

Alabama Sentencing Commission

Minutes of Commission Meeting
February 24, 2003

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Monday, February 24, 2003. Present at the meeting were:

Honorable Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa

Honorable Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery

Rosa Davis, Chief Assistant Attorney General, Montgomery

Honorable P. B. McLaughlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark

Emily Landers, Deputy Director of Constituent Services, Governor's Office, Montgomery

Honorable O. L. Pete Johnson, District Judge, Jefferson County, Birmingham

William Segrest, Executive Director, Pardons and Paroles, Montgomery

Lou Harris, D. P. A., Faulkner University, Montgomery

Commissioner Donal Campbell, Department of Corrections, Montgomery

Stephen Glassroth, Esquire, The Glassroth Law Firm, P.C., Montgomery

Advisory Council:

Adolph South, Tuscaloosa

Others Attending:

Sharon C. Bivens, Legislative Fiscal Office, Montgomery

Cynthia Dillard, Pardons and Paroles, Montgomery

Becki Goggins, The Sentencing Institute, Montgomery

John Hamm,

Ted Hosp

Staff:

Lynda Flynt

Melisa Morrison

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. Chairman Colquitt mentioned that Lynda Flynt, Executive Director, would cover the proposed legislation, Rosa Davis would discuss the sentencing standards, and at lunch the Commission was to hear a report on the probation and parole workload study. In the afternoon, the Commission would address recommendations for the March report. Lynda Flynt would present reports on the Community Corrections and Punishment Act, Crime Victim's Compensation's proposed bill, and the Habitual Offender Act.

Community Corrections and Punishment Act

Lynda Flynt reported that the Community Corrections Punishment Act was tabled at the last meeting to allow Commissioner Campbell to look over the proposal. Commissioner

Campbell reviewed and saw no problems with the changes that are recommended. The Act went before the drafting subcommittee where few changes were made. The Commission will go over the major changes at this time. Ms. Flynt stated that Rosa Davis is the chair of the drafting subcommittee. She provided the commission with the bill and the draft bullets that summarizes the bill.

Ms. Flynt noted that a commission member made recommendations for several changes in the Community Corrections and Punishment Act of 1991 that the Commission was not addressing. One of the recommendations made addresses where the wages are sent, changes regarding this were made on page 24 of the bill. Presently under the community corrections act wages of any defendant assigned to work release or other residential programs are to be sent to the county. However, the county is not receiving these monies, is so they designate the clerk of court to receive the funds for it.

Ms. Flynt reported that she talked to the Association of County Commissions and they did not know who was receiving these monies. Judge Rains had recommended that the Commission make it clear to who gets these monies. The changes made were that only those wages for defendants that are in residential programs are to be sent in to the community corrections providers. It is now written that they are withheld and distributed to the county or designated agency. That language has been deleted.

The other major change that some commission members had some concerns with was the half credit (Pg 11). When the drafting subcommittee reviewed it, they proposed to leave it as amended. The committee was going to require that half credit be given to all defendants participating in work release programs, originally. As the statute reads now, it leaves it up to the judge whether credit will be given. The committee knew that was disparity. The committee voted to delete that completed and that there would be no credit given to any defendant while he was in work release, home detention or on any intermit confinement.

Ellen Brooks noted that the committee made one other change on page 24, line 18. Changed waived to reduced or remitted.

Judge McLaughlin motion that the Commission recommend that the bill Motion seconded. Motion carried.

Crime Victim's Compensation Commission's Proposed Bill

Ms. Flynt stated that the Crime Victim's Compensation Commission requested that copies be distributed of the bill that they propose that would increase fees. They asked that the sentencing commission review, support and/or incorporate it in the commission's recommendations to the legislature. Major revisions are on the third page 15-23-17, where they would increase from \$2.00 to \$5.00 dollars the victim assessment for traffic cases, from \$10.00 to \$20.00 for misdemeanants, and from \$15.00 to \$30.00 for all felony convictions. Those are the court costs in addition to the crime victim's assessment. They want it raised from \$50.00 to \$60.00 for felons and \$25.00 to \$35.00 for misdemeanants.

