

# Alabama Sentencing Commission

## Minutes of Commission Meeting April 25, 2008

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, April 25, 2008. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Vernon Barnett, Deputy Director, Department of Corrections, Montgomery  
Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Cynthia Dillard, Director, Alabama Board of Pardons and Paroles, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Joel Sogol, Esq., Tuscaloosa  
Hon. Ben McLaughlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark  
Hon. David Rains, Circuit Judge, 9<sup>th</sup> Judicial Circuit, Fort Payne

### **Advisory Council:**

Bill Cole, Circuit Judge, 10<sup>th</sup> Judicial Circuit, Birmingham  
Kent Hunt, Associate Commissioner, Alabama Department of Mental Health, Montgomery  
Chaplin Adolph South, Tuscaloosa  
Denis Devane, Birmingham  
Buddy Sharpless, Executive Director, Association of County Commissions, Montgomery  
David Horn, Director, Shelby County Community Corrections, Columbiana  
Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery

### **Staff:**

Lynda Flynt, Executive Director  
Melisa Morrison, Research Analyst  
Paul Sullivan, Intern  
Bennet Wright, Statistician  
Christina Van Der Hulst, Legal Research Assistant

### **Others Attending:**

Annette Brown, AL Cure  
Rosemary Collins, AL Cure  
Alexia Ward  
Jeff Williams, ADOC  
Roger Littleton, ADOC  
Robert Oakes, Pardons and Paroles  
Neal Armstrong, Administrative Office of Courts

### **Welcome and Introductory Remarks**

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. He welcomed everyone and thanked them for attending the meeting. Chairman Colquitt introduced Paul Sullivan and Christina Van Der Hulst to the Commission. Mr. Sullivan is working with the Commission as a worksheet data specialist. Christina Van Der Hulst is the Commission's legal research assistant. She is from Australia and has a law degree from Australia. She is working on research projects including, Rule 32 handbook, reference manual and pre-trial diversion.

Chairman Colquitt noted that the Commission's annual report is in its final draft and the Commission will probably need to take some action on it today. He told the Commission members that the report is complex, as it always is, because the Commission has a lot to tell the Legislature, Governor, Attorney General and the Chief Justice concerning the Sentencing Commissions experience with the sentencing standards.

Chairman Colquitt noted that Melisa Morrison, Senior Research Analyst and Bennet Wright, Statistician, were on the agenda to explain to the Commission what is going on in regard to data and standards compliance.

### **Report on Data Issues and Standards Compliance**

Bennet Wright and Melisa Morrison briefed the Commission members on their initial work with analyzing sentencing information, including attempting to classify all different sentencing variations seen in SJIS. Mr. Wright and Ms. Morrison noted that over 200 different combinations of SJIS sentences are present in the data. They highlighted that there are two problems with this amount of sentence combinations. Firstly, not all of the different combinations are consistent with the checked flags, case action summaries, and probation term totals and secondly, the entries are not always consistent with the sentencing information on court orders that have been reviewed.

Mr. Wright and Ms. Morrison noted that sentence information can be collected from two locations; SJIS and court orders. The Sentencing Commission currently receives court orders for worksheets that are submitted via paper copy mailed directly to the Sentencing Commission office, but does not receive them for worksheets done via E-Worksheets. The majority of worksheets are being completed via E-Worksheets, and it appears an increasing number of jurisdictions are moving towards using E-Worksheets.

Mr. Wright and Ms. Morrison gave numerous examples of sentences in the data that did not appear to be consistent with court orders or did not seem to correspond with the various flag fields checked in SJIS. They noted that this is possibly due to numerous reasons, such as the ability of court specialists to override fields in SJIS, and the fact that some conditions of sentences are difficult to enter in SJIS. It was highlighted that is very important to gather accurate and clear information to determine IN/OUT and sentence length compliance information.

