

Alabama Sentencing Commission

Minutes of Commission Meeting
March 1, 2002

The Alabama Sentencing Commission met in the Mezzanine Classroom at the Judicial Building in Montgomery on Friday, March 1, 2002. Present at the meeting were:

Honorable Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
Dr. Michael Haley, Commissioner, Department of Corrections, Montgomery
Stephen Glassroth, Esq., Glassroth & Van Heest, P. C., Montgomery
Lou Harris, D.P.A., Faulkner University, Montgomery
Honorable O. L. Pete Johnson, District Judge, Birmingham
Clyde Jones, Esq., Birmingham
Emily A. Landers, Deputy Director of Constituent Services, Governor's Office, Montgomery
Honorable Ben McLaughlin, Presiding Circuit Judge, Ozark
Honorable David Rains, Circuit Judge, 9th Judicial Circuit, DeKalb
Bill Segrest, Executive Director, Board of Pardon and Paroles, Montgomery

Advisory Council:

Prince Arnold, President, Alabama Sheriffs Association, Camden
Chaplin Adolph South, Tuscaloosa
Doug Parker, Director, DeKalb County Community Punishment & Corrections Authority, Inc., DeKalb
Walter Wood, Executive Director, Alabama Department of Youth Services, Mt. Meigs
Judge Scott Coogler, Presiding Circuit Judge, 6th Judicial Circuit

Speakers:

Charles Bryant, Genesis Solutions
Dr. Tammy Meredith, Applied Research Services, Atlanta, Georgia
Dr. John Speir, Applied Research Services, Atlanta, Georgia

Staff:

Lynda Flynt, Executive Director, Alabama Sentencing Commission

Others Attending:

Stan Bailey, Birmingham News, Montgomery
Jimmy Doyle, Governor's Office
Andrew Dollar, Governor's Office
Becki Goggins, The Sentencing Institute, Montgomery
Rebecca Johnson, The Sentencing Institute, Montgomery
John Rice, Court Referral Officer, DeKalb

Welcome and Introductory Remarks

The meeting convened at approximately 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. Chairman Colquitt addressed the Commission stating that in every state that has had any meaningful change in sentencing policies and procedures it has started with data. He further stated that for once an agency of the State of Alabama has undertaken the development of information necessary to make intelligent, rational and realistic decisions on sentencing. Chairman Colquitt stated that over the next ten months the Commission must make recommendations based on the data that has been collected and analyzed and convince policymakers and citizens to take action on these recommendations.

Presentation of Commission's Legislative Report - Funding

Chairman Colquitt stated that the current state of affairs with regards to the Commission's recommendations made to the legislature in January had a lot to do with the survival of the Commission itself, and that the Commission is still struggling to receive funding at a time when the Legislature is facing many funding problems. He explained that although the Commission received no direct appropriations from the State General Fund it has been able to obtain funding from other state departments, as well as grant money. Money has been provided from the Governor's Contingency Fund and an interagency transfer from ADECA. In the budget that is proposed for FY 2003 the Alabama Sentencing Commission is listed under the Unified Judicial System to receive an appropriation, however, it is only \$184,000 which is basically a reduction of about \$193,000 from what it is operating on this year. The Commission has to start thinking in terms of at least \$200,000 in additional funding because the budget now before the Legislature will only cover the basic administrative expenses of the Commission. The Commission must again depend on grants for next year's funding in order to continue to operate.

Amendments to Alabama's Habitual Felony Offender Law

Chairman Colquitt reminded the Commission members that the Legislature passed HB 61 last year, further amending the Habitual Felony Offender Statute. He explained that this Act provides that the provisions of section 13A-5-9, as amended by Act 2000-759, be applied retroactively by the sentencing judge or presiding judge for consideration of early parole of non-violent offenders (convicted of four or more offenses) based on evaluations performed by the Department of Corrections and approved by the board of Pardons and Paroles. In 2000, the Legislature had amended the Habitual Felony Offender Act as it relates to a fourth and subsequent offenders convicted of a Class A or B felony. Under the provisions of this Act, a defendant with three or more prior felony convictions convicted of a Class B felony could be punished by either life imprisonment or any term of not less than 20 years (prior law provided only for life imprisonment), and a defendant convicted for a Class A felony with three or more prior felony convictions, none of which were a Class A felony could be sentenced to life imprisonment or life imprisonment without the possibility of parole (prior law only authorized a sentence of life without parole.) It was noted that the Attorney General, some attorneys and prosecutors opposed the bill. One of the interesting things about the

Act was that is to apply to “nonviolent” offenders but it really doesn’t provide a definition for that term.