Discussion on Crime Victim's Compensation Commission's Proposed Bill

The question was asked if there was a supporting reason for the particular increase, and if there was a budget attached. Lynda responded that they had originally sent a budget; however, the state needed the funds. Bill Segrest explained that his concern was that right now the costs in Alabama are extremely high. Speaking on behalf of the probation officers who attempt to collect this court ordered money it is difficult to get these people to realize that it's a very good thing to have a paying job but we take all of the money away from them. Mr. Segrest suggests that the Commission be careful about increasing any court costs and court fees for that reason. Ms. Flynt mentioned that she did point out that the DA's worthless check unit automatically goes up with any court cost increase. They should specify otherwise in the bill. Chairman Colquitt suggested that representation from Crime Victim's Compensation be invited to make a presentation at the Commission's next meeting. He stated that this is his first time to see this, where the commission is talking about the assessment of fines or penalty--that's one issue. Court costs is a totally different issue. The sentencing commission really doesn't deal with court costs--it deals with fines and restitution. Lynda stated that under subsection D the provision of the inmate has to take 20% of his earnings, which the Crime Victim's Compensation fund defines, part of the commission. It also requires the DOC to assess the inmate's gross monthly income and report on a monthly basis.

Chairman Colquitt motioned that this be tabled for the next meeting (March 28, 2003). Motion seconded. Motion carried.

Judge Colquitt feels that it will be helpful anytime the Commission has a proposal coming from an outside organization, agency, or department that it be circulated far enough in advance so that the commission members can review it. He emphasized that it is very important that the commission remembers its mission. It is very difficult for us to make decisions about information that we have not been able to collect.

Habitual Felony Offender Act

Ms. Flynt stated that what she is trying to do is recap the history behind the amendment to Habitual Offender Act. The commission has spent considerable amounts of time looking over the retroactivity provision and the procedure that was originally committed by the DOC. She emphasized that the Commission needs to specify what if anything it is going to do with the Habitual Felony Offender Act in this legislative session and in the report to the legislature. At this time, there are court cases pending. It shows that the commission voted against the proposals that were submitted by DOC. They did recommend that a suit be brought either by the AG's office or the DOC to resolve the problems that had risen. There were even some long discussions about the constitutionality of the act that as it was presently drafted. Demetrius Newton is going to propose a bill to amend the Habitual Felony Offender Act this session. This was brought up for discussion for the commission's decision on what if anything that it needs to do with the habitual felony offender act.

Discussion on the Habitual Felony Offender Act

Rosa Davis asked if the commission is discussing all of the habitual felony offender act or just the amendment to?

Ms. Flynt responded that the commission should discuss the retroactive provision part and then look at the Habitual Felony Offender Act as we charted it out. As the amendment now stands where the prospect of a retroactive they only changed the Class A felons of three or more priors and they made a distinction there between the priors being Class A s. They made a change in someone that is convicted of a Class B felon with three or more priors but they made no distinction whatsoever among the priors.

Ms. Davis stated, "It's my understanding that in the development of our simulation model and our ability to test theories or recommendations or proposed changes and the affect of those changes on our convicted population or offender population that in the status of all that we had just reached the point, where we can begin to take a look at the affect of the habitual offender act and propose any proposed changes on the system. It is my understanding that what the sentencing commission desires to do is base our recommendation on (empirical?) data where ever possible and that this data is just now coming together. At this point and time we are not prepared to say this is what you need to change and this is how much you need to change it. We need to continue to look at that and figure out, where the changes need to be made. I don't think we are prepared to do that immediately. I think that we are prepared to begin that undertaking."

Motion: The commission looks at the effects of the habitual offender act based on the simulation model and considers both the effects of the act, as it currently exists as proposed. The commission will come back with recommendations as to changes that may need to be made. Motion seconded. Motion Carried.

Ms. Davis stated that she would add to that in the discussion that didn't occur: in the proposed new sentencing structure the effects of the habitual offender law will be considered in coming up with sentence length and duration and disposition recommendation. That is something that is already under consideration and will be considered.

Ms. Flynt stated that it is to her understanding that the commission will not make any recommendations about the Habitual Felony Offender Act whether amendment or the retroactive implementation until further data is available.

The comment was made that the recommendation ought to be made regarding structured sentencing rather than sentencing standards until we make recommendations on the habitual felony offender act because that is the law that we are putting the cart before the horse down the road up the hill. Ms. Davis noted that there was difficulty in defining which came first; some of us say it is collecting the data and making the sentence length recommendations through sentencing standards is really a prelude to the revamp criminal code. Some others say that the code comes first and then the standards.

A question was raised that, the habitual offender act will not be implemented even though it is the law? Rosa replied not necessarily. Lynda stated that she wasn't sure what the status of executive order is now, with the new governor. Rosa replied that the retroactive amendment that's in litigation has, there are several lawsuits in which issues are pending. Chairman Colquitt stated that the commission did take up the proposal. The commission

concluded that it couldn't understand what it meant. There's nothing else for the commission to do at this point—it's in court.

Ms. Davis reported that it brought up at the last drafting subcommittee meeting. We had 3 different versions of people at the table who were all absolutely sure they understood what that amendment meant and what the legislature intended to do. They were very diverse in their recommendations and understandings. At that point and time rather than try to figure out what it meant we decided to let the litigation continue and we will look at it separately as we are pulling the data on habitual offender.