Mr. Wright and Ms. Morrison also discussed the period of data that will be used to report compliance for the first time in the following year's annual report. It was explained that

although the standards went into effect October 1, 2006, data for the first compliance report will start from January 1, 2007. This start date was set after consultation with national experts, where it was learned that the first months of data are generally filled with errors and also because not all jurisdictions within Alabama implemented the standards as of October 1, 2006. Some jurisdictions lagged behind others in fully utilizing the sentencing standards.

### **Report on the Cooperative Community Alternative Sentencing Project and Report from the Uniform Sentencing Order Committee**

Rosa Davis reported on the concept of creating model community punishments programs in Alabama which was an idea that came out of the Denver Conference (sponsored by Pew and Vera Institute of Justice and the Crime and Justice Institute). Ms. Davis explained that the term ‘community punishment’ involves all of the different entities in Alabama that are somehow now involved in some aspect of community supervision; i.e., probation, parole, reentry programs, community corrections, pretrial diversion, court referral, and LifeTech. She noted that the concept involves creating a statewide steering committee that would have representation from all of the players in the community supervision system. That committee would select four jurisdictions in Alabama that would become model community alternative programs that other jurisdictions in the state could emulate. That statewide steering committee would set criteria for selecting the pilot jurisdictions and would also set a recommended protocol for what those jurisdictions should include. Vera and CJI, along with the Sentencing Commission would then assist the chosen jurisdictions by providing technical assistance. Each jurisdiction will have its own local committee to identify what the jurisdiction has, lacks, and how to go about accomplishing what the jurisdiction needs.

Ms. Davis noted that one of the biggest voids in Alabama is that it doesn’t have sufficient space in the penitentiary or community corrections, nor does it have sufficient officers in pardons and paroles for adequate supervision. She explained that the current ideas for community alternatives and the available options in Alabama are too limited in most jurisdictions.

Having set the background, Ms. Davis detailed what has happened on the Cooperative Community Alternative Sentencing Project to date. She noted that a statewide steering committee was formed and met once in April. The aim of the first meeting was to formalize the committee and to discuss the different commonalities that exist amongst the various stakeholders. In particular, the meeting focused on the assets, as well as the problems that the different jurisdictions had in regard to community corrections.

Ms. Davis detailed the composition of the statewide steering committee. As co-chair of the committee along with the Chief Justice, she explained that the committee consists of a broad range of people including: Stacy Neely of DeKalb County who runs an outstanding community corrections and court referral program in Alabama; David Horn, President of the Alabama Community Corrections Association and Director of Shelby County’s Community Correction program; Buddy Sharpless, Executive Director of the Alabama Association of County Commissioners; Jeff Williams, Director of the

Community Corrections Division of the Department of Corrections; Judge Clark Hall, Circuit Judge from the 16th; victims representative; Cynthia Dillard, Director of the Board of Pardons and Paroles; Kent Hunt, Associate Commissioner of Mental Health; Ellen Brooks, District Attorney of the 15<sup>th</sup> Judicial Circuit; Vernon Barnett, Deputy Director of the Department of Corrections; Montgomery Police Chief Art Baylor; a victim's advocate; and a rehabilitated offender.

Ms. Davis highlighted that the committee will meet again on May 1, 2008, when they will begin to identify criteria that will be used for site selection. She noted that each committee member has been provided with materials that will be discussed at the meeting. Ms. Davis explained that the packet of materials included a white paper on using evidence-based practice, noting that part of the selection criteria take into consideration the site's availability of data. She noted that the committee will need to identify what works, which is why data collection is so important, so that each jurisdiction that wants to participate can make informed choices.

Ms. Davis mentioned that for information purposes she has provided commission members with the packet that was sent out to all of the statewide steering committee members.

#### **Uniform Sentencing Order Committee**

Ms. Davis explained that the Uniform Sentencing Order Committee is comprised of judges, prosecutors, defense lawyers and circuit clerks. The Committee met once, when it was noted that to fulfill the committees' charter, additional judges were needed to serve on the committee. Ms. Davis emphasized that the committee was not formed to decide what the proper sentence is in any case; but rather, to determine how sentences are being entered on the system and how sentencing orders are being written, with the aim of establishing a 'uniform' sentencing order that anyone can use and understand. The purpose is to make sentencing orders clear so that the persons who are entering the sentencing data can enter the data correctly. This will allow the Sentencing Commission to collect the data that is necessary for evidence-based practices, showing the true results of sentences. It will also allow the Commission to determine what happens to offenders later. .

