

# Alabama Sentencing Commission

Minutes of Commission Meeting  
March 2, 2007

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, March 2, 2007. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Richard Allen, Commissioner, Department of Corrections  
Hon. Terri Bozeman Lovell, District Judge, Lowndes  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General, Montgomery  
Cynthia Dillard, Executive Director, Board of Pardons and Paroles, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Ben McLaughlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark  
Joel Sogol, Esq., Tuscaloosa

## **Advisory Council:**

Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery  
Deborah Daniels, Birmingham  
Denis Devane, Birmingham  
Kent Hunt, Associate Commissioner, Alabama Department of Mental Health  
Shelly Linderman, VOCAL, Montgomery  
Justice Hugh Maddox, Retired Associate Justice, Supreme Court of Alabama  
Eugene Pierce, Director, Franklin County Community Corrections, Russellville  
Walter Wood, Executive Director, Alabama Dept. of Youth Services, Mt. Meigs  
Chaplin Adolph South, Tuscaloosa

## **Staff:**

Lynda Flynt, Executive Director

## **Others Attending:**

Jerry Conner, Department of Public Safety, Montgomery  
Robert Oakes, Pardons and Paroles, Montgomery  
Brenda Roberts, Alabama Crime Victims Compensation Commission  
Michael Robinson, Department of Public Safety, Montgomery  
Miriam Shehane, VOCAL  
Jeff Williams, Director, Community Corrections

### **Welcome and Introductory Remarks**

Chairman Colquitt called the meeting to order at 10:00 am and made introductory remarks. He thanked everyone for attending and noted that it was always a pleasure to have people join the commission that are interested in its work.

### **Announcement - Nomination of Advisory Council Members**

Chairman Colquitt introduced Kent Hunt, Associate Commissioner of the Alabama Department of Mental Health and Mental Retardation, Substance Abuse Division, who was elected to the Sentencing Commission's Advisory Council at the Commission's last meeting.

**Chief Justice Sue Bell Cobb** – Chairman Colquitt welcomed Chief Justice Sue Bell Cobb to the meeting. Justice Cobb thanked Commission members for all the hard work that they do and recognized the importance of sentence reform in Alabama. Chairman Colquitt recognized that the Chief Justice's advocacy for drug courts and better community corrections programs supports the work of the Commission. .

### **Callie Dietz, Administrative Director of Courts**

Ms. Dietz welcomed the Sentencing Commission to the Judicial Building and thanked the Commission for its efforts to improve Alabama's Criminal Justice system. She indicated that she was looking forward to working with the Commission.

### **Report of Legislative Committee – 2007 Legislation**

Lou Harris, chair, stated that the Legislative committee met and looked at various proposed bills. Dr. Harris noted that he was always amazed when the committee has these meetings at how many busy people show up. Eleven people attended the meeting representing the Board of Pardons and Paroles, victims of crime, the academic community, judges, district attorneys, the defense bar and the Sentencing Commission staff. The committee spent a good bit of time reviewing proposed legislation. The committee noted that some of the legislation needed additional information.

Dr. Harris noted two proposals will be presented: amendment of the community corrections statutes and the split sentencing statute. The other 11 proposed bills the committee discussed were soundly debated with only one bill, the victims' notification bill, receiving the committee's affirmative recommendation.

The Committee took the following action.

***Pardons and Paroles Facility Fee*** - voted not to recommend.

***DOC Prison Industry Proposals –expanding prison industry*** - tabled awaiting additional information and will consider that proposal further when information is provided.

***First Offender Legislation*** – the committee tabled. The committee has requested additional information.

***Pharmacy Robbery*** – *elemenating as a separate offense* – tabled for additional data

***Medical and Geriatric Release*** – voted not to recommend this bill because of issues in the proposal and the effectiveness of P & P current procedures..

***Habitual Felony Offender Act*** – voted not to recommend this act until further research can be conducted, suggesting the formation of a subcommittee to look at issues pertaining to this act.

***Amendment of Good Time Statute*** – Committee voted not to recommend.

***Proposed Legislation*** – The committee has requested additional information.

Dr. Harris noted that the committee had two bills that it did not generate but was sent to the committee for informational purposes only: (1) HB117 – Parole Eligibility Consideration of Habitual Offenders Sentenced to Life without Possibility of Parole after 20 years of incarceration. (2) SB168 – Puts Limits on duration of probation/parole. Copies of these bills were provided to the Commission members but no action was requested or taken on these bills.