Structured Sentencing Legislation

Rosa stated that at the last two commission meetings the discussion has been about the standards and implementation of sentencing guidelines in Alabama to give judges additional guidance. What the sentence ranges are, the recommendation and what the disposition of offenders should be. After a study of a number of different states and how sentencing is carried out those states and systems our system has been better implemented in order to enhance and manage the offender population. So that it is known who is being sentenced to what, when and where and whether or not those sentences are effective.

The sentencing commission some time ago this year decided to adopt voluntary sentencing standards that will be provided to judges to assist in determining sentence duration and sentence disposition.

The sentencing commission also understood and decided that we need a wide array of alternatives to sentencing people to the prison. Community alternatives are effective options and less costly and in many instances much more effective than sending someone to an overcrowded penitentiary, where they can't really be held accountable to the victim or the public or the community for the offense other than locking them up for a period of time. In looking at all of those issues, the commission decided that voluntary sentencing standards would be recommended for implementation in Alabama.

The commission has voted and agreed to a 4-year implementation plan. The drafting subcommittee agreed to a 4-year implementation plan. The subcommittee agreed on the plan for several reasons: it will take time to put together the data in order to come up with the recommended sentencing options which will be based on historical sentencing patterns as a starting point. We will look at the historical sentencing and make decisions on which offenders based on the resources we have as well as which offenders are most deserving of incarceration and which offenders can be better punished and more effectively punished in the community.

After looking at the historical patterns, adjustments will be made to reflect the current sentencing policy. If the state of Alabama says, "This is all the prisons we are going to have", then we have to find options to include people who are not going to fit in those prisons or continue to handle/defend lawsuits from year to year. The good thing about it, in looking at other states that community options can be indeed be more effective.

Sentencing standards will be developed based on historical data with adjustments made to reflect the policies that the legislature has recognized. Those policies are incapacitating through incarceration Alabama's most dangerous and violent offenders, eliminating unwarranted disparity in sentencing, assuring truth in sentencing, providing the most effective use of the resources that the state of Alabama is willing to permit to corrections and assuring the greatest opportunity for victim restitution while protecting against prison and jail overcrowding. A lot of those are almost conflicting goals but they are goals that we believe that can be reached through the implementation of voluntary sentencing standards.

The subcommittee opted for several years implementation for a number of reasons. The first part of the plan will be implemented while developing the sentencing standards is a development of a bench manual for judges. The commission will be providing by July the bench manual for judges, which identifies the sentencing norms that are now being used and also identify for judges those types of offenders who are in those areas where community punishment is available are most likely to be sentenced to community punishment. By this we hope to educate judges statewide or begin the process on the availability of options.

The next step in the process is the implementation of voluntary sentencing standards based on sentences imposed. The third step will be the implementation of sentencing standards based on time served. Why do we need two sets of standards? We need two sets of standards, because once you move to a time served standard we will recommend the abolition of parole and good time as it is known today and sentences in court will become truthful. Every one who leaves the court will know what the sentence is, how long the offender is to serve whether it's on probation, work release or some other alternative, how long he will be supervised when he gets out and what the minimum and maximum time the offender would serve/would be.

When you switch from one system, a system that has parole and good time to a system that doesn't have parole and good time there are *ex post facto* constitutional implications, therefore, we will have to have two sets of standards. One that applies to offenses committed before the implementation of the truth and sentencing standards and one that applies to offenses that are committed prior to the implementation of truth in sentencing standards. The commission will implement them over two different years to give judges the opportunity to become familiar with and learn to use the sentencing standards. We also need to give judges the time to learn to use the sentencing standards so that when we switch to truth in sentencing and the abolition of parole and good time we will not immediately exacerbate our overcrowding problem by sending way too many people to the penitentiary.

The subcommittee believes that in the way the standards are being developed judges will follow them. The subcommittee as been looking at how Virginia implemented voluntary sentencing standards and been very successful in that implementation by taking a period of years to implement the changes. Ms. Davis explained that Alabama didn't get in the fix that it is in today overnight and there is not a real quick fix that's going to get us out of it tomorrow.

The drafting subcommittee has approved most of the language for implementation. The final first set of standards will be produced in 2004. The second set of standards should become effective in 2006 with the manual for judges becoming effective in July of 2003.

Ms. Davis turned the commission's attention to the structured sentencing bullets for Feb. 24th. She gave the commission a review of the about changes that were suggested at the drafting subcommittee meeting on last Friday.