It was the consensus of the members present at the meeting that a uniform sentencing order was needed, i.e., a standardized sentencing order that judges would be encouraged to use through education. Ms. Davis was very clear that this was not to be a mandatory form at this point. The committee members were provided examples of sentencing orders that the Sentencing Commission had received. It was after seeing the numerous ways sentences are entered that members of the committee decided that something had to be done for consistency.

The Commission was provided with a first draft uniform sentencing order. There was a discussion about what the Uniform Sentencing Order should include and it was decided that the committee should develop a draft order for review and consideration.

Ms. Davis stated that a committee of judges will be formed to review the order and to make any recommendations back to the committee and then the committee will test the order by asking different judges to use it. She mentioned that different members of the committee will try to bring in more people. The committee will look at the results and then come up with a final order by the end of the year.

### **Report from Alabama Association of Community Corrections**

David Horn, Executive Director of Shelby County Community Correction and President of the Alabama Association of Community Corrections, reported that there are 34 community correction programs in 45 counties. He announced that the Association held their spring conference in Lake Guntersville and had the largest turnout ever, with 120 people registered for the conference. Noting that the Department of Corrections (DOC) was the focus of that conference, Mr. Horn expressed his appreciation to DOC for all the support and training that they provided.

Mr. Horn reported that he attended the multistate conference that was held in Washington, D.C., on behalf of the Alabama Association of Community Corrections. He stated that three states were represented, Alabama being one of them. Members at the conference wanted to see how Alabama collects and uses data. It was mentioned that one state actually did a survey on community corrections where the survey results were used to enhance community corrections services. Mr. Horn encouraged the Commission to look at a statewide survey about community corrections to get the public's perspective.

Mr. Horn noted that as an organization, the Association supports the Chief Justice and her efforts to create a safer and more efficient criminal justice system. In respect to the Association, Mr. Horn stated that he feels that over the past several years there has been a breakdown of communication between the Association and state agencies in general, not meaning one particular organization such as AOC or DOC. Mr. Horn stated that he sees his role as bridging that communication gap. He mentioned that the Association had worked closely with the Sentencing Commission in the past and hoped to continue to do so.

Mr. Horn announced that Neal Armstrong would later talk to the Commission about MIDAS III. He stated when attending the meeting in Washington, D.C., participants were asked what instrument they were using to collect data, and the response was that everybody was using something different. He thanked Chief Justice Cobb and Callie Dietz for assigning Mr. Armstrong to work on MIDAS full time.

Ms. Davis commented that the main focus of the meeting in Washington was on how to use evidence-based practices to form policy. That of course centers on the fact that you have to have the data to build the evidence to prove what works. Ms. Davis stated that they were given several examples of how different programs had achieved funding or expansion because they were able to prove through the use of the data that they did work and actually reduced recidivism. Ms. Davis thinks that having David Horn and his county commissioner see that really helped create a more positive atmosphere for everybody getting on board with the same data collection tool.

Ms. Davis mentioned that the data collection tools that everybody has used in the past were good tools when they were created and they were good tools for the purpose for which they were created. However, the purpose for which they were created was case management. She explained that there is a difference between case management and data collection for analysis. Data collection for analysis has to be more specific. It's has to be in data fields not text. Since you are looking at everybody together and not individuals, there has to be a uniform way of knowing the same thing about all the individuals that you are studying. That is what is creating all of the problems that we now facing, we are trying to turn case management data systems into offender based databases for analysis. It is happening, but not as quickly as everyone would like. Having the Association of Community Corrections on board is a key factor to making it work. The Board of Pardons and Paroles is already on board and this is a definite plus.

