

# Alabama Sentencing Commission

Minutes of Commission Meeting  
March 5, 2010

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, March 5, 2010. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General  
Cynthia Dillard, Director, Alabama Board of Pardons and Paroles, Montgomery  
Hon. Ben McLauchlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark  
David Rains, Circuit Judge, 9<sup>th</sup> Judicial Circuit, Fort Payne  
Joel Sogol, Esq.  
Stephanie Daniels

**Advisory Council:**

Bill Cole, Circuit Judge, 10<sup>th</sup> Judicial Circuit, Birmingham  
Denis Devane, Birmingham  
Deborah Daniels  
Miriam Shehane, VOCAL  
Jeff Williams, ADOC  
Shelly Linderman, VOCAL

**Staff:**

Lynda Flynt, Executive Director  
Bennet Wright, Statistician  
Melisa Morrison, Research Analyst

**Others Attending:**

Callie Dietz, Administrative Director of Courts  
Annette Brown, CURE  
Rosemary Collins, CURE  
Becki Goggins  
Cathy Eades Daniel  
Sharon Denham

**Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. He recognized Ms. Callie Dietz, the Administrative Director of Courts and asked her to address the Commission members. Ms. Dietz noted that the

State Judiciary was busy, with the Chief Justice looking at many ways to do what we need to do, but do it in a fiscally responsible manner. Mrs. Dietz stated that much of the works the Chief is doing on reform to help the Department of Corrections hinges on the work of the Alabama Sentencing Commission. She thanked the Commission members for all they were doing and the support that the Commission has given over the last three years and the three years remaining in this administration. Stating that sentencing reform was very dear to our heart, she said that the work that this Commission and Lynda, Melisa, Rosa and Bennet have done is the best she has seen. She advised that this work was something we needed to continue and AOC and the Chief Justice were supporting the Sentencing Commission's efforts. She told the Commission to let her know what AOC can do and thanked the members for taking the time to attend the meeting.

Judge Colquitt thanked Mrs. Dietz for taking the time to recognize our director and the staff because, as he continues to remind people, we probably have one of the smallest sentencing commissions in the United States and yet they are one of the most productive and effective groups, and it is because of the hard work of those four individuals that we get as much done as we do. He announced that this month we have a delegation coming from Louisiana's Sentencing Commission to look at our Commission. They have scheduled a meeting with him in Tuscaloosa and then they are coming to Montgomery to meet with Lynda, Rosa, Bennet and Melisa. Judge Colquitt stated that we should be glad that people are actually taking notice of what we are doing in Alabama now and thinking that there may be something they want to adopt. He explained that Louisiana had a Sentencing Commission and it basically died because it could not sustain itself and they now have brought back one and they are looking at Alabama as a model.

Judge Colquitt introduced a new member of the Sentencing Commission, Stephanie Daniels. He noted that she is an appointee from the Alabama Lawyer's Association in Montgomery.

Chairman Colquitt then called on Bennet Wright, the Commission's statistician to report on the 2010 Sentencing Report.

### **2010 Sentencing Report and Judge Rain's Data Request**

Bennet advised that the PowerPoint presentation he was about to show was basically the same as the Commission staff gave to the recent Judges and District Attorneys conferences in Birmingham. This information is a summary of the information that is provided in our most recent report. He stated that one of the things that the Commission wanted to know was whether the sentencing standards were effective. We wanted to wait until we had enough information and data available to really analyze the effectiveness of the standards. As a baseline we wanted to know what types of felony offenses are convicted in state courts in Alabama. Drug and property offenses account for roughly 4 out of every 5 convictions – in the last 5 fiscal years they have accounted for 80% of all felony convictions in the state of Alabama. He reminded the members that the 26 offenses on the sentencing standards worksheets cover approximately 87% of noncapital felony convictions; in other words they account for roughly 7 out of 8 noncapital felony convictions in state courts.

For purposes of this presentation, he gave the Commission members a data template as used in the annual report to explain what they would be reviewing. He explained that we looked at standards offenses before the standards existed, i.e. the 3 fiscal years prior to the standards and then the three years after the standards were implemented. The basic information that Mr. Wright said he wanted to cover today were: the percentage of the total population of prison admissions that are accounted for by the standards, prison sentences for first timers (defined as offenders convicted of a single count having no prior Alabama felony convictions). He explained that the staff does not have access to out-of-state felony conviction history. We are restricted to looking at in-state felony conviction history. Mr. Wright stated that we looked at first time offenders that received a prison sentence and were sent to prison. These figures do not include offenders returning to prison based on a probation or parole revocation. These are new offenses. He noted that Drs. Meredith and Speir of Applied Research Services coined this consistency in sentencing to find out from jurisdiction to jurisdiction the percentage of first time offenders convicted of a single count that received a prison sentence. Additional information contained in the annual report are: the midpoint of sentences given (defined as one half of offenders are sentenced below the midpoint and one half of the offenders are sentenced above the midpoint); the average, i.e., what is the average prison sentence length in months; sentence disposition, i.e., the number of offenders that received a prison versus a nonprison sentence. One of the original intentions of the sentencing standards was to lower the percentage of nonviolent offenders (those convicted of drug and a majority of the property offenses) that went to prison. We now are looking at whether sentencing has changed since the implementation of the sentencing standards. The answer is yet.

Mr. Wright went on to explain some of the emerging trends. The violent and serious offenses still retain a high use of prison. The use of prison after the implementation of the sentencing standards has not changed for violent and personal offenses. The second point he noted was that the use of prison is beginning to diminish for drug and property offenses. These are the two major trends we are seeing. Utilizing two pie charts, he explained that before the standards, 59% of worksheet property offenses went to prison. After the standards were implemented that number dropped down to 51%. There has been an 8 point percentage drop in the use of prison for worksheet property offenses, for those offenses covered on the property sheets. There has been a larger drop for the drug offenses. Prior to implementation of the standards 54% of offenders convicted of felony drug crimes went to prison; after implementation that number dropped to 45% - a 9% drop in the percentage of drug offenders that have been sentenced to prison.