The first one is #44 on page 4 attempting to come up with language that allows in the definition of violent offense that recognizes and offense committed and convicted in another jurisdiction as a violent offense in Alabama, changing to language that says any substantial similar offense for which an Alabama felon offender has been convicted under prior Alabama laws or the laws of any other state.

Added or worked on section c on page 4 because we are adopting a definition of violent offender and violent offenses. We added a provision that says: subsequent to the passage of this act any bill in addition to the legislature should be submitted to the sentencing commission for a recommendation on whether it fits the violent offense category. The legislature can do with it what it will but we would like input on those bills to say whether or not a particular recommendation is violent.

Ellen questioned that, F on Page 4 has included an attempt and conspiracy clause, was the result consciously to choose to omit solicitation? Rosa reported that it is on the table for today and it will be brought up before it goes to the legislature.

On page 5, some changes in the definition of continuum of punishments essential to restructuring sentencing in Alabama. Alabama makes judges a continuum of punishments available, beginning with probation and going all the way through incarceration and coming back down through reentry or transition.

In section J, a number of options for the continuum of punishments are defined. The first being incarceration which is for purposes of this law the severest penalty. The death penalty was not looked at, so the subject was turned to looking at felony offenses for which sentences other than death are imposed. The second definition under continuum of punishments is probation and intermediate punishment and a list of options that can be included in probation and intermediate punishment. Part of the reason for listing all of the options is so that judges and the public will know what kinds of options are available. A change was made in work release section to indicate that work release can be either a custody option in the penitentiary or an intermediate punishment option.

On page 9, a word was rearrange/changed; Section E is now Section B. In the new B it was decided to educate judges and not to train them. It was decided to make sure that every time the word standards comes up voluntary is placed in front of it to keep any question from arising. A topic discussed was about 3 of 4-year implementation period for the program. The conclusion was the 4-year period to give a one-year opportunity to study the voluntary time imposed sentencing standards and the initial sentencing standards.

Some changes were made on page 12 referring to voluntary sentencing standards. Also some minor changes were made on pages 14,15 and 16. That's all of changes since the last meeting. Changing the parole structure was discussed; however, no final conclusion as to the out come of the changes, therefore those recommendations are not being made today.

Judge Johnson reported that it was a good idea to find out how many people were killed in Alabama. The most current statistic found was the 2001 statistics, there were 379 murders in Alabama and there were 376 DUI related deaths in Alabama. There are as many people being killed by drunk drivers as are being killed by murders in this state if we are talking about protecting the public safety.

Rosa stated that the discussion at the last meeting was that everyone was in agreement that the trafficking and drug laws need to be addressed. They need to be addressed as a body of law. That is a part of overall sentencing reform that is going to have to take place and will be a part of the sentencing standard recommendations. On the felony DUI offense, the studies done by the commission showed that 40% of people convicted of felony DUI have never entered into any real treatment options. The discussion suggested that a felony DUI in the penitentiary is going to get out and still be a danger to the community. If that person can be treated in some other way to make him less a danger to the than that's what we need to pursue. No one disagrees with the fact that tragic results do occur. What is the most effective way of stopping that activity for the longest period of time?

Motion: To adopt changes made to the voluntary sentencing standards proposals. Motion Seconded.

Rosa reported that it has been moved and seconded that the changes be adopted with license to make needed editorial changes.

Judge Johnson opposed and requested that the minutes of the meeting reflect the fact that he opposed this in every vote that has been taken. There is no objection to those changes that were made, the objection is pointed towards going to structured sentencing prior to addressing the inequality and inconsistencies of sentencing statutes by a committee going in and doing the legislature's work. Johnson stated that he would like for the minutes to reflect that this committee member opposes this strategy.

Rosa articulated that the purpose in looking at the sentencing standards is to present them to the legislature in the manner in which they will be presented for adoption in order to address just inequalities. There is a disagreement on how to do it.

Lynda stated that the sentencing commission has been working on the report to the legislature, and is provided to the commission this week in draft form. The legislature was reported to be the first ones to view the report. Votes of this meeting are needed to complete chapter 7. The request was made that at the present time a few minutes were taken to look over the report and after the session would reconvene with recommendations incorporations. The report must be ready for the first of the legislative session. A deadline was set to respond.

Other provisions were discussed briefly; however, before discussion a poll was taken to see if there was any opposition to it. One was for the statewide pretrial diversion programs authorized. Discussed earlier was that there are DA s around the stat that have pretrial diversion programs established by local acts. An idea was to have a general law that would authorize DA s to start up a program if they wanted to. Ellen stated that Montgomery has a very successful program. The program is basically probation before adjudication and if the person successfully completes the program there is a nol-pros of the case so that there is not a conviction on the persons record. The statute outlines it for nonviolent first time offenders. Judge McLauchlin asked a question: "Right now the only way you can have a pretrial diversion program is that each county have their own, and what you want to do is have a statewide program that if the county wants to do it they can do it without having to have a local act?"