Mr. Horn mentioned that while attending the multistate conference the one thing that he noticed when talking to different states was that some states did not have a Sentencing Commission. The states that did were much bigger than Alabama's. He stated that if the Commission could look at as possibly getting more staff on board, it would benefit the entire state and our state's criminal justice as a whole.

Chairman Colquitt commented that the Sentencing Commission in Alabama is a very small organization and has a lot of hard dedicated workers. He agreed that the Sentencing Commission does need additional staff, but at this time doesn't have the budget to expand. He noted that the U.S. Sentencing Commission employs 80 people. The Alabama Sentencing Commission has 6 fulltime employees, including the director.

### **2008 Report to the Legislature**

Lynda Flynt, Director of the Sentencing Commission, provided members with the second draft of the 2008 report to the Legislature. She explained that the report was in its final stages except for the database section. Ms. Flynt indicated that she sent the Pardons and Paroles chapter to Cynthia Dillard so that she can look over it and let the Sentencing Commission know if she agrees with it, noting that the Commission had gotten data on probation and paroles granted, denied and revoked, and appreciated the help that Pardon and Paroles has given. Ms. Flynt thanked Dr. Cavanaugh, Jeff Williams and Roger Littleton for their help in getting the information on DOC and community corrections.

Ms. Flynt asked members of the Commission and the Advisory Council to look through the report and to let her know if they have any corrections or comments. She noted that the completed report would be posted on the Commission's website. Ms. Flynt told members that if they have questions about the data to contact Melisa Morrison or Bennet Wright at the Sentencing Commission.

Michael Gregory of AOC gave the Commission an overview on the Drug Court Task Force and the status of drug courts in Alabama. He advised that when Justice Cobb took office there were between 14 and 18 drug courts across the state of Alabama; however, there are now a total of 38 drug courts, with 26 counties that are in the process of

planning to establish a drug court. He noted that the Drug Court Task Force, chaired by Retired District Judge Pete Johnson, had met 5 times and is working on legislation, which it plans to introduce in the legislature next year.

Mr. Gregory stated that he and Neal Armstrong have a goal of having all the active drug courts use Midas in order to capture the data and compile reports. He further stated that their goal is to get nonviolent offenders with drug problems that are in prison out of prison and also to quit sending the wrong people to prison. Mr. Gregory highlighted that Midas is playing a key role in capturing data, noting that there are a couple of other case management programs out there that people are using which AOC will be able to get the data from. For example the larger cities Birmingham and Mobile will be able to dump that data into AOC's system. The Sentencing Commission is working with AOC now to try to make Midas work for these programs and there are good indications that this will happen. Neal Armstrong has scheduled some meetings with these jurisdictions, and hopefully will convince them to utilize Midas, since 'dumping' the data may not be sufficient.

Mr. Gregory stated that he knows that it may not be sufficient to work with other systems but these programs don't want to go to Midas as a case management tool. He noted that they have got their own programs, which they have invested a lot of time and money in. He did argue for the Midas System was undergoing improvement and noted that one big advantage is that it was free. Midas is offered to court referral officers, community corrections agencies, all drug courts and any kind of alternative court program there is.

### **Midas III Demonstration**

#### **Neal Armstrong, Administrative Office of Courts**

Mr. Neal Armstrong from the Administrative Office of Courts explained to the Commission members why a unified case management tool was so important, demonstrating to them how to navigate Midas 3. He noted that through the Midas system information on defendants could be shared with the court, community corrections programs and other criminal justice official. Currently there is a wealth of information Midas is able to offer case managers about each defendant with the click of a button. The information available through Midas includes:

- 1) Clerk file information
- 2) AIS numbers
- 3) Addresses and Phone numbers
- 4) Prior criminal convictions
- 5) Alerts (NCIC hits)
- 6) Photos of defendants

Mr. Armstrong also informed the Commission members of Midas' ability to gather pertinent data for future reporting purposes. He noted that this data could be used to assist in obtaining future grants and future state funding.