Dr. Harris encouraged every person present to attend the legislative committee meetings. He noted that the committee usually meets about a week and half to two weeks before the full commission meets.

***Community Corrections Act*** – Ms. Flynt provided the commission members with a handout on the community corrections statute with a suggested change to allow use of community corrections monies to help fund drug court participation for eligible offenders. It was noted that Drug court participants frequently are not convicted offenders and that the current Act speaks only to convicted offenders and does not include those who are charged in drug courts, enter a guilty plea, and are not adjudicated. The adjudication in drug court is frequently withheld until the completion of drug court. Those completing successfully have their cases dismissed, those terminated are adjudicated and sentenced.

Ms Davis explained that some drug courts or drug court tracks do include convicted offenders. She noted Franklin County has a two track drug court: Track 1 is for offenders who have not been adjudicated and who may or may not be otherwise prison bound. Track 2 is for offenders who are adjudicated and are more likely to be prison bound. Track 2 offenders may already be covered so that community corrections funds could be used to expand or create this type of program without amending the statute.

It was suggested that the Legislature might have to change the definition of “state inmate” in the Community Corrections Act to allow the use of community corrections funds for establishing and supporting drug courts that do not adjudicate successful participants. Ms. Davis proposed a possible implementation of this concept by changing the definition of a “state inmate” in the statute to include a person who is convicted or whose charges will result in a conviction of a felony. Additional suggestions included amendments to change “punishment” to “sanctions” or “treatment”. The members were advised that all proposed changes to the statute had been shown by underlining, with deletions reflected by interlining. Members were given an opportunity to look over the proposed changes to the act prior to further discussion..

In response to discussion, Ms. Davis noted the proposed definition affected only the provisions of the Community Corrections Act and would not be used for other purposes. There were some concerns that the proposals improperly expanded the clients that come under community corrections and could be read to encourage placing all drug offenders in community corrections. There were also concerns these proposals were not timely because there was not a consistent definition of drug courts or community corrections on a statewide basis. It was suggested that the Commission not recommend expanding the jurisdiction and use of community corrections funds into an area that lacked consistency and uniform minimal standards.

There was further discussion of the disparity in drug court programs, their criteria for admission, the treatment offered, and the services provided. It was noted that some drug courts would not allow transfers to other drug court programs. There was also discussion that community corrections standards and regulations had been developed but were not final.

It was moved and seconded to table the proposals for amending the statute. The motion carried and the proposal to amend the Community Corrections Act was tabled.

### **Split Sentencing Statute**

#### **Amendment of Split Sentencing Statute to allow for partial revocation.**

The proposed bill, which is the same as introduced in 2005, would amend the split sentencing statute to expressly grant trial courts authority to impose various sanctions upon revocation of probation, including modifying any condition of probation, ordering the offender to participate in a substance abuse or community corrections program, incarcerating the offender for any portion of his or her suspended sentence or for the entire term of the suspended sentence.

Some members of the Commission voiced concerns that amendment might in fact authorize more severe penalties if judges utilized their increased authority to stack split sentences, and have cumulative mandatory imprisonment terms. After a brief discussion, the Commission voted to table this proposed amendment for further study.

### ***Victim's Notification Amendments***

Ms. Flynt noted that last year's HB 489, proposing amendments to the Victims' Notification Act, had been introduced again this year by Representative Black as HB 412. She reminded the members that last year, a Sentencing Commission subcommittee chaired by Ellen Brooks worked with victim advocates at the request of Governor Riley to amend some of the victim notification procedures in the bill to make them more workable, without infringing on the victim's need to know the parole consideration status of their offender. After many meetings, patience and cooperation from both sides the committee came up with this bill. This was the only bill that the committee approved for the Commission to endorse within the legislative package for this year. Chairman Colquitt advised that a committee report did not need a second, the report carried and the Commission approved this bill for Commission support.

### **Community Corrections Update**

Jeff Williams, Director, Community Corrections Division, Department of Corrections stated that the Department of Corrections is still aggressive traveling around the state to encourage the development of community corrections programs. Mr. Williams reported that currently there are 38 counties that have community corrections programs. Of the 38 counties that have a community corrections programs, 75% of the offenders in the Department of Corrections population come from those 38 counties. He noted that forty one percent (41%) of the programs that are in existence today have been established since fiscal year 2000 and that seventeen percent (17%) of the 38 counties were established in 2006.

