonably well. I'm sure there are controversies about some things they do. This company is in business and very profitable and a lot of people believe in the work that they do. They save state governments money. He said that his company is unwilling to assume the risk of running an Alabama prison with the amount of money that we devote to the administration. That is an indictment to me. That is a scary thought. I asked him what kind of level of spending would we be talking about. We would have to at least get to the position of Mississippi, which is 49th in how much they spend for their prisons. It's about $4,000.00 an inmate more than we are spending in Alabama. You translate that into the number of inmates that we have in our system right now and we are talking about more than a hundred million dollars more that would have to be devoted to our corrections budget. I

would be the first to level with the public and the legislature about that too. We have got to spend more money on our corrections system but we cannot be locking everybody. We have got to have more leadership from folks like Ellen who established a drug court here recently and community corrections programs in parts of the states that are working. We have got to be doing more of that.

Ms. Davis noted that Tammy and John mentioned, in terms of data and impact analysis, we are looking at the current system and starting from the proposition of "if we do nothing" then what is going to happen to the populations in our jails and prisons. From the demographics, looking at the rising 17-21 year old male population, this is as good as it is going to get right now and it is going to be worse 6 years from now.

General Pryor congratulated Judge Colquitt and the Commission for their insistence on getting reliable data on which to base their recommendations for reform. He stated that he agreed that if this is going to be done, and done correctly, the first order of business is to get good information on how the system is currently being operated, what it is that we are recommending and how it will impact the system as a whole. Noting the work of the consultants, Applied Research Services, General Pryor stated that he had reviewed the information they had provided to the Commission and thought it was very good. Now, it is up to the commission to utilize this data to make decisions.

Attorney General Pryor thanked Ted Hosp for his service on the Commission as Governor Siegelman's appointee and stated that he had enjoyed working with him. He noted that Ted had been a splendid legal advisor and was a superb lawyer.

Dr. Rich Hobson, Administrative Director of Courts

Judge Colquitt introduced Dr. Hobson and thanked him for being a great help to the Commission by providing facilities and support throughout the Commission's work. He noted that Dr. Hobson had been asked to address the Commission and make some observation about their work.

Dr. Hobson addressed the members of the Commission, saying that although it was an honor for them to be appointed to be a member of the Sentencing Commission, with that honor came a lot of responsibility and a tremendous amount of work. He reiterated what Attorney General Pryor said about the visibility and expectations of the public in the work of the Commission and stressed the importance it is to district attorneys, judges, probation and parole officers and the public.

Dr. Hobson advised the members that AOC has been conducting an orientation session for new judges this week, teaching judges on how to be judges and some of the issues that the Commission has been studying. He stated that Judge Rains had talked to the circuit judges about sentencing issues and what they need to know and gave them good advise and that District Judge Wayne Owen talked to the district judges; both using their experience and knowledge to provide them with helpful information. Another segment of the new judges orientation had been devoted to the popular topic of enforcement of

court orders, which is an important issue that the Sentencing Commission should address since judges use this tool to put more people into the system.

Dr. Hobson reminded the Commission members of the March deadline for their report to the Legislature. He recognized several people, stating that the Commission had available experts and professionals in the field to help them with their work, Melisa Morrison, who has been hired as a research analyst for the Commission, Judge Colquitt, Rosa Davis and Lynda Flynt. He stated that he was confident that with the amount of research that has been conducted and the experience and knowledge of the members, staff and consultants he knew that there would be good recommendations made in the Commission's 2003 Legislative report. In closing, Dr. Hobson thanked the members for their dedication and work to improve Alabama's criminal justice system.

Chairman Colquitt thanked Dr. Hobson for his remarks and stated that the Commission appreciated all of the support that AOC has provided. He stated that the Commission would not have been able to achieve all it had without the superb assistance that had been provided by Rosa Davis who had been permanently loaned to the Commission to the Commission and the help of Lynda Flynt, who was appointed as executive director by Chief Justice Moore.

Judge Colquitt acknowledged that March, the Commission's deadline for recommendations to the Legislature, is rapidly approaching and stated that the project is probably further along than the Commission members thought it might be a couple months ago. Reviewing the agenda for today's meeting, Judge Colquitt advised the members that there were several proposed bills that they would be asked to review and that we would be distributing and discussing an outline for the Commission's Legislative report. In addition, the Commission's consultants from Applied Research Services, Dr. Tammy Meredith and Dr. John Speir have been scheduled to answer any questions on the data they have been gathering and simulation model that is being developed. Chairman Colquitt emphasized that their task is not limited to just collecting a large amount of data, it is also a matter of establishing a modeling program that will tell the Commission what it means and how things would work if certain changes were made or if we maintain the status quo. He stated that it was, "those ifs that are the key to this whole process - it is not enough that the Commission recognize the issue and come up with a solution, that solution has to be modeled to determine if it means what we think it means."

Proposed Sentencing Reform Act – Rosa Davis

Ms. Davis addressed the members of the Commission, stating that following the commission's decision to adopt a voluntary guideline system that is historically based with normative adjustments to effect sentencing policy, the Drafting Committee began working through the process on how to implement such a system. She reminded them that she had briefly explained the work of the committee at the last Commission meeting, at which time she provided a general timeline for implementation and the reason that the committee decided to implement the new system in phases.

Ms. Davis distributed a copy of the structured sentencing outline prepared to date (Attachment A) indicating that although it was not yet completed, she wanted the

Commission members to review the proposal and adopt the principles and the language that was recommended by the committee.

The purpose of sentence reform – Section I

Ms. Davis then began a review of the 13-page outline, starting with the legislative finding, "that in order to secure public safety and make the most effective and efficient use of correction's resources, the legislature finds that we need voluntary sentencing guidelines ought to be used in judicial decision making to determine the appropriate sentence for felonies." She emphasized that the guidelines would only address felonies and that to provide truth-in-sentencing traditional parole and goodtime would ultimately have to be abolished. The committee also recognized that a continuum of punishment options would also have to be established to protect the public safety and to reach the goals of sentencing, which include incapacitating, through incarceration, Alabama's most dangerous and violent offenders, eliminating unwarranted disparity, assuring truth-in-sentencing, providing the most effective use of correctional resources, assuring the greatest opportunity for victim restitution and protecting against prison and jail overcrowding. The latter was included to make the system realistic.

Definitions – Section II - court, commission, felon, felony offense

Ms. Davis then led a vigorous discussion of the definitions section of the outline. Some definitions, i.e. "court," "commission," "felon," "felony offense," "non-violent offender," "initial voluntary guidelines," and "truth in sentencing guidelines," were considered self-explanatory and generated very little discussion. Most of the discussion centered on the definitions of "violent offense" and "violent offender."