Every single drug and property offense covered by the worksheets had a percentage reduction in the use of prison. This shows that a lower percentage of people convicted of these offenses are now going to prison than were being sentenced to prison before the implementation of the standards. This includes both straight prison sentences and splits. In response to a question by Miriam Shehane as to where these drug and property offenders were going, Mr. Wright explained that there has been increased use of probation and an increased use of community corrections as well. To put some numbers

with the narrative, he noted that prior to the implementation of the standards 69% of offenders convicted of Distribution of Controlled Substances were being sentenced to prison and that number has dropped down to 63%. Felony DUIs dropped from 64% to 53%. Possession of a Controlled Substance has dropped from 51% to 42% and Possession of Marijuana 1<sup>st</sup> has dropped from 44% to 39%. The largest drops for prison sentences has occurred in the property category, particularly with the offense of Breaking and Entering a Motor Vehicle – prior to the standards it was 69% and now it is 58%. Three other large drops are Forgery 2<sup>nd</sup> (decreased 10% points from 53% to 43%); Possession of a Forged Instrument 2<sup>nd</sup> Degree has dropped from 52% down to 42% and Receiving Stolen Property 2<sup>nd</sup> has dropped from 60% to 50%. One of the most important things to take away from this presentation is that there has been a percentage drop for every single drug and property offense, which is consistent with the original intentions of the standards – to lower the number of people sentenced to prison for drug and property offenses so that prison beds could be reserved for people convicted of violent and serious offenses.

In regard to personal offenses, Mr. Wright explained that the use of prison for personal offenses has stayed consistent. There has been a 1% increase in Assault 1<sup>st</sup>, which is negligible. For Assault 2<sup>nd</sup>, the use of prison has dropped 7%. Prior to the standards, Assault 2<sup>nd</sup> was sentenced to prison about 60% of the time and now it has dropped down to 53%. Manslaughter, Murder, Rape 1<sup>st</sup> and 2<sup>nd</sup>, Robbery, there has been absolutely no change in the use of prison for offenders convicted of those offenses, which is consistent with the intentions of the standards. There have been two drops in the use of prison for personal offenses which were larger than the decrease for Assault 2<sup>nd</sup> – Robbery 2<sup>nd</sup> and Robbery 3<sup>rd</sup> have dropped significantly. Robbery 2<sup>nd</sup> prior to the Standards – 81% or roughly 4 out of every 5 offenders were sentenced to prison and that has now dropped to 73%. Robbery 3<sup>rd</sup> is the largest change. Prior to the Standards, 77% of these offenders were sentenced to prison and that number has dropped to 66%.

Mr. Wright explained that we looked at first time offenders because we wanted to look at people who were in similar situations. These are people that have no known Alabama prior Alabama conviction history and these people are convicted of the same crime. What has happened with first time offenders since the standards were implemented? Prior to the standards, for first time possession cases they were sentenced anywhere between 34% - 42%. After the standards were implemented that number has dropped in Fiscal Year 2008 to 27%. A lower percentage of first time offenders for possession are going to prison, and that is consistent with the worksheets recommendation. A first time possession case with no known prior felony conviction history is an OUT recommendation. Prior to the Standards, roughly 1/3 of first timers convicted of Possession of Marijuana went to prison. After the Standards that number has dropped to under 1/4 offenders. Now it is under 25% of the offenders convicted of Possession of Marijuana go to prison. For Burglary 3<sup>rd</sup>, prior to the Standards roughly 1/2 of first timers convicted of Burglary 3<sup>rd</sup> went to prison. That number is now approaching 1/3 of offenders. There has been a large drop in the use of prison for Burglary 3<sup>rd</sup>. Approximately 1/3 of offenders convicted of Possession of Forged Instruments 2<sup>nd</sup> went to prison. That figure has dropped now to approaching to 1 out of every 5. This is a

large drop. Assault 2<sup>nd</sup> has historically in the three years prior to the Standards hovered around 50% and after implementation of the standards it is moving closer to 1/3 of the offenders. Robbery 3<sup>rd</sup> has had some shifts even before the implementation of the Standards, moving from 66% to 57%. After the Standards, there have still been some fluctuation but the number is still under ½ of offenders convicted of Robbery 3<sup>rd</sup> that are first timers who have gone to prison.

Mr. Wright emphasized that the number of offenders in prison has drastically increased over the years. From 2001 to 2008 there has been a 20% increase in the number of offenders convicted in state courts. That roughly equates to additional 3,000 people were convicted in state courts in 2008 than were convicted in 2001. This is very large. He explained that it is important to remember this when we discuss the fact that the percentage of people convicted of these offenses and sentenced to prison has been decreasing. While the percentage of convictions for a certain crime may have been decreasing, the number of people convicted for the crime were increasing. A percentage drop does not always equate to a huge reduction in the number of people. As the percentage of people going to prison continues to decrease, the number of people convicted keeps increasing. There is a delicate balance in trying to determine the percentage of people convicted and sentenced versus the number of people that are actually walking into prison. Ms. Ellen Brooks asked if the Commission members could get the figures of the increase in Alabama's general population over this same period to compare with the prison increase. Mr. Wright said that he could get this information but noted that he thought it was roughly 4 - 5% and the percentage of people convicted have jumped approximately 20%. Ellen asked if he knew why the increase in the convictions to prison was so much more than our population increase. Mr. Wright said that, while he could not relate it specifically to Alabama, some could be explained on additional judgeships, courtrooms becoming more and more efficient and new criminal laws passed by the Legislature. Ms. Davis noted that it depends on whether people were being convicted under those new laws. She reminded the members that we now many drug courts and those that successfully complete those programs do not have a conviction. Joel Sogol noted that the other side of that issue was that if you do not complete Drug Court, you do not get probation or even use the guidelines because the defendant signs an agreement that if he or she does not complete that they waive probation. Ms. Davis said that the other big problem is that we do not know who you have in the drug courts because no one seems to keep data. Ms. Flynt stated that federal grants should also be considered as an increase in convictions. In the past the federal government focused on giving grants to law enforcement without considering the effect on the courts or prisons and the need to provide funds to the parts of the criminal justice system that were going to be effected.

Ms. Brooks asked if there was data on how many of these offenders were sentenced to jail. In other words, was there a corresponding increase in the number serving their time in jails? Anecdotally, she said that there was not an increase in Montgomery County. Mr. Wright stated that we were going to go over the jail surveys later in the meeting, but we did not get a good response rate. He stated that from the figures he and Melisa

reviewed, there had not been a huge increase in jail. The pickup has been in probation and community corrections, not the use of county jails.

Ms. Shehane stated that while she was not opposed to providing alternative sentences to nonviolent offender in order to keep the violent offenders incarcerated. She stated that one reason for the increase in the prisons is because that we are having more people committing crimes because they are just getting a slap on the wrist. Mr. Wright noted that, as Ellen indicated, there have been so many new felonies created in the last 10-15 years and those people would not have been convicted in the past. Also there are mandatory minimums and increased punishment that have been applied, so there are other things going on outside the sentencing standards that actually affect the people going to prison and how long they stay.