Review of Implementation Procedure by Sentencing Commission – June 1st

The Governor issued Executive Order #62 in regard to the implementation of HB 61. Executive Order #62, dated September 29, 2001, sets forth a course of action in which the Department of Corrections is required to develop a process of identifying and evaluating violent versus nonviolent offenders and present a proposed scheme or process (procedural rules) to deal with these matters. **See Appendix A.** Governor Siegelman ordered the Department of Correction to develop the procedure for implementation of HB 61 and to submit his proposal to the Attorney General and to the Alabama Sentencing Commission on June 1, 2002. When the Commission receives the proposal it will make comments and recommendations for submission to the Governor.

Chairman Colquitt stated that the Sentencing Commission will be required to prepare a report to the Department of Correction with regard to the Commission’s position, recommendations and comments for incorporation into the Department of Corrections report to the Governor. Judge Colquitt noted that the report could have a great impact on the use of Habitual Offender sentencing laws in the State of Alabama.

Pardoned Convictions Cannot Be Used for Enhancement Under the HFOA

Judge Colquitt announced that last Friday the Supreme Court of Alabama released a case (Ex parte Casey, 2002 WL 254110, February 22, 2002, **Appendix B**) holding that a full pardon precludes the use of pardoned convictions to enhance a defendant’s sentence under the Habitual Felony Offender Act. If a person has three prior felonies for which he receives a full pardon, those three prior felonies go to zero and the defendant’s sentence cannot be enhanced under the Habitual Felony Offender Act upon conviction of another felony.

Chairman Colquitt announced that today’s agenda included a preliminary report on sentencing data presented by Drs. Tammy Meredith and John Speir of Applied Research Services, Inc., a consulting firm from Atlanta, Georgia with which the Commission contracted to develop a database of felony offenders. It is upon this cohort of felony offenders that the Commission will depend to study Alabama’s criminal justice system and start developing solutions for some of the problems that exists. In addition, Charles F. Bryant, President of Genesis Solutions would present a report on an alternative sentencing/reentry proposal his company was hoping to implement in Alabama.

Alternative Sentencing/Reentry Proposal by Genesis Solutions

Charles F. Bryant, President, of Genesis Solutions presented a proposal on Alternative Sentencing/Reentry Programs to the Commission. Mr. Bryant stated that Genesis Solutions is a company that is still in the planning stages and has not filed its papers for incorporation. They hope to form a nonprofit corporation that would work in partnership with the state of Alabama on criminal justice matters to help with prison

overcrowding and recidivism. Mr. Bryant stated that the biggest problem that he sees is jail overcrowding and monitoring of defendant's released on probation and parole. Probation officers have 170 people on probation and there are not enough officers to adequately supervise them all. Mr. Bryant feels that Genesis Solutions has could help in this area.

Mr. Bryant explained that he had already presented Dr. Michael Haley, Commissioner of the Department of Corrections, with a proposal that offers an alternative to incarceration for selected offenders that would be similar to the S.I.R. program, but that his proposal was rejected. He further stated that every program that Genesis Solutions has depends on electronic monitoring bracelet bracelets that control a defendant's range of movement from 35 ft. up to 150 ft and have an immediate response system.

Under their proposal, Genesis Solutions would employ approximately 200 retired law enforcement officers (offender monitoring agents) that are located throughout the state. An agent could monitor 20 or more participants on a part-time basis in their home county areas and these officers would be employed as agents of the state to monitor people electronically and conduct drive-by monitoring on defendants while at work. The agents would conduct investigations to verify that program criteria are met and restitution payments are being made. Mr. Bryant stated that he hoped that this program could be implemented into a pre-parole/pre- release program six months before a person is released from jail. **See Appendix C.**

Discussion:

A question was raised as to whether these people would be certified, to which Mr. Bryant responded in the affirmative, explaining that they would be retired sheriff deputies, sheriffs, state troopers and city detectives who would be able to maintain their certified officer status through state in-service training. Additional questioning on the proposal was as follows:

Question: Will these people be peace officers and will the state assume any liability for their actions?