Lynda stated that most of them have it paid through Montgomery County. The problems we have with pretrial diversions as well as drug courts and community corrections program is that we are trying to resolve the reporting requirements because I think what we mentioned that although a case action summary is space for community corrections programs, drug courts or whatever. That's on the back end. We need something on the front end for drug courts where they are approved because what happens is if they fail all they show is that there is a conviction. If they are approved then it's going to show a nol-pros and that's what happens throughout. As far as pretrial diversion programs the DA has it. Hopefully, we can meet with the DAs and find out how to get a little bit better reporting on those. We are talking about going around the state.

Ellen stated, I think we need to include the judges and the circuit clerks because we do all of our by paper work so it's in the file it's not in their office. It would apply to drug courts.

Judge McLauchlin reported that under the mandatory treatment act now you can have drug courts.

Rosa stated that the biggest problem with drug courts now I hate to say is that some of them are very respective if not all of them and apparently they will run but getting their hands on data that helps us convince other counties that this is part of an effective overall continuum of punishment that can be applied so that we have a well management ability over the offender population. One of the things we will be talking about is treatment alternatives to incarceration has to be one of the big things that is addressed through funding and implementation statewide in Alabama through corrections, community punishment alternatives, post release supervision.

Judge McLauchlin stated that basically in drug court we have a conviction and then treatment rather than treatment and no conviction. We still do treatment with probation or through the courts parole service.

Lynda confirmed that they are working with the AOC on this because they have a committee established by Supreme Court order. We did a survey on drug courts and most of the drugs courts said that if they have been to a drug court then authorized to participate in a drug court before that's one of its qualifications. We don't allow him to

participate in our drug court. With no reporting procedures we are relying on the defendants word that he has never been accepted into a drug court program. We are all working on a question reporting system so that we not only have the data available to look at how many people are being served but recidivism rate in the future. Right now we don't have that other than a self-reporting survey we did this year, which was to have been done in several years.

Lynda asked if she should go ahead and draft up a statute and send it out Ellen. Ellen responded by not knowing, she stated that she was concerned about the first offender bill. Lynda announced that she really didn't think that they were going to come with a first offender bill. They asked us if we were. Rosa stated that is was an early on suggestion. I think that it is a meritorious consideration but I think the emphases this year is going to be on funding community alternatives and implementing a sentencing program that makes sense.

Lynda stated, that's not to say that Senator Escott-Russell or some other representative or senator won't come with a bill. We have a little blip in the report on drug courts that needs to be expanded. I have emailed Foster for some help on it. We have already done some summaries of our drug court surveys. What recommendations if any would we want to include in the report about drug courts? Expansion of drug courts if so how to expand them. Does anybody have any ideas on that?

Judge Johnson responded that some of the problems with the jurisdictions that have drug courts is that they are usually set up and the judge who would sentence the responsibility would be the drug court judge. The history of drug court judges throughout the country has been that after a few years they just get wore out. The word has gotten out about it. As long as it's voluntary in other words a circuit or a county can have a drug court or not have a drug court. I think it could be a constitution issue. There's something wrong that a citizen of the state of Alabama who commits an offense in Jefferson county. Also have the advantage of not having any convictions. That's the big question that gets people to come in—we put them through hell. I have sent 306 to prison. We are going to graduate over 1200 next week. There's always one that shows up dirty and goes to jail rather than graduate. We are getting close to 1.5 million dollars in fees. First, they pay \$300 dollars court cost. We added that last year when we got in a real crunch. The cost of drug court in Jefferson went up to try to help the problem we have got. The other problem we have got is I lost a bailiff. I am going with two thirds of the staff thanks to what has happened in the funding problems with this state and the court system. I can't hire anybody. The legislature is going to have to say you will have drug courts.

Ellen stated that if we are not careful we would run into the same problems that community corrections faces. Ellen stated that philosophically there should be a conviction in treatment or there should be a questioning process in ordering the treatment. The question stated is who is eligible? A drug diversion statute used to serve as a guideline but now needs to be revisited. When the federal grant started the drug court there was no use for the same requirements. The grants were lost, so what are the eligibility requirements for the offense charged? Another issue is standardized treatment. What gets done in one circuit is vastly different from another. Ellen believes that there is

a need for some standardization across the state. There is a need for some philosophical discussion and an agreement.

Judge Johnson states that there have been a few that have come back through, there is a client right now after they didn't make it the first time got the conviction, went to prison, came back a few year later, got arrest and charged with possession of drugs.