Ms. Davis explained that one of the things that the CCAS Project is looking at now is the use of Risk and Needs Assessment tools and community sentencing, so that when someone is sentenced to the community it is actually a penalty and it addresses the issues that need to be addressed so that you get better outcomes. She noted that some studies have shown that recidivism actually may be increased by putting some defendants in prison.

Chairman Colquitt stated that you are going to have what you might call Type A and Type B errors, whichever way you go. You can either put 100% in prison and nobody gets revoked or commits another crime as long as they are incarcerated because they are incapacitated. If you put 50% in prison and 50% on probation, your revocations go up because you now actually have someone out there to revoke. As we try more people, we take our chances one way or the other; we are either putting people in prison that we could handle elsewhere or we are putting people on probation with the risk that they are going to reoffend. It comes down to which was you are making the most effective use of limited resources. Any judge knows that there is always the chance they commit another offense – whether in prison or on probation. The risk on probation can be minimized through community support, supervision, intensive supervision, training and counseling but it is what we want to do. He said that as Judge Bill Pryor often said, “It is not always a matter of being tough on crime, but rather being smart on crime.” Judge Colquitt said that his concern is that when you are seeing first offenders being sent to the penitentiary for possession of drugs, that may not be the wisest utilization of limited resources and what happens was (and what Georgia saw happening) that when you load more first time offenders into the penitentiary for possession of drugs, you have got to have either an overreaction with regard to parole or you get federal court orders with regard to release and when they do that it is not the first offenders that possess drug that are only getting out, it is also murders, robbers and rapists. If we have 25,000 prison beds, the ones that he said he really wanted in prison are first, the ones that are dangerous and then the ones we can take a chance on we can take a chance on them and if they do not prove successful, we have a space for them because we have eliminated the ones we need to put in prison.

Referencing his service as a Circuit Judge in Tuscaloosa, Judge Colquitt said that the typical first offender possession of marijuana sentence was 6 months imprisonment, probation for a year with a \$200 fine. There was another county in the State where people were going to the penitentiary for 10-12 years on that same offense and they were no more effective in controlling marijuana use than Tuscaloosa was. What they were doing was taking away bed space that Tuscaloosa and other counties were using for robbers, rapists and murders. He cautioned that this is why we have to continue to look at the big picture. He indicated he would like to follow-up on data on Robbery 3<sup>rd</sup> and Burglaries; he was not as concerned about possession of drugs, which is a societal problem we have to address, but not by utilizing scarce prison beds that should be used for violent and serious offenders.

Bennet then reviewed the report he had compiled for Judge Rains. He handed out a standards compliance diagram from the Annual Report. He explained that every offender that is convicted of a worksheet offense gets an IN or OUT disposition. Box C shows those offenders that received an OUT recommendation. In order to comply with the standards, if an offender has an OUT recommendation and is sentenced to a nonprison disposition, that is compliant. A judge does not have to comply with the sentence length recommendation. However, for those offenders that have an OUT recommendation and the judge choose to impose a prison sentence, the judge must sentence under existing law exclusive of the standards. Judge Rains asked if judges are following the mandate that those who are sentenced to a prison term without following the standards recommendation being sentenced under existing law. Bennet explained that what Melisa and he did was look at the 1,934 offenders that met these criteria. They isolated those offenders that had OUT recommendations but actually received a prison sentence. He then explained that they looked at what would be the applicable HFOA ranges for these offenders, i.e., the law outside the standards. Each offender's prior convictions, as shown on the worksheet, were considered. Using the current conviction and priors, they discovered the sentencing minimum. What was found was that out of those 1,934 cases judges did not sentence under the Habitual Offender Act in approximately 7% (136 cases) of those cases. He noted that an interesting fact was that of the 136 cases, the vast majority of those cases fell within the sentence length recommendation found on the sentence length worksheet. A very small number of these cases – 13 – that fell under both the Habitual Offender and the minimum punishment range as recommended by the sentence length worksheet. The vast majority were sentenced under the recommendation of the standards length than under existing law, i.e., the Habitual Felony Offender Act. Judge Rains stated that to avoid the Habitual Felony Offender Act you would have to comply with the IN/OUT recommendation as well as the Sentence Length recommendation. Otherwise it would be an illegal sentence. It was asked whether the State have a remedy, and determined that it would be by mandamus by the State if the issue was properly preserved. However, it was noted that whether or not it was an illegal sentence depended on whether the State invoked the HFOA and proved the priors.

Judge Colquitt explained that at one time some DAs were not invoking the HFOA consistently. He held that there was a ruling by the appellate courts and federal court opining that this was a mandatory law and that a DA could not ignore the issue and had to

raise enhancement for priors. Rosa Davis reminded the Commission members that one of the reasons why the standard ranges came out a little lower because of the number of times the HFOA was available but was not invoked.

Ms. Flynt noted that when we were conducting workshops it was noted that some district attorneys' offices could not have been raising priors because they acknowledged that they were not doing criminal history investigations. Judge Colquitt stated that another problem is who enforces whether a District Attorney fails to apply the law. Ms. Brooks noted that they are now under the jurisdiction of the State Bar. He noted that it was obvious that there was a need for more education regarding compliance and when enhancements under the HFOA apply because the sentence does not comply with the Standards. Judge McLaughlin noted that if you check community corrections under either the IN or OUT column the judge would always comply with the standards recommendations. Judge Rains stated that he had a case involving a plea agreement and the issue was whether the agreement could be set aside when it was later discovered that he had more priors. The question was whether the judge should set aside the plea agreement and resentence the defendant. He said that was the basis of his question to Bennet to find out how often this happened. The problems still exist and judges need to be advised on what to do. Ms. Flynt stated that it all goes back to lack of a criminal history check or a thorough criminal history check.

#### **Report on the Cooperative Community Alternative Sentencing Project (CCASP)**

Ms. Davis advised that the CCAS project was still alive and that it has been a very interesting project. She reminded the members that the goal was to choose four pilot sites and to turn these pilot sites into model community sentencing programs, bringing together the local agencies that supervise offenders in the community to try to create a system of community punishment with graduated sanctions that provide a continuum for judges to use in making sentencing decisions. The first step in doing that was to go into one of the pilot sites and gather data that would show what is happening now in those sites. Mrs. Davis said that has been much more of a challenge than we knew it was going to be when we started out. The best things that has come out of that has been working with community corrections and parole toward creating the kind of data systems that we can actually use for research to review what we are doing for evidence-based practices so we can keep the things that are working and throw out the things that don't. That is one of the important issues: in sentencing someone, what do you do with them once they are sentenced to the community. We should end up with improved data systems. Pardons and Paroles is already working on a whole new case management data system called ISIS that is going to be a lot more user friendly. As they are developing this program – becoming more and more aware of the data and what type data needs to be collected. Mrs. Davis said that she has been very much impressed with their willingness to work with us and to make decisions on how to collect the data initially. The project has come along at a good time for those decisions to be made.