Ms Davis explained that the committee defined "felony offense" as a non-capital felony offense because sentence reform at this time is directed to non-capital felony offenses,

Definitions – violent offense

Ms. Davis reported that the drafting committee believed that a definition of "violent offense" was needed for a number of reasons. There are frequent references to "violent offenses" and "violent" verses "nonviolent" offenders, in discussions of sentencing policy, without a definition ever being provided. She stated that the committee determined that a violent offense and violent offender are two different things, i.e., a "violent offense" is something that by its very nature is an intentional violent act. It may also include sex offenses that do particular violence to individuals. Ms. Davis noted that the committee de prepared a list of offenses deemed "violent." This list includes capital murder even though the new system for structured sentencing by use of voluntary guidelines would not include capital murder, because punishment is statutorily provided at either death or life without parole, this offense would naturally fall outside the guidelines.

Reviewing the list of offenses listed under the definition as "violent," Mrs. Davis explained that the first offenses included were murder, assault I and II, Kidnapping I & II, (all kidnappings), all the rapes, sodomies, enticing a child to enter vehicle for an immoral purpose, stalking, aggravated stalking, soliciting a child by computer for sexual acts. Reckless assaults were not included by the committed because the committee included only offenses where there was an actual as opposed to constructive violent intent . In

addition, the committee included the offenses of domestic violence I & II where the underlying assault is defined as a violent offense; Burglary I, unless (this was a big point of discussion and controversy in the committee) the offender enters the dwelling without a weapon or other dangerous instrument and does not use or threaten to use a weapon or dangerous instrument against another person during the commission of the offense. This was one exception made for burglary I. All burglary II offenses were included, and burglary III, if the intent is to commit a violent crime as defined under this section. The committee determined that the burglary III would be a violent offense if the underlying felony is a violent offense. Also included in the list of violent offenses were the crimes of arson I, criminal possession of explosives, extortion, all of the robberies, pharmacy robbery I & II, intimidating a witness, intimidating a juror, treason, discharging a weapon into an occupied building or dwelling, promoting prostitution I (because it is coercive), and production of obscene matter involving a minor. Ms. Davis reported that the committee considered other offenses, including trafficking, but determined the other offenses should not be defined as violent offenses for criminal sentencing purposes.

Chairman Colquitt stated that he was concerned about the way the term "violent" is being used, because there are two types of crimes that are being included - violent crimes and particularly offensive or reprehensible crimes. For example, enticing a child into an automobile is not violent but it is a reprehensive and offensive act and probably should be treated in the same manner as a violent offense. He stated that due to the historical propensity for lists of this nature to mushroom out, encompassing more and more over time, the Commission should be clear about what our purpose is in defining this term from the start and then it would be easier to defend against unwarranted expansion. It would be difficult to explain to a legislative committee that when we speak in terms of a violent act we are talking about something that is either violent in the abstract or violent in the actual manner in which it was carried out. It appears that the committee is saying that a "violent crime" it is one of those crimes that society deems so reprehensible and contemptible that we equate it with a violent act. Judge Colquitt suggested having two paragraphs, paragraph A including violent crimes and paragraph B, including other reprehensible crimes. That would be one way to use the same crimes that the Commission has been discussing while using the terms a little more scientifically or correctly, instead of trying to encompass all crimes under a general umbrella deemed "violence."

The commission discussed whether a general definition should be used for "violent offense" and what that definition should be. The use of the term "heinous" was discussed. Chairman Colquitt stated that some term other than "violent" needed to be used so that the commission could explain why some offenses that do not meet a traditional definition of "violent" have been included. It was noted, however, that the legislature used the word "heinous" in the death penalty statute and to avoid any confusion, perhaps another word should be used in the definition.

Chairman Colquitt noted that what we want to say here is that for our purposes and this act there are two types of crimes that we are concerned about and that we want to attach serious consequences. One of the types is crimes of violence and the other are those other heinous crimes that we condemn as a society. We condemn a lot of crimes as a society but these are particularly heinous. We might use the word particularly heinous

instead of especially because especially heinous is the capital term. We want to divorce ourselves from that. We are looking for something that would denote that these offenses, though not traditionally thought of as "violent", are more aggravated and more egregious than other offenses in the same classification or are otherwise set apart as especially egregious.

Comment: As a practitioner after the sentencing fact here I was hoping that there is a whole lot of our methodology that relies on our definition of violent offense or violent offender. I was hoping that in defining it that it was going to be a definition of violent offense/violent offender that we could go by without being subjective in our interpretation of a violent offense. For our purposes we would like to have a definition of violent offense or violent offender.

It was also noted that there needs to be a measure of what is a violent or non-violent offense so that as the legislature adopts new laws, there is a field of reference for designating whether the new offense is violent. If the commission provides only a list crimes there is no definition on which to rely for future categorizing.

It was suggested that each new statute must contain a designation of whether the legislature considered the offense violent.

Comment Judge Rains expressed continuing concern for using the term "heinous" because of its association with the capital statute. He felt this could lead to unnecessary litigation. Judge Rains also expressed concern about including all production of obscene matter involving a minor in the definition. The way that statute is written, the offender may not have involved children at all. The way the statute is written, the offender might be merely photocopying what someone else has produced

Chairman Colquitt suggested that the definition include the words "particularly reprehensible" rather than heinous. Judge Rains agreed..

Ms. Davis suggested that the commission go through the list and look at the offenses and then decide whether a further definition is needed and what that definition should be. .

Ms. Goggins suggested that it might be helpful to use the definition that the drafting committee had discussed: "a violent offense is an offense that has an element the use/attempted use or threaten use of deadly weapon or dangerous instrument or physical force against the person or another or involves a substantial risk of physical injury against a person or another." This was the primary criteria the committee used to develop the list.

Ms. Davis noted the committee also included the more reprehensible sex offenses that did not include physical force or intimidation as an element..

Judge Rains noted that the sex offenses didn't actually fit the definition that the committee was using and that led the committed to substitute a list for the definition.

Several members of the commission voiced agreement with the definition originally used by the committee and suggested that it be expanded to include offenses that are otherwise deemed particularly reprehensible so that the statute includes not only a list but the definition defining the offenses included in the list.

Chairman Colquitt asked how the definition fits into the work of the commission. Ms. Davis explained that the definition is needed in the establishing of guidelines, in defining criminal history, and in looking a possible amendments to that habitual offender law, like the legislature attempted last year.

Chairman Colquitt noted that if the definition deals only with the work of the commission, it would be easy to basically use what the definition suggested and not include a list but just say as interpreted or considered by the commission. If, however, the definition is to be used by judges, then something more definitive is need to discourage disparity in application. If we are trying to give judges guidance, then we need to basically give them something more specific. If you dealing with the sentencing commission it is easier for this small group to have guidance and then discuss it between themselves and make a decision as a group and instead of having the judge in Fort Payne and the judge in Tuscaloosa reaching different conclusions. Judge Colquitt expressed concern about the use of a broad definition that might be used other than by the commission. For general use, he felt the definition should be more precise.