Ellen agrees that it is a worthy subject to study but I don't think we are ready to move forward. Lynda expressed that as far as drug courts; the Supreme Court last year did create a rule in order to establish a committee AOC staff. Lynda also states that one of their promises is to look at standardization qualifications and reporting. Included in the reports they included the reports to the sentencing commission provision. Judge McLaughlin stated in support that Mobile has a good system. He states that if you have but one or two judges you can't run a drug court; there won't be enough people. Lynda disagrees in stating that Judge McFerrin is 1st circuit and he is the only circuit judge there, they have a drug court. Rosa states that a consensus from the commission that drug courts are effective needs of accomplishing the purposes of the criminal justice system to protect public safety and to decrease recidivism, as well as to put the offenders where they need to be put the most. The agreement is that drug courts are an effective use of resources.

Motion: The commission supports the efforts of the Supreme Court committee that has been developed to evaluate and make recommendations on drug courts and implementation of them.

Commission discussion and postponed vote on motion until commission has had a chance to review the order.

Rosa stated that the community corrections and punishment act of 1991 now establishes community corrections and authorizes community corrections authorities around the state. The board of pardons and paroles through its probation and parole officers supervises the offenders within the community. At present our state has court referral programs, drug programs, drug court programs. Some of these programs are managed under community corrections act, some under CRO programs and still others through the provision of services from probation officers. The unified effort to bring together the provision in Alabama is what the state is lacking. An alternative punishment in the community is what the state still needs. It is referred to around the country as consolidated field services. This basically means that the state looks toward providing a system of community punishments alternatives, not in any way meaning to do away with the community corrections act of 1991, nor with the probation and parole officers. It simply means that the services are brought together so that they compliment rather than duplicate each other and so that the resources may be managed in Alabama for the provision of the services through one agency.

For Alabama right now I think also what that means is bringing together under one head someone who can have a vision of how those services can be provided to the community. I brought this up at the last meeting and we it took to the drafting subcommittee and discussed and also went to the community corrections associations and discussed it. The

community corrections association said right now they prefer to be where they are but they recommended that we study the consolidation of field services.

The drafting subcommittee then met and it was the consensus of the board that the field services needed to be consolidated. The issue of contingent is how and where. That is what the commission will be working on, in order to make recommendations as how to best provide and expand the services for the state of AL. The two programs should be made to accent each other. The services have to be provided all over the state not just in the places that can afford them. Therefore, the consensus of the drafting subcommittee was that we recommend in the report that all of these services be consolidated for implementation under one head. It was not reported yet who the head will be.

A question was poised that for small counties it would better be recommend that they have regional community corrections services. Rosa then states that it is in the community corrections act. Consolidated of field services mean setting up a system that looks at everything that goes outside of the penitentiary. By starting to look at Alabama's correctional system we have no detention centers. We have no places where offenders can be sentenced to spend the night and go out and work during the day except for a few places in Alabama. By looking at the prison population and the work release population these centers are just a custody option in corrections. They are not a valid sentencing option. One of the things the commissioner would want to look at in the consolidation of field services is what to do with all of those centers. Should they be kept as work release centers, as a custody option or do they become transition centers for sentencing options on the front end and back end so the system will work.

Stephen Glassroth stated that it would be an opportunity to look at the duplication and to where money is being spent in two places that could fairly be done in one place, also it gives the chance to expand the range of possibilities for different options to a greater population. Rosa then states that there are places in Alabama where the programs work together hand in hand, and yet other places where the programs don't acknowledge each other existence. Rosa also states that it's not the most efficient and effective way to provide services.

Comment: One of the visions that we have is the preparation for the time when people question truth in sentencing for everything. Releasing prison released questioning supervision is having regional transition centers. And then we transition both from the prisons to the free world and from the free world as a sanction. What we have got now in some places is community corrections and all they do is probation. It's not a continuum of services.

Rosa states that they are not doing prison diversion. There are some that are doing primarily misdemeanors, which are necessary.

Rosa motioned that the commission recommends the consolidation of field services and that we continue to work on how to. Motion seconded. Motion carried.

Rosa stated that a new movement that should be considered is around the country the services are being consolidated. It is the only way that I can see in Alabama for us to implement what we need to implement. The time to do is early rather than later.

Increasing the number of probation and parole officers

There are two things that need to be done desperately and that is: to increase the funding for community corrections programs to come into existence and to grow. The other is to increase the number of officers available to supervise. We are looking at how many and over time with implementation how much that would take. Right now Pardon and Paroles just received 1 million dollars to increase the number of officers that handle intense supervision on the special release dockets. Those dockets have over the last year proven to be very effective when they were nonviolent offenders who were considered for early release. The revocation of parole rate on those offenders with more intense supervision has been lower according to pardons and paroles than the revocation rates on the parolees who do not have the intense supervision. The reason being that the parole officers is able to be more effective in early intervention when problems start to arise.