Answer: Genesis Solution's proposal is that they would be recertified/post certified. If they have been out over two years they would have to be recertified. Mr. Bryant stated that since Genesis Solutions would be a nonprofit organization its purpose would be to distribute any profit at the end of the year to the state. These people would be agents of the state. The state would assume some liability and Genesis would carry a \$24 million liability policy.

Comment: Tuscaloosa, Montgomery and one other county are already doing this with re-entry programs that DOC or Pardon and Parole came up with for defendants serving a split sentence. Tuscaloosa has five people on the program and Montgomery has 15.

In implementing this program, local probation officers were given an additional officer that would monitor and assist the defendant with employment, housing, etc. The judges are putting them into treatment programs and want the officers to continue monitoring, etc. The program has been limited up to this point to split sentences in which the judge retains jurisdiction to review and change the sentence. Noting that it appeared to be similar to these existing programs (in Tuscaloosa and Montgomery) and potential problems with house arrest, liability and community issues, one member question whether these officers employed by Genesis Solutions could become part-time employees of Pardon and Paroles and step into that program?

Answer: Yes, they could but the problem lies in the fact that these people are already retired and they are in the state retirement system.

Question: If retirees work for Genesis Solutions, who authorizes them or commissions them with arrest authority?

Answer: They would have to be commissioned by the state. The arrest powers they are going to have is going to be limited to those 20 individuals or anyone in that program.

Question: (Rosa Davis) Is Genesis Solutions envisioning that the entire program be supported by fees paid by people who are being supervised in this program or if Genesis Solutions is looking for other sources of funding?

Mr. Bryant responded that their proposal initially was to charge a fee to enter into this program. DOC could pay the \$3.00 through electronic monitoring and Genesis would operate off of 10% of the defendants' earnings and distribute funds back to the DOC. If the program is implemented into a pre-release/pre-end of sentence program, the DOC would probably have to pay half of what it costs them right now to keep a prisoner a day until he gets a job and then we could take our 10% from this individual. This endeavor is to try to figure out a way to solve a problem that the state has and is not able to solve at this point.

Dr. Michael Haley commented on Genesis Solutions proposal, stating that DOC has met with them and looked at the program and feels that it is not a workable program for the following reasons:

- There is no statutory authority to enter into such an agreement with them.
- This program would repeat what is being done already with the existing SIR program that is statutory.
- There are not enough eligible inmates to have two duplicate programs.

- There is no funding available and there is no law enforcement certification for these retired officers.
- There is no way that they could be law enforcement certified working for a private nonprofit agency.

Submission of Sentencing Commission's Initial Report to the Legislature

Chairman Colquitt recognized and thanked Lynda Flynt and Rosa Davis for their dedication and hard work in putting the Initial Legislative Report together that was presented to the Legislature in January. Chairman Colquitt wanted the Commission to be aware of the fact that it would not have been able to present that report had it not been for a lot of overtime and weekend work on the part of Lynda and Rosa.

Sentencing Data presented by Dr. John Speir and Dr. Tammy Meredith

Chairman Colquitt stated that Drs. John Speir and Tammy Meredith have been working with the Commission under a contract that is due to expire in two months. Chairman Colquitt further commented that the Commission is now looking at what to follow up on and how to continue efforts of data gather and modeling. He commended Drs. Speir and Meredith for the great job they had done in the initial stage of compiling the data from AOC, DOC and CJIS databases. Chairman Colquitt noted that we have more sentencing data right now in the State of Alabama than we have ever had before and in a more useable format than has ever been available.

Dr. John Speir and Dr. Tammy Meredith provided the Commission an overview of preliminary sentencing data. Dr. Speir stated that their role and responsibility is to provide research support to the Alabama Sentencing Commission. Their goal in this project was to create consensus with the existing databases so that the Commission would have confidence with moving forward with policy recommendations based on this data. Their primary deliverable was a three-year research database consisting of over 48,000 felons.