In addition, the other thing that has come out of this project is a real in-depth look at piloting a risk/needs assessment instrument that not only gauges risk of reoffending using criminogenic factors that raise that risk. Once these instruments are used and applied the

data collected from those instruments can be used to look at who is being sentenced where and what is happening to them after they are being sentenced. Mrs. Davis explained that in using the risk/needs instrument you might have a moderately high offender that has certain dynamic needs (things that are changeable), e.g. they lack an education, they need treatment, they live in a high crime area. If you can change these things you can lower the risk of reoffending and you lower the recidivism. These are the type of things that you can use these instruments for in these four pilot sites.

Eight community correction and probation officers have now been trained in the use of the instrument and in some case toward case planning. Five community corrections officers and five probation officers have been trained in how to train others in the use of the instrument. It is now set in motion so that we can add additional folks to those that have been trained to use the instrument. Mrs. Davis acknowledged that there are a lot of issues arising out of the use of the instrument, the time it takes to apply the instrument and the interview with the offender. She noted that there was a meeting of a Risk and Needs group last Friday in Montgomery, that included representatives from all of the groups that are interested in the use of the instruments. That group has broken up into two workgroups and two more are to be added – one to look at when the instrument will be used in the sentencing process and the second one to look at how to use the instrument to provide case plans for community supervision of offenders that are sentenced in the community.

The very very high risk offenders will not be recommended for community sentencing. What you are looking at are people who are moderate to high risk offenders that have issues that can be changed to change the outcome and reduce recidivism. Mrs. Davis stated that this is all about how to increase public safety through the use of community supervision resources, as far as risk/needs are concerned.

Two other workgroups: a data workgroup that will look at how to use these instruments to collect data and what to do with that data once it is collected and the fourth workgroup is Quality Assurance – how to make sure that as these instruments are used and applied we maintain fidelity to model. For instance, the instructor who taught the use of these instruments said you may have 10% of the cases in which the officer using the instrument will say that he is not going to agree with the instrument's conclusions. There are instances in which the instrument results will be overridden, but sometimes this means that they are not being used correctly, especially if you vary from the instrument results more than 10% of the time. Mrs. Davis said that they are also looking at training issues. She said that she has asked Sharon Shannon in Pardon and Paroles to chair that group.

Chairs for the workgroups were elected Friday and interestingly enough both chairs were from Pardons and Paroles. Mrs. Davis mentioned that she intends to expand this group to include more judges and that if anyone on the Commission is interested in serving just to let her know.

Plans are to go into Jefferson County next and Ms. Davis said she hoped that a meeting could be held March 25<sup>th</sup> to begin the program there. There will be a lot more data on

community corrections from that county. Mrs. Davis said that the reports from Lawrence County and Montgomery County would be posted to the Sentencing Commission website.

Mrs. Davis advised that they would be going into Marshall County in April. In response to a question from Miriam Shehane on how long will it be before we know that this project is working, Mrs. Davis advised that it would depend on the data that is collected. She did state one thing that we will get out of the data, or lack thereof, is the type of services that are needed. She said that it will probably take several years worth of data.

In closing, Mrs. Davis reminded the Commission members that she has given out modifications of the sentencing standards adopted by the Commission at the last meeting and these have been submitted to the Legislature for approval. She we will try to get these on the Judiciary Committees' calendars next week and will be in touch with the members to get them to notify their legislators.

### **Chief Justice Sue Bell Cobb**

Noting that Chief Justice Cobb had joined the meeting, Chairman Colquitt recognized her and asked if she would like to address the commission members. Greeting the Commission members, Chief Justice Cobb thanked the members for all that they were doing. She stated that she is working hard to do everything she can to supplement the Commission's efforts. She noted that she has been to Washington D.C. twice in the last month, once to represent the Chief Justices at a Justice Reinvestment press conference, trying to get Congress to refund the Justice Reinvestment Act which is a lot of community corrections and alternative sentencing projects – things that we are working on to reduce recidivism. The Chief Justice advised that she was also invited to speak on indigent defense and was excited because of the Juvenile Justice Act that passed in 2008. Alabama is now the model of the nation on indigent defense in Juvenile Court because we have codified the responsibilities for the child's lawyer and there are numerous other things so that now there are 90% of the kids that have a lawyer. We are far ahead of other states. As a result of those things, she talked to the Department of Justice requesting funding for a mandatory sentencing conference with mandatory tours of the prison. The Chief Justice stated that she bet that only 5% of the judges that sentence felons have visited a prison. Judge Rains noted that if a Judge wanted to tour a prison, all they had to do was call ADOC like he had. The Chief Justice decided that she wanted them to each visit 2 prisons each. She stated that the conference was going to be using the model curriculum from the National Judicial College and National Center for State Courts on thinking about risk and needs assessments and sentencing in general. It should be a real turning point in us reevaluating all sentencing practices. What can we do to stop the revolving door. She passed out a letter she was sending asking help from Pew Charitable Trust and the Department of Justice. The Chief stated that she was going to ask the district attorneys to be involved, at least one day and we are going to try and get enough money for at least one probation officer to attend. She said that she hoped to be able to hold the conference in September.

One of the other programs that the Chief Justice stated she wanted to get involved was the HOPE Project – Hawaii’s Opportunity Probation Enforcement project. The numbers for recidivism are shocking. It applies consistency and immediate and appropriate sanctions. It has been in Hawaii for six years and it has significantly reduced prison and jail time. The offenders are mostly nonviolent offenders. They are drug tested once a week and they are told that the first infraction, a technical violation, they will get a night in jail. There are progressive sanctions. The Chief Justice stated she has talked to Judge Alm who is over the HOPE project and he has served 1,350 felons over 5 years. She said that this will be one of the programs that will be on the agenda for the Sentencing Conference. She said that she has asked Judge Clark Hall to be the pilot project and he said that he is already doing something close to that now. He agreed to follow the HOPE project with no additional money.

The issue of the cost of drug court came up. Joel Sogol noted that there were a lot of things that could be done. He said that the University has contracted with a company in New Jersey and they are paying something like \$30 a test every 90 days for a test that gives you specific indications of whether they use drugs. Rather than have them come in once a week and pay \$30 or \$50 every week they are paying \$30 once every three months for a test that gives you 90 full days of review. The Chief Justice noted that would not fit into the concept of HOPE since it is based on the fact that you know immediately of violations and they are given immediate sanctions. Also, they are putting these offenders in jail as a sanction for the appropriate amount of time.