It was suggested that the definition might include both a general definition and a list of included offenses. We would list those crimes as either being violent, sexual in nature or particularly reprehensible/specially reprehensible or whatever to give us guidance on what types of statutes we might to fold into this in the future or suggest to the legislature to fold into it.

It was again noted that any broad definition will lead to different opinions of what is included. Ms. Davis replied that this is why the committee went to the list rather than a definition.

Judge Rains asked Judge Colquitt if he was in favor of or opposed to having this list incorporated in this statute.

Chairman Colquitt responded that he was not going to oppose the list. He simply isn't sure if it is necessary if the definition is for the commission to apply rather than others, subject to Ms. Davis stating the definition will be used in other ways. His view is that we don't need the list but it is a shorthand way of getting to a point without having to later take a definition and then the Commission voting on each and every statute throughout. The subcommittee has already done that. They have already gone through the code and picked out which statutes they see fitting into this category of crimes that we ought to focus on. Chairman Colquitt suggested two approaches: (1) give the commission a definition and let the Commission deal with it as the time comes; or (2) give the commission a list and a definition so that if it's not on the list and it's a new statute the Commission can then determine whether or not it would end the spirit of this.

Judge Rains noted that the next section of defines violent offender that is a person who is to be treated as the same as a person who has committed a violent offense. In fact a violent offender is one who has committed a violent offense but it's also some other things. Because it's some other things it has that subjectivity that you are talking about to achieve the degree of fluidity, I think, you are perhaps recommending. You have also the special circumstance the parole folks are concerned about that is addressed by having not only a definition of a violent offense or a list of offenses we deemed violent, but also a definition of a violent offender which is a broader definition.

Chairman Colquitt reiterated that how the definition is written depends on its use. If the definition is for the sentencing commission to decide, from time to time, what is a violent offense, in recommending guidelines, then a general definition is appropriate to give the commission leeway to add to the list. The decisions would be made by the commission as a group and that doesn't lead to disparity of result because there is only one result. Whatever the Commission decides that's the end of the issue. We may disagree all day long but at the end of the day we vote, it's over and there is one answer so there is no disparity. He noted, the other potential use for this type of list is that it is folded into some guidelines where judges are making decisions about whether or not this person committed a violent crime. If you have a definition and judges are entitled to aggravate or enhance the sentence based on whether or not the person committed a violent crime then it's possible that judges will decide that something was violent where other judges would decide it was not violent. Now we are right back to disparity in sentencing. This is where more specificity is required in the definition.

Ms. Davis suggested the committee would continue to work on the definition and include a general definition that includes a list of offenses

Definitions – violent offense list

Ms. Davis then asked for specific comments on the list.

Ms. Brooks suggested that the list should include manslaughter and criminally negligent homicide. Manslaughter was added to the list

It was noted that some states include criminally negligent homicide and some do not because the offense does not include a specific intent to cause death or physical injury.

Judge Johnson noted that it seems strange to include promoting prostitution, legal in some states and not include killing someone.

Ms. Davis pointed out that promoting prostitution is coercive sex, i.e. coercing someone into prostitution, whereas criminally negligent homicide, was a negligent rather than an intentional act.

Chairman Colquitt noted that this is one of the reasons he likes including "particularly reprehensible" in addition to violence in the definition. All deaths necessarily met some versions of definitions of violence. You can have a bad result on a nonviolent type crime. If felony murder doctrine, it is possible in some states for someone write a bad check and give it to a store keeper and they cash it and loose their money and have a heart attack

and they are guilty of felony murder. There's no violence in the crime. There is just a violent result. The person died of a heart attack. We still might deem even a nonviolent bad result to be particularly reprehensible. We want to punish it as though it were a violent crime at the same level. For offenses like, criminally negligent homicide or promoting prostitution in the 1st degree or production of obscene matter or something of that nature we don't have to stick with the word violent. We can always say that society just deemed it so reprehensible that we punish at the same level as though it were violent.

Criminally negligent homicide was included in the list.

At Ms. Brooks suggestion, all variations of Assault I were included in the list bringing back in those that were excluded by the committee under the same rationale as manslaughter and criminally negligent homicide.

At Ms. Brooks' suggestion, all Assault II was included in the list, adding back in the reckless assault initially excluded by the committee on the same rationale that manslaughter was excluded..

Ms. Brooks suggested that kidnapping II is included in its entirety and that compelling street gang membership, §13A-6-26, that is a force crime should be included in the list.

Judge Johnson noted this a real problem in Jefferson County.

Kidnapping II and compelling street gang membership were included in the list.

Ms. Brooks noted that using pepper spray was not included in the list. Ms. Davis noted that it was left out as lacking the element of violence included in most offenses that were included. This offense was not re-included in the list.

Ms. Brooks also noted that sexual torture and sexual abuse I & II were not on the list.?

Ms. Davis noted these offenses were supposed to be included and would be included.

Ms. Brooks questioned whether soliciting a child by computer should be included.

Ms. Davis noted the offender is soliciting a child for sexual purposes. It was stated that that this offense is particularly reprehensible and should be included.

All of the domestic violence statutes were added back in because these offenses are based on assault and all of the assaults were included.

There was some discussion concerning Burglary III and the limitation that the offense is considered violent only if the intent of entering the building is to commit a violent offense as defined by this section. It was decided that this restriction should remain and that there was no need to include the term "(a)".

It was decided that pharmacy robbery need only be listed once and there is not need to distinguish between I & II because the distinction goes only to penalty.

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Chairman Colquitt asked what is the reference to §13A–8-5. That was explained as a typo.

Ms. Brooks noted that the committee included discharging a firearm into an occupied building, dwelling etc., leaving out unoccupied buildings, etc. under §13A-11-61. Ms. Davis responded that this was correct and intentional.

Ms. Brooks noted that the list does not include Terrorist activities under §13A-10-15 and that should be included. §13A-10-15 was added to the list..

Ms. Brooks noted that Promoting prison contraband I, §13A-10-36 was not included in the list. That offense involves a deadly weapon or a dangerous instrument. Ms. Davis noted that offense will be included.

Ms. Brooks noted that Abuse of a corpse is not included in the list. Ms. Flynt responded that the committee believed that act is repulsive but not necessarily violent in the same respect as the other included offenses.

It was noted that the offense might be considered particularly reprehensible and further noted that might be so to the family of the deceased but there is a distinction between abusing a corpse and a live individual. Ms. Davis noted that this offense will not be included in the list..

Ms. Brooks noted that disseminating of obscene matter to minors was not on the list. Ms Davis responded that the committee discussed the offense but decided there is a big difference between disseminating obscene matter to minors and requiring them to participate in producing obscene matter. The offense was not included.

Ms. Brooks noted that the list should include child abuse under §26-15-3 and aggravated child abuse under §26-15-3.1. Ms. Davis noted that those offenses would be included.