Ms. Flynt stated that the Commission really appreciates Mr. Armstrong's help. She mentioned that just this week the Commission had a suggestion from one of the community corrections programs. It was highlighted that probation officers and law enforcement officers are in the system where they can get an alert on somebody that is a probationer or that's a danger when they pull up. Ms. Flynt noted that community corrections programs that are meant to supervise more serious offenders would want that same capability, but there is no connection right now. She explained that while probation officers and law enforcement officers might know about one person on probation or parole they won't know about the one that just completed a community corrections program or one that hasn't shown up for two weeks. The Commission is trying to see if Alacop can be connected some how. She mentioned that there was a problem with law enforcement status and getting NCIC access, however, Alacop captures only Alabama offenders. Ms. Flynt concluded that the commission is going to be looking into Alacop access and would be talking to Maury Mitchell, director of Alabama's Criminal Justice Center.

Mr. Gregory noted that the AOC gets NCIC alerts through Midas. If that person has done anything, the NCIC or tag search that has been done on that person they get an alert. It doesn't tell you anything but give a phone number of a NCIC terminal at random. It lets you know who to call and where they were.

Ms. Flynt explained that what they wanted was access to an alert that goes out to different law enforcement agencies and eventually community corrections that indicates that the person has been assigned to a community corrections program and he has not shown up.

Ms. Flynt asked Commission members to look over the annual report during the lunch break.

### **Crime Bills – Legislative Update**

Ms. Flynt told the Commission that there are probably more criminal bills this year than she has seen in the last 10 years, noting that 85% of those are creating new offenses.

Ms. Flynt detailed the General Fund Budget as it relates to the Sentencing Commission, indicating that the Commission was budgeted for \$525,000 in FY 2008. For FY 2009 the Commission requested \$608,858, primarily because it has acquired two more employees. She reminded the Commission members that the federal grant the Commission was receiving would run out this year. The Commission was approved to receive an appropriation of \$544,784 in the GF budget, however, it is contained a stipulation that 17.25% of that was conditional.

Ms. Flynt asked Vernon Barnett to bring the Commission up to date on the Department of Corrections. Vernon Barnett, Chief Deputy Commissioner of the DOC reported that the Department is now an unprotected agency. That is, the department is subject to radical budget cuts. He explained that the DOC had its budget increased by about \$15 million over last year. Since the majority of DOC's budget is personnel and also utility, gas and

food costs, that was not enough to meet the Department's mandatory increases. The DOC budget was \$18 million short for FY 2009, coming into the legislative session, where it has now been placed on the list of departments and agencies to be cut by up to 11%. The Department has been told to expect an 8% cut, which would mean that it would be required to absorb a \$50 million cut after absorbing a \$31 million cut from 2008. He noted that inmate food costs alone have gone over this year's budget by \$6 million. Mr. Barnett stated that the Department is in a crisis as how to exactly stay on course and take care of the inmates. The only places that the Department can cut are inmate health care, mental health care, food, utilities and expenses and personnel costs. The Department is at 65% staffing level right now, therefore, if they lay off people, they cannot man the posts in their facilities. He indicated that there were all sorts of contingencies floating around as ways to make up the \$50 million, but none of them have materialized yet.

Ms. Flynt asked Mr. Barnett to look over the Department of Corrections' part of the annual report and to let her know if there are any changes that need to be made.

Ms. Flynt pointed out that there is a part of the Pew Charitable Trusts' recent report that lists states and the portion of the general fund that's allocated to Corrections. The article was entitled *One in a Hundred Incarcerated* and was published in February of 2008. The article showed Alabama was on the bottom of the list. Not only was it last as far as the amount of funds appropriated from the general fund for corrections, but it was next to the highest for states in which there was cut from earlier years.

### **Sentencing Commission Bills**

Ms. Flynt explained the following Bills as follows:

#### *Community Corrections - Drug Distribution*

The house bill is still in the House Judiciary Committee. The senate bill has had its second reading but it hasn't had any action since February 21. This bill would amend §15-18-171, striking the prohibition against people that are convicted for distribution of drugs which includes sales and furnishing. Ms. Flynt noted that with this amendment, anyone convicted of violating the statute, not just those that give away or transfer drugs, would be eligible to participate in a community corrections program. The ultimate decision would, of course, remain with the sentencing judge.