Dr. Speir stated that Alabama, like other states, has a lot of operational databases. There are principally four major databases the AOC, DOC, CJIS and the Board of Pardon and Paroles (there are legal problems accessing the Parole data at this time).

Dr. Speir stated that their mission was to:

- Review and document historical trends in sentencing.
- Establish a clearinghouse of knowledge and facts about the system.
- Develop a 3-year research database of felony offenders.

Dr. Tammy Meredith provided the Commission with the results of the sentencing data, looking at a three-year window of felons that got convicted in the state of Alabama (48,000 people). Dr. Meredith stated that what they are trying to do is document sentencing trends. She noted that the sentencing data presented supplemented the data

that was presented at the NorthRiver Retreat held in Tuscaloosa in October 2001. In talking about the 48,000 felony offenders making up their 3 year cohort, Dr. Meredith emphasized that:

- The defendants in the cohort have been convicted of one of 400 felony offenses and they were classified according to their most serious offense.
- Three out four people were convicted of a Class C offense.
- Fifteen percent of the felons have been convicted of more than one offense. If someone is convicted of kidnapping and assault, for reporting purposes they are classified according to their most serious offense.
- Nineteen percent of them were convicted of Class B offenses.
- Six percent are being convicted of Class A felonies.
- Three quarters of the offenders were convicted of drug/property offenses.

Dr. Meredith stated that for purposes of data analysis, she followed AOC's definition violent crimes when categorizing offenses. The AOC created a system internally for classifying offenses according to types of crimes.

Drs. Meredith and Speirs gave a powerpoint presentation and distributed handouts to explain their analysis of the data. *See Appendix D.*

Criminal Case Law Developments

Chairman Colquitt explained the importance of considering all aspects and possible consequences of sentencing before recommending modifications of our existing statutes. He specifically mentioned the Supreme Court decision of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (U.S. 2000) in which the Court held that any fact, other than the fact of a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. In this case the Court held unconstitutional a New Jersey hate crime statute that provided for an increase in the maximum prison sentence authorized based on a judge's finding, by the preponderance of evidence, that a defendant acted with purpose to intimidate victim based on particular characteristics of victim. He also mentioned a death penalty case out of Arizona now before the United States Supreme Court which could impact capital sentencing in the states and the work of the Commission, although the Commission is not directly involved with capital offenses at this time.

Commission Tasks for 2002

Chairman Colquitt mentioned that one of the things the Commission is going to have to do is establish work groups to begin preparing the Commission's 2003 report and to start drafting proposed legislation. He noted that one thing that the work groups might do in the short-term is to start drafting proposals, such as restructuring the Criminal Code, to bring before the Commission.

LEGISLATIVE REPORT

Director Lynda Flynt distributed handouts on the status of criminal bills now before the Legislature that could impact the work of the Commission, noting particularly the following:

HB 413 SB 263	House Judiciary Senate 2 nd Reading (1/24 Amendment)	Alabama Sentencing Commission
HB 403 SB 94	House Judiciary Senate Judiciary	Parole Eligibility – 85% of sentence served
HB 38 SB 256	Senate Judiciary Senate 2 nd Reading	Anti-Terrorism Act of 2002
SB 100	Senate Judiciary	Aggravated Rape, Sodomy
HB 403 SB 125	House 2 nd Reading Senate Judiciary	First Time Felony Offenders – Mandatory Minimum Sentences

See Appendix E

Scheduling of Next Meeting

After a brief discussion of the best date in April to schedule the next meeting, the Commission members were advised they would be notified by mail as soon as the next meeting date had been determined by the Executive Committee.

Closing Remarks and Adjournment

Chairman Colquitt addressed the members of the Advisory Council who were present, stating that the council was created as a body to review the Commission's work product and it was envisioned that the members would provide the Commission with ideas and critique and analyze recommendations that the Commission proposes. He noted that the Advisory Council would be invited to all of the commission meetings but would not be required to attend.

Chairman Colquitt recognized Judge Pete Johnson for being very involved in drug court in Birmingham, for which he has received national recognition, recently having an article written about his drug court in the February edition of the Readers Digest. ***See Appendix F.***

Lynda Flynt stated that Dr. Kay Morgan was unable to attend today's meeting but would like to present her proposal to the Commission at its next meeting.

There being no further business, the meeting was adjourned.