Stephen Glassroth asked “Do we have any figures on those that are violated on the special release docket whether those are for technical violations as we see the increase?” Bill replied “We are building in that capacity at this time. We are assigning the people on special nonviolent dockets question status code. We will be able to track them through the AOC computer to show exactly what happens”. Stephen expressed his concern, “We don’t know now whether they are technical violations or not?” Bill stated that this is a learning process for us. What we did the first time was to assign them a level which changed we can’t track them. This time we are assigning them a status code that won’t change.

Rosa recommended that an addition of 32 parole officers continue the program as more offenders come back into the community. Present is also a recommendation for a work study program geared toward probation where 60 additional probation officers will be needed in order to provide the supervision. There will be a schedule coming up over the next few years of additional hiring’s that are necessary and the cost associated with those hiring’s. Stephen question, Is that for implementation if we go to the full structured sentencing? Rosa responded that it was for two things, implementation of going to the full structured sentencing and allowing Blount county to develop drug court with sufficient case management if they don’t address the community corrections in Blount county. Community corrections want to be in every county but that’s a county decision.

Comment: Blount County is in the process of getting a drug court started.

Stephen expressed his concerns that we would be recommending for post incarceration supervision and the full range of if we have consolidated services that would require probation/parole. Rosa states that all of this folds in to the consolidation of services. Putting additional funds into the provision of officers for supervision make sense long term and short term. It’s a short-term recommendation that becomes part of a long-term plan. Do we need a motion for us to make the recommendation that we consider and come up with a recommended number of pardons and paroles’ supervising offers over the next 5 years? Stephen replies that he thinks that we should tie any recommendation for an

increase to whatever phase we are going into so that if we are not hitting the part of the implementation that calls for post incarceration supervision for example. Rosa states that we ought to gauge what's being implemented.

Stephen expressed his concern about taking 3 years to doing this and then they are going to come in with a price tag that we understand solves a lot of long term problems but given the tradition and history of our legislature they are going to look at a price tag and it's going to blow their mind particularly at a time when we are fiscally dead if you want to look at it that way.

Comment: The legislature is expecting. What I am going to present to them on 27th and I am going to show them we consider as being a 5 year plan with a fiscal note—how much it is going to cost. We are going to tie to with what we expect to do with and it is going to be adding 60 numbers to the year.

Stephen express his concern over seeing all the agency heads now going in front of the committee and they are all coming in with these numbers and the legislators are already saying this is very ambitious you are going to have to scale back. We are going to come in with things that are going to be off the board.

Rosa states that you either build a certain number of prisons at whatever that costs or you put money into more effective means of punishment up front. You put a whole lot less money. Every time I talk to a legislator what I'm telling them is you have got a choice between expenses and less expenses. You have don't have a choice of do something or do nothing because our prison population is going to get managed. Maybe we haven't reached that point yet but we are getting carelessly close to it. I'm not saying that we have reached that point but if we don't do something and you look at the projected growth in prison population is and you don't increase what we are giving to the prisons and what's going to community alternatives we will end up with a prison budget that bigger than the general fund budget.

Judge Johnson states that none of the agencies that he has read about in the paper have suggested where the legislature gets more money. Rosa responds, I don't know that we can tell them where to get it but we can tell them what is going to happen they don't. Judge Johnson replies, should we suggest that we need more money and not be looking just at corrections or sentencing but look at the whole state and as a commission say.

Motion: The commission support increase in funding for supervisory officers for probation and parole. The recommendation is geared to implementation of the sentencing changes that have been recommended. Motion seconded. Motion carried

Stephen expressed his concerns for not seeing anything that talks about disparity broken down by race and gender, in chapter 4. He believes that it is really important to submit to the legislature because there are going to be legislators that are going to be asking that questions. If the commission tells them that it has not looked at that issue when it is charged with looking at sentencing disparity we are losing a lot a creditability and we may very well harm our mission. Rosa responded that it is something that is available as far as raw data is concerned, and that is something that is very easily run and provided

with a caveat that is apparent disparity. It's not absolutely proven unwarranted disparity. So far we have not included it because the issue is, is there disparity. You can look at these things and tell that there is not only disparity there is a terribly wide disparity from circuit to circuit from both durational and dispositional. Stephen responds by saying that it doesn't go far enough in looking at disparity. You can show disparity but even within circuits there may be disparity that lends to that disparity and that may be related to treatment of gender and race issues. If we are going to be looking at disparity we don't have the full picture of disparity if we don't break it down to these things. Realize that there are some uncomfortable issues involved in this but if we are going to be true to our mission and look at it unwarranted disparity to me means that there be no disparity based on invidious classifications such as race or gender

Comment: Let's say that we determine that there is then how would that impact the report other than simply noting it.