Ms. Brooks also suggested that the new offense of elder abuse under§38-9-7 should be included in the list and Ms. Davis agreed to include it.

Ms. Brooks noted that there may be some misdemeanors that rise to a felony on the second or subsequent offense that the commission may need to consider. Ms. Davis responded that additional offenses can be added later.

Ms. Brooks noted that attempts and conspiracies should also be added to the definition. Ms. Davis responded that this would be done. Ms. Davis also noted that the list or definition should include like offenses under prior law and the law of other jurisdictions and this would be considered.

Chairman Colquitt noted that when you add conspiracy and attempt you want to make sure that you are reminding yourselves that we are talking violent or particularly reprehensible conduct. For instance, lets suppose somebody tried to kill a dead body. Is that a violent crime? Under Alabama law if a person intends to kill somebody and that

person is already dead and they walk in and they shoot that body they are guilty of attempted murder in the definition. Attempted murder is punished the same as murder. Shooting a dead body with the attempt kill to them carries life in prison in this state. This is under §13A-4-2(b), the attempt statute which provides that it is not defense that the offense charged was factually or legally impossible of commission under the attendant circumstances. Chairman Colquitt noted that that provision is pretty broad.

Ms. Davis noted the list of violent offenses was now essentially complete with the additions that had been agreed to by the commission.

Judge Johnson asked whether trafficking in cocaine and heroin should be included. Ms. Davis noted the committee had much discussion on this issue. Ms. Davis stated she believed that trafficking, especially in cocaine, heroin, and ecstasy, is a violent offense or particularly reprehensible offense. She asked for a consensus of the commission on the issue.

Ms. Davis was asked to explain how trafficking is violent. She explained that trafficking is particularly reprehensible because trafficking in large amounts affects a whole lot of people. The degree of harm that can be done is so great.

Judge Johnson suggested the legislature should look at all the trafficking offenses because they raise numerous questions and do not reach the problems addressed. He believes the commission needs to address that in a comprehensive way, at some point.

Ms Davis agreed that ultimately the criminal code is going to be addressed in a comprehensive way. The commission simply cannot address everything at one time. The commission agreed to include trafficking in the list of offenses that are violent or particularly reprehensible.

Ms. Davis will review the list again and review offenses to determine if there are any other omissions of offenses that should be included.

Definitions – violent offender

Ms. Davis noted that the definition of "violent offender" is still in draft form and is written in terms of a determination by a release authority. She proposed that the definition should be broader than that. Ms. Davis suggested "a violent offender is one who is convicted of a violent offense as defined in this section or who is determined by a trial court judge, release authority, or other (whoever has the authority to make the determination) to have demonstrated propensity for violence, aggression, or weapon related behavior based on the offender's criminal record or behavior while incarcerated."

It was suggested that referring simply to "criminal record" may be too narrow and exclude the consideration of information relevant to the determination of a propensity for violence. The commission changed the wording to "criminal history," the term used in the capital statutes.

Ms. Brooks suggested that limiting the definition to "while incarcerated" may also be too narrow or restrictive. .

Chairman Colquitt noted that the capital statute for the purpose of enhancement says criminal record. The litigation says that the defendant has no significant history of prior criminal activity. The way the capital statute is using it is that if you have no significant history of prior criminal activity you get the benefit of the statutory mitigator. On the other hand if you have any significant history of prior criminal activity you don't get the mitigator but you don't necessarily get the aggravator. You don't get the aggravator unless you have a conviction. You are using it here as an aggravator.

Ms. Brooks noted there is another definition under community corrections act. Ms. Davis suggested that definition is very similar to the one proposed here.

Ms. Davis suggested that "while incarcerated" be changed to " while under supervision" because that would apply to somebody on probation whose behavior causes them to be revoked—somebody on parole who has a propensity for violence that causes them to be revoked and that's what we are really after is what happens while the offender is under supervision

Ms. Flynt recognized that "under supervision would also include pretrial diversion and that would entail the DAs providing records.

Mr. Hosp noted the use of the term "supervision" requires a definition that should include incarceration.

Ms. Davis agreed that defining supervision is important for a number of reasons but especially because criminal activity while "under supervision" is often found to be a relevant factor in increasing a sentence recommendation.

Ms. Brooks suggested "under sentence" instead under supervision. She noted there are cases where they are court supervised probation (means they get nothing) and then the judge doesn't even want to see them but just go pay your money an when you pay it bring it to me and I'll terminate it.

Ms. Davis agreed that the committee would consider this further,.

Definitions – risk assessment

The definition of risk assessment as an instrument designed to assess an offender's relative risk of reoffending or propensity for violence or threat to public safety generated no discussion.

Definitions – continuum of punishments

Ms. Davis suggested that the definition of continuum of punishments is definitely merely a concept at this point and is not proposed for decision but to provoke thought. She did not ask the commission to vote on this definition at this time. There are a lot of issues in the area of intermediate punishment and how that is defined and the drafting committee will continue to work on this. This definition could be particularly important as the commission begins to work on guidelines.

Definitions – initial voluntary sentencing guidelines
truth in sentencing guidelines

Ms. Davis then discussed the definitions of "initial voluntary sentencing guidelines" and "truth in sentencing guidelines." The initial voluntary guidelines would be the voluntary guidelines that would become effective on October 1, 2004. These guidelines will be based on the historic sentences imposed with normative adjustments designed to reflect current policies.

There was some discussion of whether the word "normative" should be used. The commission decided to take out the word "normative" as being unnecessary to the definition and because it could generate issues about whether the guidelines were constructed according to this direction. The point is the commission recognizes the guidelines will not be based solely on historical sentencing patterns because to do so would not allow for any changes in the historical sentences to reflect changes in sentencing policies or to meet the requirements set out by the legislature as the purpose of sentencing.

Ms. Davis explained that truth in sentencing guidelines are the voluntary guidelines that would become effective Oct. 1, 2005 or 2006 that date is up in the air for several reasons. And the commission is not being asked to make the final decision at this time.. These guidelines would be based on historic time served for offenses with adjustments (scratch normative) designed to reflect the current sentencing policies.

Judge Johnson noted the historic time served, based on the commission's study, shows some circuits giving the maximum and some giving the minimum. Historic times served in some cases is too much. In some cases it isn't enough. If we are going to base it on that we are locking ourselves in to what has been happening in different circuits.

Ms. Davis stated that is why we have included the authority for the commission to make adjustments to reflect current sentencing policy.

Judge Johnson s indicated that authority may not be enough to overcome a political propensity to "lock them up and throw away the key law and order."