Chief Justice Cobb announced that Pew Charitable Trusts has asked her to establish an interbranch sentencing reform task force with a significantly greater number of legislators participating, significantly bipartisan to truly have a bipartisan group that is heavy with legislators. She said that she was going to ask Judge Colquitt to be on the task force to represent the Alabama Sentencing Commission and she said that she hoped that they could count on the Commission to be a constant resource to make sure that we are doing what we need to get done. She indicated that she has already talked to the Governor’s folks and has had a tremendous response. This task force will hopefully come up with some serious legislation.

Mrs. Davis stated that one of the things that they talked about at the sentencing conference was to make sure that we included a segment on the sentencing standards and that everyone is up to date in using them. This was because the Standards Committee of the Sentencing Commission has recommended a conference. The Chief Justice told the Commission members that they should provide input on what they might want included at the three day conference. She said that hopefully we will have the trainers for the risk/needs assessment, the sentencing standards and will have break out groups that hopefully will have people that are very supportive of community corrections and alternative sentencing in each group.

One of the Advisory Commission members questioned what had been done with juveniles and faith based programs. The Chief Justice stated that this is a Montgomery project that she and Mayor Strange are working on and have made significant progress.

She said that they have gotten serious commitments from about 5 of the largest churches and they are now talking about hiring someone who is knowledgeable of the system and can help get support from the churches. Although this started with the Juvenile Justice System, Chief Cobb stated that the criminal stakeholders have been contacted and she has gotten their complete support. There are 13 ministers involved and there have been two meetings. The Chairman of the County Commission is very supportive. The goal is to educate and empower the faith community so that they can help people down the path to success. She stated that one of the things she was going to do was a survey to find out what churches are now doing. We also need to do more to help victims.

### **Legislative Update**

Ms. Flynt handed out legislative brochures that the Commission decided to use this year along with the Annual report. She said that utilizing this brochure as a synopsis of the annual report (a before and after picture of sentencing practices before compared with after the standards were adopted) it was hoped that we could get the attention of the Legislators. She explained that it also includes a summary of the Commission's bills.

Referring to a handout she distributed Ms. Flynt noted that we have 41 pages or more of crime bills that have been introduced during the 2009 Legislative Session. She reminded the Commission members that when the Commission was first established when considering bills to increase penalties or establish new crimes, the legislators would say that they wanted to wait and see what the Commission came up with. There were less crime bills even introduced in the legislators and less passed. Now there are more crime bills being dropped, perhaps because it is an election year. Ms. Flynt stated that she summarized the bills that she thought would be important to the Commission members, noting that most of these bills the Commission staff had to provide impact statements on.

The first bills noted on page one and two of the handout are the Commission bills and they have not moved since February 11<sup>th</sup> and we are going to have to work on that. The first one is the bill that would prohibit the stacking of splits and limit the probation term of a split to 5 years for a felony and two years for a misdemeanor, the same as it is now for a straight probation sentence. She explained that this bill also has an express provision for participation in a substance abuse program or community corrections program as an intermediate sanction upon revocation of probation.

The Community Corrections bill and the Split Sentencing bill have been introduced by Representative Black in the House and we have given them to Senator Smitherman who has only introduced the sentencing standards modification bill. We will follow up with him and see if he will introduce these bills or support the House bill. Ms. Flynt reminded the members that Senator Penn is now Chair of the Senate Judiciary Committee and by virtue of his office is now a member of the Sentencing Commission. The Community Corrections bill would allow offenders charged and convicted for the sale of drugs to be considered for participation in a community corrections program, eliminating the absolute prohibition. Both bills have had their second reading in the House so they have a long way to go for passage. The modification of the sentencing standards has been

introduced in both the House and Senate and they are now in their respective Judiciary Committees.

Ms. Flynt explained that the modification bill has some very important provisions, in addition to adding attempts, conspiracies, and solicitations for murder and certain drug offenses to the sentencing standards offenses. They would require the worksheets to be made a part of the court file and that the judge initial or sign the final work sheet. Those are very important measures for the Sentencing Commission.

The General Fund Appropriation – we still do not have a budget. She referred to page 2 of the handout explaining that there is a bill for a \$51.6 million supplemental appropriation to the Department of Corrections. On page three, the Unified Judicial System budget is summarized. The Sentencing Commission is listed as getting appropriations of \$490,955, the same amount we have this year. This figure actually represents a 12% cut for 2010. The Commission had requested \$686,000 and we only got \$491,000 or less.

The Budget Management Relief Act that the Chief Justice has been working on, this bill has had its second reading in the Senate. This bill would exempt the Judiciary from certain Budget Act provisions. In other words, if an appropriation is approved by the Legislature the Governor, short of declaring proration, cannot dictate in which quarter it will be spent.

The only bill that has been enacted during the Session so far is the Sex Offender Act requiring a special driver's license. Ms. Flynt noted other bills that had been introduced, such as the Expungement of Court Records, which is the same as introduced by Representative England last year. She mentioned that Senator Smitherman has also introduced an Expungement bill, which includes, not only records of offenders charged and not convicted, but it also covers some convicted offender records. She noted that throughout some of these bills they use the terms "expungement" and "sealing" simultaneously. Ms. Flynt said that these bills have not moved lately. Both had their second reading of the house of origin.

She noted bills that proposed amendments to the Habitual Felony Offender statute; one by Representatives Dunn and Fields. Representative Fields bill provides for Life with Parole after 20 years.

The Contract Review Committee bill creates Class B and C felonies. This bill has passed the Senate and is now in the House Judiciary Committee. It creates a new Class C felony for anyone who makes a payment under a contract without prior review by the Contract Review Oversight Committee.

There is a School Employee Sexual Act for contact with a student, are pending in the opposite houses' Judiciary Committee. These provide for a Class B felony. Ms. Flynt mentioned that many of the bills like this one the Commission staff cannot provide impact statements on since we do not know the age of the victims of crimes in the past.