#### *Prison Industries*

Although the Commission voted to have this bill as part of its legislative package, the Department of Corrections had their own version of the bill. Ms. Flynt noted that their bill was similar to the Sentencing Commission's bill but had a few changes. She advised that the bill is in the House and has had its second reading. On April 3<sup>rd</sup> there was a substitute for the House bill. The Senate has made amendments and the Senate bill has had its second reading.

Ms. Flynt referred to the Sentencing Commission legislation handout and asked members to look at the bottom of the handout and draw a circle around the last paragraph that says

the 'House bill was amended by Demarco'. She noted that it should have been on Page 3 under the split sentencing statute on HB416. This was an amendment that was put in by Demarco on the split sentencing bill. Ms Flynt referred the Commission to the page where it says that 'the judge cannot suspend imprisonment under a split'. The language that they added was '*or work release or any other release consideration.*'

In the split sentencing bill it says that the judge may incarcerate for a period of up to 3 years for a 15 year split with the remaining of the sentence suspended and placed on probation. Ms. Flynt stated that the Legislative Reference Service thought the it was grammatically proper to say "may" place on probation. She stated that this actually changed the meaning of a split sentence. The appellate courts have held that the very definition of a split sentence requires a period of incarceration followed or preceded by a period of probation. She indicated that the Commission fixed this in the House substitute, however it still must be fixed in the Senate version which has had its second reading in the Senate.

#### *Truth- in-Sentencing*

This bill which postpones truth-in-sentencing until 2011, had its second reading in both houses but has not moved since March.

#### *Other Crime Bills*

Referring to the portion of the handout labeled *Other Crime Bills*, Ms. Flynt noted that she didn't include the theft of property bill on page 4 as a Sentencing Commission bill. Ms. Flynt explained that this bill was introduced to amend the theft statutes to clarify that the offenses of 'exerting control or obtaining stolen property from the custody of law enforcement' and the theft of property from a charity drop box (now listed in the definitional statute) were separate types of theft under Theft I, Theft II, and Theft III, depending on the value of the property stolen. Ms. Flynt noted that when working with the Warrant and Indictment Committee the question arose on how the warrant/indictment should be drafted because the members couldn't determine whether the dollar amounts under theft first, second and third would apply. The Warrant and Indictment Committee asked if the Commission could include a bill in their legislative package for clarification. Ms. Flynt noted that this bill was introduced in the Senate, where it has had its second reading. Although the bill was given to Representative Marcel Black, it has not yet been introduced in the House.

The original Medical Geriatric was HB597 by Hall and it has had its second reading in the House. It had a substitute put on 4/16 and that bill seems to be moving. HB284 and HB621 are sponsored by Representative Rogers. There is movement on the HB 621, it had a substitute 4/16 and it was in the House for its second reading.

Ms. Flynt asked members to go through the handout and look at the sex offenses starting on Page 10 with HB142. Ms. Flynt highlighted that the bill is trying to correct an error with the penalty provision. It was noted that this is not all of the sex offense bills, but many of them don't look like they have a chance of passing.

Ms. Flynt explained that the handout provides a summary of all crime bills. She noted that the Sentencing Commission bills are categorized separately from the other crime bills.

Ms. Flynt mentioned that the bill amending the probation and parole statutes drafted by the Drug Policy Alliance was finally introduced last week and was sponsored by Senator Smitherman. Ms. Flynt stated that it doesn't have chance of passing. The other bill that was mentioned, provided for a 4th parole board member. She noted that this bill does not look like it's going anywhere.

### **New Business**

Ms. Flynt reminded members that some of their terms are about to expire. Members were provided with a copy of the rosters with their terms noted. Ms. Flynt stated that she had already sent letters to the agencies and departments asking them to appoint or reappoint representatives to serve on the Sentencing Commission.