Ms. Davis stated the wording is broad to allow the commission, in the development of guidelines, to make adjustments. The guidelines will be developed using the data that we have running with the simulation model to determine if sentences comply with sentencing goals. If it overloads and overcrowds the prisons it doesn't comply with the stated goals

It was suggested that "designed by the commission" be added to the guidelines definitions sections and that the word statewide be added to show that the guidelines would be based on "statewide" sentencing practices, rather than individual circuit practices. Also the commission has discussed using the middle 50 percentile of sentences to construct the guideline sentence ranges. This throws out the outliers or extremes and allows the guideline ranges to be based on a norm.

It was agreed that the proposal would be amended to take out the word normative and add the word statewide and the phrase "designed by the commission

Ms. Davis explained the purpose of two sets of guidelines. The initial guidelines under J are based time imposed. In K the truth in sentencing guidelines are based on time actually served. The two need to be in existence so that judges will have guideline options for all cases. The ones before the effective date of truth in sentencing and the ones for offenses committed prior to the effective date of truth in sentencing so judges won't be sentencing half the people with guidelines and half without. This is to encourage compliance.

Duties of the Commission – Section III

Ms. Davis explained the next section, Section III is what the commission will be doing to achieve the goals recognized by the legislature. She noted that Section III.A. requires the commission to develop statewide guidelines and suggested this might also include based on "statewide" data.

There was discussion of Section III.F. concerning risk assessment instruments and how the commission proposed to use a risk assessment instruments. Ms Davis noted that Virginia uses a risk assessment to determine, among offenders slated for prison in Virginian's guidelines, which offenders could be placed in intermediate alternatives rather than prison. It was noted that this is different than using the instrument up front to determine the in/out decision. Virginia's application is more like granting a favor to someone who otherwise would have gone to prison rather than actually using it to determine disposition in the first instance.

Ms. Davis agreed that the risk assessment section needs to be rewritten and should not be considered for adoption at this point. She noted that looking at the data that we have looked at there may be at least 25% of the people who are being sentenced to incarceration today who could be diverted or sentenced to other alternatives were they are available. She wants to know how to write in this statute to use risk assessment to determine if that 25% of the population exists and to identify them. She noted this type of instrument could be used to help resolve the overcrowding problems if there is a large enough divertible population.

Development of voluntary sentencing guidelines – section IV

There was some discussion of the language in Section IV.A.(3) and similar sections concerning the presentation and approval by the legislature. It was noted that the language should be consistent. The idea is that the guidelines will become effective on a certain date after the legislative session in which they are presented and approved. Ms. Davis noted that this is a matter of drafting and will be cleaned up in drafting the legislation.

Ms. Davis noted that Section IV.B. is intended to state that statewide historical sentencing practices will form the starting point for guideline sentence range construction. This starting point will be adjusted to reflect current sentencing goals as established by the legislature and court rule. -

Ms. Davis stated that Section IV. C requires the commission to take statutory minimums and sentence enhancement and sentencing practices pursuant to these requirements into

consideration constructing the guidelines. This is simply to make everyone aware that these provisions reflect sentencing policy and will not be ignored. She noted, however, when these statutory policies are considered along with actual sentencing practices they may not look the same.

Section IV.D. will be consistent with other effective date provisions.

Ms. Davis next discussed Section V of the statute recommendations with the commission.

Use of the voluntary sentencing guidelines – section V

Filling out guideline work sheets -

Concerning Section V.A. there was discussion of who would fill out the guideline recommendation worksheet. Ms. Brooks stated there had been considerable discussion in the drafting committee concerning this item and that Mr. Glassroth had expressed concern that the defense must be given sufficient notice of the contents. Ms. Goggins stated that Mr. Glassroth wanted to make sure the defense had an opportunity for input. It was noted that requiring a certain length of time for formal notice to defense counsel could be unrealistic in many cases because of the way in which plea agreements are reached.

In response to a question Ms. Davis stated the worksheet would be completed prior to sentencing. She was asked if this would create a logistical problem for someone who wanted to plead guilty at arraignment. Ms. Davis stated she did not see that it mattered when the plea occurred so long as the worksheet was filled out for any plea prior to sentencing. If the pleas is negotiated, the worksheet should, most likely, be filled court prior to the plea so that all the facts on which the plea is based will be known and takeen into account during the guilty plea colloquy.

Ms. Brooks was concerned there could be logistical problems if the offender wants to plead guilty and ordinarily the plea is accepted in a very short period of time. Ms. Davis replied that once everyone is used to it, filling out the sheet should take only a matter of minutes if the facts are known or agreed to. Ms. Brooks noted that prosecutors generally have prepared a summary sheet by the time a case is presented to the grand jury and that sheet can be adapted to include the worksheet data so the information will be available very early in the proceeding.

Judge Johnson noted this discussion is applicable to most cases because most cases are decided by a guilty plea.

Ms. Davis estimated that in at least 90% of the cases worksheet will be filed out by the District Attorney. If the judge puts off sentencing for a full investigative report from his probation officer and the information changes as a result of that investigation, that would have to be taken into account at the sentencing hearing. The fact that this could happen would probably need to be presented to the defendant during the guilty plea colloquy. This could affect when the guilty plea is accepted or allow for the guilty plea to be

withdrawn, very similarly to what happens now if circumstances change. It would be up to the judge whether the guilty plea is accepted.

Ms. Davis was asked if a problem is raised where the guilty plea length of sentence and the disposition of sentence occur at two different times. She responded that the guidelines would include both sentence duration and disposition so this should not pose a problem. Therefore disposition is determined at the time of the sentence. She noted this may change some sentencing practices. In some circuits a guilty plea is accepted and then the judge imposes the whole sentence at another proceeding, i.e. Montgomery. In other circuits, the judge accepts the guilty plea and imposes the duration of sentence at the same time. Instead of a sentence hearing, the judge later holds a probation hearing and determines disposition. Under guideline sentencing both a duration and a disposition will be recommended.

Ms. Brooks asked if the guideline recommendation is different that the plea bargain, or the plea bargain is based on an erroneous computation, would that situation create any rights for the offender. Ms. Davis replied that, if the judge decided to go with the guideline sentence, the situation would be the same as now if the offender bargains for a certain sentence and the judge decides to impose a different sentence.

Judge Rains stated this problem should be addressed in the guilty plea colloquy: Chairman Colquitt agreed that this must be addressed in the colloquy as part of the guilty plea proceeding. Judge Rains noted the judge should protect the record in the colloquy much the same way it is done now when a judge is awaiting a pre-sentence report to decide probation issues. Ms. Brooks noted the colloquy might include a standard statement about the guidelines.

Consideration of the worksheets by the trial judge

Section V.B. requires the sentencing judge to consider the guideline recommendation. The section generated no further discussion.

Departures from guidelines - Appellate review of departures prohibited

Ms. Davis explained Section V. C. is intended to prohibit appellate review of departures She stated the primary purpose of having the judge state a brief reason for the departure is to inform the sentencing commission as it reviews the recommended sentences in the guidelines. A length description of the reason for a departure is not necessary for this purpose. This is based on the Virginia provision.