Stephen states that it would spur the adoption and actually have a salutary affect in having judges utilize the voluntary standards that we are talking about so that by doing that they are immune from accusations that there may be sentencing based on classifications. It's sellable in political terms as well that we have to look beyond just putting it out there. It is going to require a selling job to the circuit judges if we are going to have implement this. If they fight using voluntary sentencing standards and get cover for a variety of accusations, it will assist in implementation of the voluntary standards. It is something that we are going to be asked about and it's something that we really need to have credibility about. It will further the goals that we are trying to attain.

START

Lynda provided the commission with a copy of the Supreme Court order. She stated that there was a need to include in the report about the success of the Birmingham drug court. Rosa moved that the sentencing commission support the drug court coordinating committee that had been established by Supreme Court order to study drug court.

Rosa motioned that the sentencing commission supports the efforts of the drug court coordinating committee of the Alabama Supreme Court to evaluate and establish drug courts in Alabama. Judge Johnson seconded motion. Motion carried.

Rosa recognized that reentry and transition centers are established around the state. One of the things that come with everything that has been looked as thus far is the effect of substance abuse and addiction on the criminal justice system. The governor's task force recommended the establishment of treatment centers regionally for offenders. They have had more than one chance at trying to overcome the addiction.

The program is in the process of evaluation and appears to be an effective program. It's a six-month program. It is almost like a pilot program for the state. There has been a recommendation from the new governor's task force that (there are 40 more beds available for that program) those be funded through mental health.

It was moved that the commission recommends the establishment of drug and alcohol treatment centers for offenders regionally and that they cover both male and female offenders. Motion seconded. Motion carried.

As of present time only the male offenders are offered the treatment centers, a similar program is needed for the female offenders.

Stephen Glassroth motioned to move that the commission include the section in chapter 4 of its draft report to the legislature that data showing sentencing based on race and gender be included for consumption of the legislature. Rosa amended that the commission look at the information first because there are many variations from offense to offense and if one makes the decision to include it, how should it be included so that it gives the best picture. Stephen Glassroth questioned if the date could be looked over and discussed as a commission before determining whether it should be included. It was decided to see what the information was first.

The motion was moved that the commission would direct its data analyst to provide the information regarding sentencing practices and more possible sentencing disparity based on gender and race at the next commission meeting. Dr. Harris seconded motion.

The comment was raised that the subject should be seriously considered because of the potential to become the primary focus of the reports for the commission. The commenter suspects that there is significant disparity; especially from a news media standpoint. A concern was expressed about the outcome of the terms of litigation; also what the impact will be on those currently serving sentences.

Lynda expressed her concerns about having the data available at the next commission meeting, and not having enough time to research and finish the report as well. Stephen stated that before the decision should be made research and discussion should be finished first. Rosa states that disparity is everywhere and impossible to get rid of it through voluntary sentencing standards. Stephen questioned what the “disparities of disparities” were. Rosa stated the details would come. Stephen pressed that the commission would be opened to bad criticism if research were not done. Stephen also suggested that the solution was to start collecting data.

Lynda moved to motion that the data be researched and presented at the next meeting (March 28th). The Information will not be included in the report. Motion seconded. Motion carried.

The report will consist of:

Letter from the Chairman

Table of contents

Duplex

Report will be printed in a larger font, and formatted as far as appendix.

A question stands, whether to put the legislation that is being recommended in the report or whether to have that as a separate package and have other items such as graphs of the parole process.

Ellen expressed her concerns about solicitation, and if brought up at another meeting it will not be aloud to be included in the report. Lynda stated the report must be ready by the 4th. Ellen moved to add solicitation to the violent offender section of the report, Rosa agreed. Motion seconded. Motion carried.

Rosa states the question as to whether or not the graph on page 5 of chapter 3 is going to contain a footnote. Another question was raised as to whether or not new date was going to be collected if the old data was not valid. Rosa states that it is valid date, it just leaves out a lot of the population, and also the graph was labeled problematic and needs to be extracted if it is going to be a problem. Chairman Colquitt questions when the actual filing with the legislature will happen. Lynda reports that the week the legislature comes in is when it will be filed.

Chairman Colquitt expressed his appreciation for the members of the commission and all of the hard work. He stated that the draft would be circulated and input and suggestions should be directed toward Lynda. A vote is to be taken in early March.

Lynda stated that Vera Institute asked that when the commission meets if some of the institute comes and talks the some of the member of the commission for an evaluation project. They are coming on the 28th of March.