Ms. Flynt continued reviewing the pending bills. She mentioned the Text Messaging while driving bill is a House bill that is now pending in the Senate Judiciary Committee and has a good chance of passage. She noted that the Metal Recyclers bill that had action yesterday, and is now Engrossed, passing the House with an amendment and substitute. It is a Class A misdemeanor if it is less than \$500 value rather than \$250 and a Class C Felony if the value of the property is \$500 to \$2500 and a Class B if it involves property valued over \$2500. The Child Day Care bill, pending in the House Judiciary Committee; the Crime of Human Trafficking which has now been engrossed, creates new felony offenses. The House bill on Chemical Endangerment to an Unborn Child creating Class A, B and C felonies, depending on the amount of harm, has had its second reading in the House with a substitute on March 3<sup>rd</sup>. The Senate bill on Sex Offenders Accessing Social Networks with punishment as a Class B felony is pending in the House Judiciary Committee. Bill by Senator Marsh pertaining to Private Investigators without a License would make it a Class A misdemeanor. This bill was substituted March 3<sup>rd</sup> and has had its second reading in the House. Ms. Flynt noted that there are bills introduced that would amend the DUI law; one by Collier which would eliminate the 5 year cap; however the five year cap is still mentioned under the second conviction provisions. Another bill by Glover provides for extreme DUI. This bill, if passed would inadvertently disallow consideration of in-state municipal ordinance convictions while allowing for out-of-state municipal ordinance convictions. The bill on Driving Suspended or Revoked would establish mandatory minimums; 30 days in jail for a third or subsequent conviction for driving suspended or revoked if suspension or revocation was the result of a DUI. Ms. Flynt noted that it appears that this would also apply to defendants who had their license suspended for refusing to take the BAC test. There is an Ignition Interlock bill by McLendon that has been substituted is similar to ones that have been introduced in the past. She noted that it appears that this is a revenue raising bill for the ignition interlock companies. There is a provision that would require defendants who do not even own a vehicle to pay the same costs. This bill is in the Senate Judiciary Committee. The Identity Theft bill increases the penalty from a Class C felony to a Class B felony. Hate Crime bill, which would establish a mandatory minimum sentence. It provides for 15 years but does specify imprisonment. The mandatory minimum for adult sex offender when the child victim is less than 6 years of age. A Possession or Sale of a Short Barrel Shotgun bill makes it a Class C felony if it is in violation of federal law has had its first reading in the opposite chamber. Joel Sogol advised that if it is a short barrel gun it has to be three dollar bill lengths to be legal.

Reviewing other bills, Ms. Flynt advised that the Jefferson County Sex Offender bill is now in the opposite house as substituted. Representative Knight's bill on the Technical Violator of Parole, is similar to the bill the Chief is pursuing on probation, providing that there is a limit of 90 days incarceration in the penitentiary for violations. It is still pending in House Judiciary. The bill on Law Enforcement Warrants requires the local law enforcement agency to determine probable cause. She noted that this bill had passed both Judiciary Committees but has constitutional problems under the United Supreme Court's Opinion of Shadwick v. the City of Tampa. Interstate Supervision Compact Fee is Pardon and Paroles bill and is pending in the Senate Judiciary Committee and looks

like it may have a good chance of passing. The Chief' Drug Court bill, which the Commission supported is sponsored by Rod Scott and this bill is still pending in the House Government Committee. The Domestic Violence bill would increase the mandatory terms of imprisonment for second violation from 48 hours to 30 days and for the third offense from 30 to 120 days. It has had its second reading in the House with a substitute. Ms. Flynt noted that she had listed the changes in the bill on Protection from Abuse Act are listed on page 32 and this bill has had its second reading in the House so it does have a chance of passing. She reviewed the General Solicitor Fee bill and local bills providing for a \$21 fee for District Attorneys. Ms. Brooks said that the local bill for Montgomery County was dead, noting that Montgomery County now has the lowest court costs of any county in the state.

Reviewing the Chief's bill on Revocation for Technical Violations of Probation, Ms. Flynt noted that both the House and Senate bills are still pending in the Judiciary Committees of the respective houses. Felony DUI, Senate Bill 37, requires that the citizenship status of those persons be made within 48 hours to Homeland Security. The Death Penalty Moratorium bills are still pending in their respective Judiciary Committees. Closing, Ms. Flynt stated that there is a bill regarding revocation of driver's license of Youthful Offenders.

Ms. Flynt asked that if any of the Commission members had any questions about any of the bills to please contact the office. She indicated that we are doing Impact Statements on bills that affect the criminal justice system.

## **Working Lunch**

### **Report of the Uniform Sentencing Order Committee**

#### **Lynda Flynt, ASC Director**

Ms. Flynt distributed draft copies of the Uniform Sentencing Order that was approved by the Sentencing Order Committee, Chaired by Judge Virginia Vinson. She thanked Judge Vinson and all the Committee members for the work they did on that committee. She noted that there were some that wanted an Order that allowed for sentencing multiple counts. The Committee decided that after this Order was approved then Rosa Davis and Judge Rains are going to draft a Multiple Count Sentencing Order. Ms. Flynt stated that she received some recommendations from the judges at their winter conference, which she promised to submit to the Commission before they voted on the proposed Uniform Order. The first recommendation was on jail credit. Where it states "to be certified by the court clerk" – tracking the statute – it should be a space provided to fill in when the amount of time is know. The other suggestion was in reference to the PSI Order. It now has: Considered by the Court; Waived; or Will be Considered. Ms. Flynt stated that she followed what is in the statute and Rule 26.3 ARCrP or that it is either on motion of the party or the court when a PSI is required. It is really not "waived." She said that she thought that they wanted to include a provision in the Order to check when a PSI was not requested. There was another judge that commented that the form could not be used for blind pleas. Another recommendation was on the PMOD Account Number at the bottom. There was a suggestion to include a specific percentage on the Order to avoid disparity

between judges on the amounts ordered withheld. Ms. Flynt noted that Jeff Williams researched this issue and he determined that there was no limit on the percentage that could be deducted from a prisoner's PMOD account.

Ms. Flynt asked that the members review the Order and suggestions and then the Commission would vote. She advised that Blount County and Marshall County are already using the Order. Joel Sogol suggested including a block for "Other" that would allow a Judge to include anything else that might need to be addressed.

The Commission approved the Uniform Sentencing Order proposed, with the amendment to add a block for the number of days of Jail Credit.

### **Plans for E-Worksheets**

#### **Rosa Davis, Chair, Sentencing Standards Committee**

Ms. Davis explained to the Commission members that in many cases we were not receiving the final completed worksheet. She stated that many times the charge may have been changed due to a plea down, the worksheet factors were changed, etc. This was particularly a problem when the worksheet preparer used e-worksheets. The only way to remedy this was to require that the actual worksheets and Sentencing Orders be sent to the Sentencing Commission, effective April 1, 2010. After much consideration, and taking into account the developments with AlaVault and AlaVault becoming available to all the circuit clerks, and the need for training, we have decided to ask the Commission to extend that deadline to October 1, 2010. In this way we will continue to use the e-worksheets but will ask everyone to ensure that we get the final worksheet considered. At that time we should have the rules and procedure set up for scanning these documents into AlaVault. AOC has agreed that they will set up AlaVault so that every night the worksheets will be batched and sent to the Sentencing Commission. This will avoid requiring the court clerks to send the worksheets and orders by e-mail, fax, or any other method. Delay until October 1<sup>st</sup> will give us plenty of time to implement the procedure and to explain it to the circuit clerks at their meeting this summer. The clerks have agreed to give us 30 minutes on their agenda to explain this to them. Ms. Davis made a motion to extend the deadline to October 1<sup>st</sup>, the motion was seconded by Dr. Lou Harris. There was no discussion on the motion. The motion was unanimously approved.