Distribution of worksheets and orders

Sections V.D & E. sets out the requirements for distribution of the guideline worksheets as being the same as for pre-sentence reports under current law. Ms. Brooks stated this language was sufficient to allow access to victims, prosecutors, defense attorneys and the trial judge. Mr. Segrest stated the Board of Pardons and Paroles has always considered that Pre-sentence reports (PSI's) belong to the trial court judge and he can do with them as he sees fit. Chairman Colquitt responded that a decision of the United States Supreme Court holds that it is a violation of federal due process to have a PSI before a judge to which the defense has not been given access. This case presented no problems in Alabama is because our statute required PSI's be made available to the defendant. For

instance, in Tuscaloosa every PSI automatically went to the DA's office, defense attorney and to the judge.

Ms. Flynt noted that under the crime victim's bill of rights the PSI is made available to the victim upon request. Ms. Brooks stated the capital statutes specifically provide for the distribution and nothing is confidential. Ms. Brooks read the commission §15 23 73, Code of Alabama 1975 providing "The victim shall have the right to review a copy of the PSI subject to the applicable federal or state confidentiality laws at the same time the document is available and defendant or his/her counsel." This code sectin resolved the commission's questions about the distribution of PSI's.

Appellate review of guideline sentencing prohibited

Ms. Davis explained that Section V. F. is intended to prohibit use of the guidelines to obtain any kind of post-conviction relief. She noted that the wording had been changed by the drafting committee to shorten the section. The first draft proposed "The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be subject to appellate review or the basis of any other post-conviction relief" The new language is intended to have the same meaning in a shortened form, "The failure to follow any or all of the provisions of this section in substance or in manner shall not be subject to appellate review or the basis of any other post-conviction relief."

Judge Colquitt noted that someone might be concerned that substance would be read as some type of substantive right and that manner would include procedure and committee was trying to make clear that no right of appeal of anything about the guidelines should exist.

Chairman Colquitt noted if you started out with the word substance in the original draft, he could see where someone would be looking at whether or not it would only limit appellate review of items of substance and would not bar any appellate review of the procedures used during the process. For instance, a person could follow the guidelines but make a mathematic decision with regard to the imposition of some aggravator or mitigator in determining how this person fit within the guidelines. Now someone wants to appeal not on the basis on the guidelines themselves or the sentence imposed but the manner in which the person calculated what the sentence would be. They want to argue about whether or not this case should have been factored up or factored down based on the criteria that's being used.

Judge Rains stated that the old language was "the failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be subject to appellate review or the basis of any post conviction relief." If you leave out the word in substance in the new wording the provision doesn't make any sense.

Chairman Colquitt again noted the purpose of the statute is to clearly state that no appellate review of guideline sentencing exists outside of any limited review based on jurisdiction that already exists.

Ms. Davis stated she was fine with the way the provision was originally worded and that that language was taken directly from the Virginia statute.

Judge Rains suggested that to keep it simply the section read simply "the failure to follow any or all of the provisions of this section shall not be subject appellate review." The consensus of the commission was to accept this suggested wording.

Truth in sentencing guideline sentencing – Section V (should be VI)
No other provision as to length of sentence applicable

Ms. Davis discussed the provisions concerning the truth in sentencing guidelines. Sentencing under the truth in sentencing guidelines. She noted first that Section G under the previous section is misplaced and needs to be under the truth in sentencing guidelines section. Section G provides that sentences imposed in compliance with the truth in sentencing guidelines will not be subject to any other provision of law concerning the length of sentence. This section allows the commission to use historical time served sentencing patterns to construct the guidelines for truth in sentencing purposes. .The section addresses the issue of an historical time served of 2 ½ years on a sentence imposed of 10 years where the minimum term by statute is 10 years.

Abolition of parole and goodtime – effective date of truth in sentencing

In response to a question, Ms. Davis stated the truth in sentencing guidelines are voluntary. Mr. Segrest stated his concern that voluntary truth in sentencing guidelines cannot exist without continuing parole and good time. Ms. Davis responded this has occurred in other states. Truth in sentencing has been implemented under voluntary guidelines and parole and traditional goodtime has been abolished. Ms. Davis further noted, it is this issue that has generated the discussions about whether the guidelines were to be implemented in 2005 or 2006 and why we use the field-testing to test the compliance rate for guidelines. That's not a bit different from what other states have done that have implemented voluntary guidelines and abolished parole.

Ms. Brooks stated that this also gives the commission time to look at other changes to the criminal code to make compliance more likely and to limit the range available for departure. She noted specifically changing the minimum fro shoplifting from $250 to $1,000. .

Judge Rains noted that Mr. Segreast's concern is exactly the reason we ought to wait until 2006 to implement truth in sentencing guidelines. We have got to have at least 2 years of experience here to see if the judges are going to comply. If judges don't comply we are probably going to have mandatory guidelines. Based on what Senator Smitherman says, the legislature would favor mandatory guidelines anyway. If we start going to mandatory guidelines at this point the judges are going to try to kill this bill.

Chairman Colquitt noted and Ms. Davis agreed this leaves open the question of pardons. Now the Parole Board can pardon an offender and he or she could be released. This is an issue that has not yet been addressed by the drafting committee that the committee will look into.

Section VI – Sentencing under the Truth-in- Sentencing Guidelines. Point to subsection B, Ms. Davis explained that each felony sentence must contain a minimum and maximum release date, with the maximum release date established as 20% more than the minimum release date.

One of the Commission members asked if there had been any studies showing what the optimum period an inmate should be required to serve on post-incarceration supervision. Ms. Davis stated that South Carolina requires 18 months and they say that is too long. Mr. Segrest noted that a lot of studies that say 6 to 12 months should be required.

Ms. Davis commented that this procedure would embody the 85% truth-in-sentencing rule, but would allow release after serving 85% of the sentence. It involves 2 primary factors: (1) it would allow an inmate to be released if he follows DOC rules and regulations, does what they require and doesn't misbehave. Therefore, how long inmates are kept will ultimately be determined by DOC, but there will be a maximum time set. (2) Consideration will need to be given as to economic impact that results from setting the maximum sentence at 20% (or whatever %) of the minimum recommended sentence. Noting that the Commission could set the maximum at 20 or 15% or even 10% more than the minimum, bsent10 term requiring inmates to serve 80 as opposed to 85% of their sentence. Ms. Davis stated that she The Commission could recommend even less, but she would prefer to set the maximum at 20% unless the simulation model dictates to the contrary, in which case we can adjust the amount, even if we have to do it by amending the statute.

Judge Rains stated that the maximum term is equal to 120%, not 20% of the minimum and this should be corrected in the proposed bill and report. Judge Colquitt agreed.