### ***Baldwin, Morgan, Russell, Barbour, Covington, Tallapoosa, Washington Counties***

Mr. Williams advised that there were a number of counties in the process of developing a community corrections program. *Baldwin County* is in the process of doing so; Mr. Williams stated that he spoke with some of Baldwin County's officials late last week and they are putting together a committee that is planning to visit Shelby County to take a look at their program. Baldwin County is interested in developing a work release type program for their community corrections.

He noted that *Morgan County* has already submitted a plan that is currently being reviewed by the Department of Corrections and was advised by Judge Bellamy that the *Russell County* Commission voted unanimously on Tuesday to move forward with community corrections in Russell County. Mr. Williams mentioned that he met some time ago with the *Barbour County* Commission and they are developing a plan that should be ready for submission to the Department of Corrections in the next couple of weeks. He stated that he tried to make contact with *Covington County* prior to today's meeting but was unable to, but that Covington County was moving forward with developing a community corrections program. Mr. Williams noted that Tallapoosa County has started a conversation with Paul Jones, the Tallapoosa County district attorney. The person leading the charge has developed some personal issues so that has been stalled for now.

Mr. Williams noted that he can say that with the support of Chief Justice Cobb there has been a lot of talk about community corrections that wasn't going on last year this time. He mentioned that *Washington County* had also expressed an interest in developing a community corrections program as well as the 17<sup>th</sup> circuit.

In terms of a cost comparison for FY06, the Department of Corrections spent \$36.70 average daily cost for an offender. Mr. Williams stated that the average daily cost for an offender serving in community corrections was much lower - \$9.12.

Ms. Flynt provided Commission members with copies of the Alabama Department of Corrections' latest state comparison handout.

### **Board of Pardons and Paroles Update**

Cynthia Dillard, Executive Director, Alabama Board of Pardons and Paroles reported that Bill Segrest, former executive has officially retired and sends his regards.

### **Annual Report**

Commission members were provided with a rough draft of the annual report. Ms. Flynt apologized for the the delay in getting the report finished but unforeseen circumstances including staffing and data issues had occurred. She explained that she had been assisting AOC as interim director of the Legal Division and that both the Commission's statistician, Bennet Wright, and analyst Melisa Morrison had been out of the office on necessary leave. She advised that Melisa was continuing to work on updating the AOC cohort from her home and that Bennet was also working on his report of the analyses of the cohort. Ms. Flynt asked members to look over rough draft during lunch and requested any ideas they might have for topics to include in the report.

### **Report from Kent Hunt, Associate Commissioner of the Department of Mental Health and Mental Retardation**

Kent Hunt, Associate Commissioner, Substance Abuse Services Division, of the Alabama Department of Mental Health and Mental Retardation noted that on a yearly basis the Department contracts and provides funds for substance abuse treatment. Mr. Hunt stated that the Department pays out approximately 30 million dollars per year. The treatment dollars that the Department spends go to individuals who are referred to them through a criminal justice referral program, as well as others.

Mr. Hunt emphasized the need to collect information to be able to report the outcome of the use of these funds. He stated that there are different ways to measure quality of life. He noted that we ought to be doing the same thing across all states.

Mr. Hunt mentioned that last legislative session John Houston, Commissioner, of the Department of Mental Health, was notified by the Legislature that there was an opportunity for new money to be added towards treatment, community corrections, drug court, etc. Mr. Hunt stated that a million dollars was added to the Department's budget to pay providers who provide treatment to criminal justice defendants.

Mr. Hunt stated that he has been meeting with the Department of Corrections, Administrative Office of Courts, Pardons and Paroles, Community Corrections representatives, and substance abuse community providers to try to come up with a process that will allow those dollars to be used in the efficient and effective ways. Some of the problems identified include providing transportation for outpatient programs and the lack of residential treatment for offenders.

### **Pew Charitable Trusts/Vera Institute of Justice Assistance**

Judge Colquitt reported that Pew Charitable Trusts and Vera Institute of Justice have selected Alabama for assistance in their Public Safety initiative. He noted that employees of Pew and Vera Institute visited Alabama and became excited about the direction in which our state was moving to solve its criminal justice issues. While the Sentencing Commission had hoped that Pew would provide dollars, they offered technical assistance, which will be provided largely by the Vera Institute of Justice in New York. Judge Colquitt reminded the Commission members that Vera has worked with the Commission from the beginning of the Sentencing Commission to provide technical advice.