### **Measures of Success**

Judge Colquitt drafted a sketch on the board to show what we were doing with our prison population numbers. He gave the following example: Assume we have a prison population of 100 people (to keep it simple) and what may be happening is that prison populations are dropping - he used 100, 60, 50, and 25 and 0. He emphasized that the Alabama Sentencing Commission is not in existence to reduce the prison population. The Commission is in existence to provide for public safety, to address crime, but to do so in a reasonable manner and to be acquainted with the fact that we only have limited resources that we need to be effective in providing for public safety. He used in his example prison and probation as options for sentencing judges. He mentioned that he

could throw in drug courts and community corrections, half-way houses, local incarceration, and treatment but wanted to keep it simple. We start out with the idea that we are going to put 100 in prison, there will be none on probation and we will not have a single revocation. Now if you start decreasing the number of people actually going into prison and increasing the number of people put on probation and he said that assume you put 60 in prison and 40 on probation and then there will be some that will be revoked, say 10. You will end up with 70 people serving time. If you go to 50-50. If you hold your failure rate the same then your are going to have more failures, because there are more people on probation. Although less people are serving time, revocations are going up. If you go to 25 in prison and 75 on probation, holding the same percent of failures, revocations would still be going up but the number of people serving is coming down because there are more successes. Now if you turn to nothing but revocations and see how this affects us.

If you have 25 violent and 35 nonviolent offenders sent to prison – with 60 people in prison and 40 people on probation. Some nonviolent are in prison and some nonviolent are out of prison. Figuring a 25% failure rate, of the 40 on probation, 30 succeeded and 10 failed, so now you have 70 people in prison and 30 not in prison. Look what is happening to revocations, it is going from 0 to 10, an astronomical climb because you can't take a % of zero. Assume 50 people put in prison and 50 people are on probation. Holding the same percentage rate 38 people made it and 12 failed, and the prison population went down, but the revocations are still going up. That is what we were talking about previously – probation revocations are going up; however, more people are completing their sentences without going to prison and prison populations are going down. We have higher success but revocations are going up because we are taking chances.

Looking at the example of where only the violent are being put in prison. 75 nonviolent people are put on probation, we hold the same failure rate, 18.75 people are going to fail and 56.25 people are going to succeed; our prison population is still going down, revocations are still going up. So when you look at all this to determine if you are making progress. .... You can say, yes, the prison population decreased and probation increased, probation is cheaper than prison so we are saving money and having a higher degree of success. Although there are more failures, the number of people serving time is going down. It depends on your perspective. If you just look at the number of revocations and the fact that they went up, you say you fail. What really happened was that 56.25 people succeeded. Some – the ones in prison, may have succeeded but were never given the chance because these were violent offenders. He concluded that we should not equate rising probation revocations as failures; it should be seen as a byproduct of success. The alternative given was to send all to prison, which would include nonviolent offenders that could be punished in other ways that would be more effective at correcting their behavior. He stressed the fact that the Commission should not focus on one item and forget the rest of the picture. The Commission members were cautioned not to look at things out of context.

### **2010 NASC Conference Update and New ARS Contract**

Ms. Flynt gave a brief overview of the NASC Conference that the Alabama Sentencing Commission is hosting, thanking the Chief Justice for promising to attend and participate in the opening Plenary Session. She stated that they had wanted to get the District Attorney from San Francisco to speak on that same plenary but she was running for the Attorney General of California and could not make it. Ms. Flynt announced that Judge Bill Pryor will be a luncheon speaker on the first day of the Conference. She asked the members to plan to attend and/or make contacts with those that might be interested in attending or sponsoring the conference. Ellen Brooks and Joel Sogol have both said they would ask their associations and Joel's has offered to send him, which will help fill our room quota. Hopefully the District Attorneys will send Ellen. Lynda thanked Melisa Morrison for all the work she has done on the conference, including her participation on the NASC Planning Committee.

Ms. Flynt announced that the Sentencing Commission has had a new contract with Applied Research Services Inc., which was approved by the Contract Review Committee yesterday. She reminded the Commission members that Drs. Tammy Meredith and John Speir of Applied Research Serviced, Inc. has been working with the Sentencing Commission since it was established and developed our first sentencing standards. This year's contract starts March 8, 2010 and goes through March 7, 2011. In that contract they will give us analysis and oversight measuring Truth in Sentencing in different ways and what impact will it have on the prison population? It will compare split sentences to non-splits. The contract also provides that they will train our staff – Melisa and Bennet - on the simulation model and we will not have to depend on ARS for simulation. They are going to help on our report for 2011. Ms. Davis asked if the Commission needed to approve of the contract. Ms. Flynt said that they did not, since the contract had been approved by the Contract Review Committee, the Governor and her as director of the Sentencing Commission, noting that no other contract had ever required the Commission's approval. Ms. Brooks said that it would not need the Commission's approval if it was included in the Commission's appropriation.

### **Jail Survey**

Mr. Bennet Wright, Statistician for the Sentencing Commission, briefly went over the Jail Survey that was sent out by the Sentencing Commission. He advised that it was sent out to all the Presiding Circuit Judges in the state to try to get a handle on what the county jail populations looked like. There is no such thing as a central repository for information on county jails in our state. If you want information on county jails, you have to contact the local county jail. No one in the state can answer statewide questions about county jails. It is a rudimentary data process, but the Commission chose to mail out a real brief survey, noting that he had provided the members with a copy of the survey to review.

Mr. Wright advised that out of the 67 counties, 40 counties submitted completed surveys. The counties that responded account for approximately 2/3<sup>rd</sup>s of Alabama's population. It was not necessarily all the smaller counties or all the larger counties that responded. There were some from both sizes that did not submit surveys.

The first question on the survey was the total number of beds in their jail. Bullock County reported the lowest number of beds at 28 and Jefferson County reported the highest at 1,066 beds. Of the 40 counties that responded, they reported an average of 235 beds. The second question, “The total number of inmates housed in your jail?” – Bullock was at capacity with 28 inmates for their 28 beds and Jefferson County had more inmates than they had beds, they report having 1,150 inmates for the date of the survey. Throughout the state, for those that responded, the counties reported an average of 209 inmates, 86% were male and 14% were female.