Ms. Davis continued reviewing the report noting that Section VI (C) provided that no sentence of incarceration imposed under these guidelines can be suspended. In addition to the maximum and minimum term the judge will be required to impose a term of post release supervision of 6 months to 3 years. That is included to ensure that every felon serves some time under supervision following release. Ms. Davis explained that this part of the sentence should be ordered up front.

There followed an extensive discussion of sentencing under the truth-in-sentencing guidelines, including how to calculate the term that would be required to be served on post-release supervision. The question was asked about how you would compute post-incarceration if a person gets released after serving 100% of his short sentence term and when additional time would be given for disciplinaries.

> "Considering the maximum sentence, which is 120% of the minimum release date, that time, the time remaining, is longer than the post-incarceration supervision imposed by the judge. In that instance, what would be the time an inmate served on post incarceration supervision? Would he serve the 3 to 6 months in addition to the time served toward his minimum release date, in

addition to the maximum date, the remaining time of 120% of sentence or does he serve whichever is greater?"

The example was given of a person whose minimum release date is 4 years and maximum release date was 5 years and the judge imposes post release supervision of 6 months. Assume the inmate receives 3 disciplinaries. It was explained that the inmate will not be getting out when his four years is up and he would have to stay 3 more months. He would be released after serving 4 years and 3 months, which would leave 9 months for the remainder of time to his maximum release date. He would be required to serve 6 months under post-incarceration supervision, unless the Commission decides a longer term of supervision should be required.

As a further example, it was explained that if he didn't get in trouble and the judge said that he is going to get 6 months supervision after serving 4 years, he would still serve the 6 months on post-incarceration supervision. Whatever the judge sentences him to is what he will serve.

In regard to the above example, Judge Colquitt expressed his concern about providing a discretionary range of 6 month to 3 years for judges to choose. He stated that some judges would start giving the maximum period of supervision and that the inmates that have served longer terms of incarceration should serve more time on post-conviction supervision than inmates with shorter sentences. Judge Colquitt pointed out that judges may start giving the maximum period of supervision for everyone because it would make them look tougher, then it would make the whole idea of setting a post release supervision period irrelevant.

Mrs. Davis asked the members if they thought people who had not been sent to prison for a long time should receive 12 months of post-incarceration supervision. A member responded that it depended on what we were trying to accomplish with post release supervision. If release supervision is for the purpose of reintegrating a person who has been incarcerated into society then there is a question of whether the judge would realistically know what that length of time should be.

Chairman Colquitt stated that there were a lot of judges that will take the position that the decision should be made by those in charge of post release supervision and others are going to view release on post release supervision as just an early out and like parole, if the inmate violates the rules, he should be sent back in

This comment generated a discussion about the penalty for violation of conditions of post-incarceration supervision. Mrs. Davis explained that when an offender's post release supervision is revoked, the statute could require that he be returned to incarceration to serve the reminder of his maximum release date sentence, the remainder of time remaining on post release supervision or 9 months whichever is greater.

Chairman Colquitt asked what would happen if an inmate's remaining time is more than the term set for post-release supervision and he does something bad a day after his supervision period ends. Under this example it was assumed that the maximum release date was 10 months more than the short release date and a 6 month term of post

incarceration supervision was ordered. Under this scenario, an applying the punishment provision Ms. Davis mentioned, he asked whether the offender would he be sent back to prison; could he be sent back to serve the time remaining up to the maximum sentence?

It was also noted that the proposed statute did not provide for a judge to send a person back to incarceration for a portion of that time remaining and then back to supervision.

Mrs. Davis explained that it was envisioned that the time imposed for post release supervision would be ranked along a continuum according to the sentence imposed.

Judge Johnson expressed his concern that this guideline procedure could increase the time a person serves in certain areas of the state like Birmingham where the typical sentence given is a split sentence, with a 10 year sentence imposed and a portion suspended so that the defendant gets 1 year to serve and 2 years probation. He stated that under the guidelines proposed there will be more overcrowding in the jails and prisons. In response to Ms. Davis's question about the imposition of a 1 year sentence, it was recognized that it was disproportionately low when compared with the sentencing practices in the rest of the state. Bill Segrest said that although it is generally believed that sentences in Jefferson County are disproportionately low, he thought the data John and Tammy had provided did not necessarily support this assumption. Mrs. Davis stated that we would go back and review what the sentences in Jefferson County look like when compared with the rest of the state.

Chairman Colquitt asked what would happen to an inmate who has a post release supervision date that takes him beyond the maximum release date and he violates a condition of his release. Mrs Davis stated that he would be required to go back to prison for 9 months because the proposed statute would state that he serves whichever is greater.

Judge McLauchlin reminded the Commission members that his committee last year proposed that violations of post release supervision be treated as a separate crime, a misdemeanor, for those inmates that had no time remaining on their sentence.

Judge Johnson noted that judges often sentence offenders to part supervised and part unsupervised probation, eg. An offender is given 2 years probation, with the first year being supervised and the second year being unsupervised. Under this scheme the judge retains jurisdiction but no supervision fee is required.

Mrs. Davis proposed a procedure whereas 6 months or 3 years that is imposed for post release supervision would be served between the minimum and maximum sentence. It would not be tacked on after the maximum. She noted that post supervision was to ensure that all felons have some supervision. An extra 9 months could be imposed for violations of conditions of supervision. It could be written to authorize the judge to send then back for a portion of that. If they come out and violate supervision again then they could be required to serve another term of supervision for 9 more months or perhaps the rest of the 6 months at the judge's discretion. However, the statute can't be written to keep adding time for violations of supevision ad infinitum. One 9 month period is enough.

Judge Rains suggested that the Commission might consider developing a graduated scale so that the periods of post incarceration supervison would vary according to the sentence served. For example, for periods of incarceration of 5 years or less the post incarceration supervision could be 6 months; for sentences of incarceration of more than 5 years and up to 10 years incarceration the post incarceration supervision could be 1 year 18 months; for sentences over 10 years imprisonment, the post incarceration supervision would be something greater.

Ms. Davis asked if there is a continuum adopted, should it take into consideration at all the time between the minimum sentence and the maximum sentence? Should it be that if you served the maximum term, the only time left to serve for a violation would be the post incarceration imposed by the judge?

Judge Rains explained that if we had a graduated schedule, when an inmate violated the conditions of post incarcerated supervision, he would go back and serve the remaining period between the minimum and the maximum, whatever that remaining period is, or you could say the remaining period plus 9 months or some other time. Ms. Davis suggested establishing a maximum time.

After an extended discussion of the problems associated with ways in which to handle violations of supervision under different scenarios, not only with a split sentence but when a defendant's sentence is suspended and he is placed on probation for no more than 5 years (the statutory maximum for straight probation), it was decided that the drafting committee would do further work on the issues raised pertaining to post incarceration supervision and present their recommendations to resolve these problems at the Commission's January meeting.