Rosa Davis stated that Vera plans to do some evaluations for the Commission, working with the Commission staff to evaluate the sentencing standards and worksheets, to determine how effective they are and how they can be improved. They plan to do a process evaluation (how the worksheet process works) and a result evaluation (how effective the worksheets are). She noted that Vera was also going to work with the Commission on looking at risk needs assessments and standardizing those so that we could possibly work with one assessment that follows an offender through the system to track the progress of the offender toward rehabilitation or failure to rehabilitate. This type of assessment would give Alabama data to determine the effectiveness of programs, and would give corrections officials data to determine the needs of each offender and the risk represented by that offender at various stages of the process. It will give the Commission data to look at overall risks and what needs create what risks and what risks are going to be there regardless of needs

### **Data Requests**

It was noted that the Commission receives many data requests. Ms. Davis stated that the Commission cannot run data requests for everybody who makes a request. Most of the time, the Commission staff responds to requests from the Legislature or court system, but it is difficult to go beyond those two entities. One of the recent data projects of the Commission was a series of analyses on drug cases and offenders. This analysis provides a starting point for determining responses to changes in drug case policies.

The Commission has also been asked for information on women particularly in the prison system and demographics on women by the Legislature's Womens' Commission. The Womens' Commission is a temporary commission setup by the Legislature to study incarcerated women and how to deal with issues surrounding these offenders in the criminal justice system.

The Commission has had various requested for more information on child sex offenders; however, the Commission is limited in what it can provide in this area because of limited staff and the manner in which data is kept. It was noted that the Commission must get staff back at work fulltime, before it can really address some of those issues.

The Commission expects more data request to come in from the Legislature as bills are presented for review. Commission members were asked to advise the staff of areas of interest that perhaps should be put on the agenda.

It was announced that the Commission staff was sponsoring the meeting of the Women's Commission on Monday and commission staff would be making a presentation. The meeting will be held in the mezzanine classroom at the judicial building and is scheduled to begin at 10:00 a.m.

## **Ongoing Projects**

### Time Served Voluntary Standards

The Sentencing Commission staff continues to work with the worksheets and standards, specifically implementation and training. The Commission staff is available to assist anyone needing assistance on how to use the worksheets and are handling hotline calls on a daily basis from people who have questions. The Commission is in the process and will continue to work with Vera to evaluate the system and how it works, the process evaluation and the results evaluation. In addition the Commission is continuing to develop the online system. Mrs. Davis noted that the staff met with Ellen's assistants again last Friday and will be addressing the issues that arose in that meeting.

### Truth-in-Sentencing Standards

The Commission has also begun to collect data to start on truth-in-sentencing. The first process is two fold: collecting data and looking at truth-in-sentencing schemes. It was noted that truth-in-sentencing not only involves the sentence but what happens to the sentence. Right now there are only 26 felony offenses included as applicable to the sentencing standards and perhaps all offenses will have to be included in that system in order to address disparity issues. If people opt out of truth-in-sentencing, how long will they serve and who decides?. There are all kinds of very difficult issues that will have to be addressed by the Commission. The Commission will the collect and evaluate the data, following which, it will have to draft and develop the new standards and system.

### Alternative Sentencing

The staff continues to work with DOC and the Alabama Community Corrections Association to develop community corrections programs. We are still hopeful Alabama will develop revocation centers that will save a number of people from going into the penitentiary. The idea is that probation or parole revocations will be considered for the revocation centers, including intensive rehabilitation programs rather than sending them to overcrowded state institutions. The Commission will continue to work with Pardons



and Pardons and look at the evaluation of how L.I.F.E Tech is performing. Pardons and Pardons and the Board are to be commended for supporting those facilities.

#### Recidivism Study and Simulation Model

The Commission staff is still working on the data for a recidivism study that will be conducted for the Commission by Auburn University.

The Commission staff is also continuing to work on the simulation model to include all aspects of the system from probation/parole and to modify the existing simulation model to which components can be added. The idea is to have one model to which the staff can add sections that will give the Commission accurate predictions. The commission's simulation model that was developed several years ago is still running within a 2% accuracy.

Ms. Flynt provided members with a copy of an article published by NASC and noted that it contained an article about Alabama.

#### **Distribution of Draft Annual Report**

Ms. Flynt asked that she and Rosa be allowed to write the report, send members a copy and get their approval by email, or phone, and then submit the report to the legislature. This recommendation was adopted.

#### **New Business**

Rosa Davis moved that Judge Bill Cole be approved for the Advisory Council. He is a Circuit Judge who asked to be involved in the Commission's work. The motion carried.