Comparing questions one and two; 13 out of the 40 counties that responded said that they had no available beds. They report either that they had the same number of inmates as beds or they reported they had more inmates than beds. For the 27 counties with available beds, those counties had an average of 46 empty beds per county.

Question number 3 asked the total number of inmates in your jail awaiting trial for a felony or a misdemeanor charge. The counties that responded reported that 4,438 were awaiting trial. Bennet noted that the number reported by Jefferson County was questionable since they reported that they had 903 inmates awaiting trial but then they said that they had 3,560 awaiting a felony trial. Therefore, the 4,438 total number which includes Jefferson County figures is questionable.

There was a general discussion among the Commission members of the real need for some statewide entity that would keep up with the county jail populations and be able to provide statewide data. Judge Colquitt stated that when he was serving as circuit judge in Tuscaloosa there was a state statute that required the Presiding Judge to get a count from the sheriff on the first working day of every month. The Sheriff of Tuscaloosa County would come to him the first of each month and go over who was in the jail and why they were in there. He said that if this statute was still on the books and this information was be provided to the Presiding Judges, we should be able to get this information<sup>1</sup>. Judge

---

<sup>1</sup> § 14-6-14. Duty of sheriff to furnish list of confined prisoners to circuit court.

It is the duty of the sheriff, on the first day of each session of the circuit court of his county, to make out and deliver to the **presiding judge** a certified list of the names of all the prisoners confined in the **jail** and of the offenses with which they are charged or of which they have been convicted; and, on failure to do so, the sheriff is guilty of a misdemeanor.

<sup>2</sup> Alabama Rules of Criminal Procedure

<sup>3</sup> Rule 7. Release

➡ Rule 7.4. Procedure for Determination of Release Conditions

**(a) Initial Decision.** If a defendant has not been released from custody and is brought before a court for initial appearance, a determination of the conditions of release shall be made. The judge or magistrate shall issue an order containing the conditions of release and shall inform the defendant of the conditions,

Colquitt said that if we did not get this information from the Presiding Judge then we may be able to get the sheriff's to respond if we could give them an incentive to help us. Ms. Flynt said that she thought about sending a letter back to the Presiding Judge and the Sheriff to ask that they complete the survey again or explain the discrepancies. Dr. Lou Harris noted that the responses we got were actually pretty good.

The next item on the survey was the number of inmates in your jail that have been convicted and sentenced. There were approximately 2400 inmates convicted and sentenced. Of those, 57% were for felonies, 29% were for misdemeanors and 14% for municipal ordinance violations.

The fifth question, how many felony inmates do you have in your jail serving a split sentence. There are 395 inmates serving split sentences in the county jails that responded to the survey. Madison, Jackson, Barbour and Eufaula all had very high amounts compared to Jefferson, which only had 8.

The sixth question was the number of felony inmates sentenced to serve time in jail. Of those that responded they only responded that 153 felony inmates were sentenced to serve time in jail. There were basically three main counties, Etowah, Barbour and Madison that had the most inmates sentenced to serve time in the county jail. The other 37 counties that responded all responded that they had 10 or less, and the majority of the counties had 0-1.

The seventh question asked how many of the inmates did they have on work release, and of those on work release how many are state inmates. 190 inmates were on work release, 100 of those are state inmates. The vast majority of those came from Madison County. Of the 190 inmates report on work release, 96 were in Madison. Of the 100 that were state inmates statewide, a little over half of them were reported to be in Madison County.

---

the possible consequences of their violation, and that a warrant for arrest of the defendant will be issued immediately upon report of a violation.

**(b) Amendment of Conditions.** If the defendant is in custody, the judge or magistrate may, for good cause shown, either on its own initiative or on application of either party, modify the conditions of release, after first giving the parties an adequate opportunity to respond to the proposed modification.

**(c) Review by Circuit Court.** By the second day of each month, the officials having custody of defendants who are being held in **jail** pending trial or on extraordinary writs shall provide the **presiding judge**, the district attorney, and the clerk of the circuit court for the county in which such defendant is being held, the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The circuit court shall review the conditions of release for every defendant who has been in jail for more than ninety (90) days.

**(d) Review by Municipal Court.** By the second day of each month, the officials having custody of defendants being held in a municipal jail pending trial or on extraordinary writs shall provide the presiding municipal judge, the city attorney, and the municipal court clerk, with the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The municipal court shall review the conditions of release for every defendant who has been in the municipal jail for more than ninety (90) days.

Question number 8 was how many sentenced felony offenders do you have in your jail that are ready to transfer to the Department of Corrections. The 40 counties listed a total of 559 inmates awaiting transfer to ADOC. There were multiple counties that said that they did not have anyone in their county jail awaiting transfer. Houston County said that they had 108 people in their jail awaiting transfer to ADOC. In response to a question, Bennet advised that Lee, Mobile, Montgomery Counties did not respond to the survey.

The ninth question was how many of the inmates were on ADOC's 30 day list. Tuscaloosa's response to the survey is questionable. They report that they had 606 total inmates and then reported that they had 606 inmates on ADOC's 30 day list. Joel Sogol advised that he could assure us that was not correct. Bennet said that excluding Tuscaloosa County there would be 349 inmates on ADOC's 30 day list.

The final question was whether the counties had drug or alcohol programs available. 23 counties said they did have a program available, 17 said they did not. The information after that was very sparse. Those that said they did have a program did not go into detail but just listed drug courts or community corrections programs. In response to Dr. Harris' question, Ms. Flynt advised that this was public information, but that we are going to have to try to get others to respond and to clarify some discrepancies. She also said that there was another survey sent out with the deadline date of June 30<sup>th</sup>. Hopefully we will have better results.

### **New Business**

Ms. Flynt reminded the Commission members of the e-mail she sent out at the request of a mother who wanted to share this information regarding the murder of her son and who was seeking to have legislation introduced regarding victim impact statements. She reiterated the fact that the Chief's Sentencing Conference and her Sentencing Task Force would be meeting soon and there was going to be a delegation visiting Judge Colquitt and the Commission staff from the new (reinstated) Louisiana Sentencing Commission.

Bennet Wright distributed a copy of information on sentencing standards compliance (with a diagram and FAQs), which Judge Rains asked be drafted. He asked the members to review this document and provide input to him of any changes that need to be made. Ms. Flynt asked if it would be helpful to include the Classification of the offense or the statute for the offense. Ms. Davis said that it would not be helpful.

The next Commission meeting was set for May 21, 2010.

### **Adjourn**

There being no further business the meeting was adjourned.