Under subdivision H providing that under the truth in sentencing guidelines no felon will be eligible for parole consideration or good time credits for sentences imposed for offenses committed after effective date of the truth in sentencing guidelines. The Commission must decide on the date and the statutes will need to be included.

Abolition of Parole and Good Time

In reviewing subdivision H, relating to truth-in-sentencing, which entails abolishing Parole and good time for sentences imposed for crimes committed after the effective Date of the Act, the question was asked about how we were intending to achieve truth-in-sentencing if judges refused to follow the voluntary guidelines. Mrs. Davis stated that in that instance we would have to go to mandatory guidelines, we could amend the code and make them mandatory or we could revamp the criminal code for the voluntary guidelines.

Bill Segrest stated that we may have trouble getting the provisions abolishing parole passed by the Legislature. In his experience, there are several legislators that contact their department trying to get people out of prison on parole.

John Speir asked if there was any sort of understanding about what sentences should look like under the "time imposed" guidelines before the truth-in-sentencing "time served" guidelines are implemented? In other words, just exactly what the interim system should

achieve. Mrs. Davis stated that the Commission may want to provide in the legislation that we would not switch over to truth-in-sentencing guidelines and abolish parole and good time unless there is a 75% compliance.

Judge Rains stated that he did not think Alabama should go to truth-in-sentencing until we have at least 2 years of compliance under the voluntary "time imposed" guidelines. He agreed with John Speirs who had made the suggestion not to implement truth-In-sentencing guidelines unless a certain percentage of compliance was obtained. He stated that it would be dangerous unless a provision was included stating that parole and good time would not be abolished unless there was a certain percent compliance with the voluntary guidelines because it would tie us down to a course of conduct that could put us in worse shape regarding prison and jail overcrowding and because there would still be variations in sentencing patterns Alabama would still not have truth-in-sentencing.

Chairman Colquitt stated that down the road, even if we have 75% compliance under the interim system, we still may determine there is an alternative approach that is better than what we have envision now. It may be that our planned approach for implementation in 2004-2006 may never come about because the Commission decides it is more prudent to adopt a different approach. It all depends on what we see developing.

Mrs. Davis stated that we could always go back and amend the statute but others stated that this might be risky.

The Commission directed the drafting committee to come up with a solution. Ms. Davis stated that the committee might suggest that there be an assessment of the effectiveness conducted, without coming up with an exact percent for compliance. John Speir stated that there could be only a 60% compliance rate and you would still have a good outcome in changing Alabama's system. Judge Rains noted that any effectiveness is going to be a statistical result. Ms. Davis noted the Commission's concern and that they were of the opinion that some fail-safe measure was needed.

Ms. Davis noted that the drafting committee will report to the Commission at the next meeting and provide their recommendations as to the unresolved issues, taking into consideration what has been said at today's meeting. She stated that one of the issues that has to be resolved is who is going to be responsible for deciding the time of release on post-incarceration supervision. DOC would seem to be the likely candidate because they are going to be in their custody; however, that raises questions and issues on who will be responsible for supervision. Funding will also have to be addressed and included in the report.

The Commission voted to accept the outline that the drafting committee prepared, with amendments.

Report Outline and Format *(Attachment B)*

Copies of the outline of the Commission's 2003 Legislative report were distributed to the members, who were asked to review the format and provide any recommendations for

change that they might have. No suggestions were made and it was decided that staff and the Commission's consultants would follow this general outline in drafting the report.

Questions & Answers
Applied Research Services, Inc.

John Speirs advised the Commission members that a lot of input had gone into the report outline, and was written by Applied Research Services with assistance from Vera Institute of Justice and the Commission staff, with the objective that it not be turned into an agency report. He explained that the goal is to tell a story in a simplified manner, i.e., how did the Alabama criminal justice system get in the condition it is today, and what will the system look like in the future if we do nothing; what will it look like if the recommended changes are adopted. The report will be devoted to addressing certain issues and applying data to answer those questions and such questions as: Are Alabama prisons and jails overcrowded, and if so by how much, according to the data. He explained that the chapter on truth-in-sentencing will address whether truth and certainty exist in sentencing, using data as proof to show that it does or doesn't. There will also be an explanation of parole practices and their effect on truth in sentencing. Data will be used to support our conclusions.

Dr. Speir stated that Chapter 4 of the report would be devoted to discussing the topic of unwarranted disparity in sentencing. To illustrate that there is unwarranted disparity in sentencing in Alabama, they may show the variations in sentences across the state for like offenses and offenders. In other words the various sentences imposed between circuits. He noted that he and Dr. Meredith had looked at differences in sentences for similarly situated people just to get an idea that we are see in Alabama it leads to a certainty issue. If there is disparity, the big question is going to be how is it going to be addressed so that people can be certain of the type and length of sentence they are going to get from one jurisdiction to next.

Continuing his review of the outline, Dr. Speir explained that Chapter 5 of the report will address the issue of whether Alabama is concentrating its prison capacity on dangerous and habitual offenders. It is at this point that we provide information not only on our current prison population, but the risk to society that these inmates pose. This information will be obtained from new data recently received from the Department of Corrections. Utilizing this information Dr. Speirs and I are going to look at who has been going to prison and the possibility that some part of this population could be diverted from prison to some other type of punishment.

Proposed Legislation

Theft Bill (*Attachment C*)

After a draft of the revised theft bill was distributed, along with a chart showing the values of property under the current theft statutes, the members voted to recommend amendment of §§ 13A-8-1, 13A-8-4, 13A-8-5, 13A-8-7, 13A-8-8, 13A-8-9, 13A-8-10.1, 13A-8-10.2, 13A-8-10.3, 13A-8-17, 13A-8-18, 13A-8-19 and 13A-8-23 relating to theft to redefine the offenses of theft of property, theft of lost property, theft of services, and receiving stolen property by increasing the threshold value of property for punishment as a Class B felony to property valued over $2,500, to increase the threshold level for a

Class C felony to property valued over $500 up to $2,500, and to increase the threshold level for a Class A misdemeanor to $500 or less.

Pardons and Paroles

A bill prepared to eliminate the possibility of immediate release by unanimous vote of the board and to change the way the parole eligibility date was computed for inmates serving consecutive sentences was briefly discussed and rejected by the Commission as unworkable. Recommendations for change were withdrawn.

Community Punishment and Corrections

The Commission was advised that staff was still discussing the proposed bill recommended by the Community Punishment and Corrections Committee, chaired by Judge McLauchlin, with the Association of County Commissions, John Hamm of the Department of Corrections and the Community Corrections Association and expected to have a revised copy available for review by the Commission members at their next meeting.

Plans for Report Review

It was noted that the report was in the process of being drafted by ARS and Commission staff and that a copy of the report would be available for their review and approval on or before their meeting in February.

The next meeting of the Commission was scheduled for January 17, 2003. There being no further business, the meeting adjourned at 2:15p.m.