Chairman Colquitt noted that the following terms will soon expire: the Commissioner of the Department of Corrections term expired May 15, 2008. The Commissioner of the Department of Corrections will serve as long as he holds office. Vernon Barnett's term will expire July 4, 2008. Ms. Flynt has already notified the Governor. Marcel Black, legislator, will serve as long as he holds office. Cynthia Dillard's term, is shown as expiring July 19, 2008, but she will serve as long as she holds office. Rhonda Hardegree's term will July 4, 2008. Stephen Nodine, Mobile County Commissioner, term will expire on July 4, 2008. Joe Reed, Jr.'s term will expire October 6, 2008. Roger Smitherman is a legislator and will serve as long as he holds office. Joel Sogol's term will expire November 7, 2008. Mr. Sogol stated that Bill Blanche is sending Ms. Flynt a renewal. Judge Colquitt announced that David Horn was a new member of the Advisory Council, taking the place of Eugene Pierce who is the President of the Alabama Association of Community Corrections.

Ms. Flynt stated that the Commission needs to vote on whether to have sentencing orders required for all worksheets done either electronically or by paper form. Right now users are encouraged to use the electronic form and have been told that if they do so they do not have to send in copies of the court orders. Ms. Flynt explained that the Commission cannot get the correct and reliable data without the court orders. Before the Commission requires all court orders to be sent in, she stated that they would see if they could obtain copies of the orders from Alavault. Assuming that the commission cannot get them, Ms. Flynt asked members if they would vote on requiring an order in every case.

### **Discussion**

Ms. Flynt noted that the statute actually says that they are required to send in the sentencing order, without making a distinction between electronic and paper forms. She advised that the staff made the decision not to require copies of court orders when the electronic worksheets were utilized, to encourage worksheet preparers to use electronic forms and to take some of the work away from the clerks. The court clerks like this incentive and have been encouraging their DAs and probation officers to use the

electronic forms. This keeps them from having to devote staff to copy the worksheets and orders and avoids mailing costs. She explained that in most instances, this was a separate court order and not the case action summary. Only where the court uses the case action summary as a court order will a copy of that form be sufficient.

Melissa Morrison noted that there is difference from the case action summary on the SJIS screen. Sometimes they use the same terms but they are two different things in some counties. Ms. Flynt reiterated that what the Sentencing Commission is trying to do is decide whether to require the court order in all cases.

Ms. Flynt suggested that this matter be carried over to the next meeting because members have not had a chance to think about it and that they would probably want input from the court clerks. The Commission staff also wants to find out about court orders from Alavault. *Rosa Davis moved to table the motion until the next meeting. The motion was seconded. The motion was carried by a majority vote.*

Ms. Flynt stated that this was an issue that the Commission should take up at the next meeting. She asked members to be thinking about the order that was put in by the Supreme Court authorizing judges, worksheet preparers to have statewide access to YO and juvenile records. She indicated that prosecutors, probation officers and community correction officers, and victim service officers (unless worksheet preparers) still didn't have statewide access to YO and juvenile adjudications. It was brought to the Commission's attention that this order did not include community corrections officers that need access to these records. Although the Supreme Court Order only relates to access for information required by the worksheets and sentencing standards, it might be that the Commission needs to get another order from the Supreme Court that ensures all court officials and community corrections people have access statewide to YO and juvenile records. Members were asked to think about this and, hopefully, a vote would be taken at the next commission meeting.

Ms. Flynt announced that the Commission was frequently asked for a list of all the district attorneys' pretrial diversion programs. She noted that the Commission's legal research assistant, Christina Van Der Hulst recently updated the list, as well as the excel spreadsheet that has programs and key elements in each local act. Ellen Brooks indicated that she was going one step further and getting in contact with those programs to find out the contact person of the DA, how many people they have presently in their program and then maybe the Commission can do a survey later.

Judge Rains stated that he doesn't want anything to show that he has any association with an endorsement of the practice of paying the district attorney for pretrial diversion programs. Ms. Brooks stated that she agrees and understands the other judges take that same position as well. She further stated that her interest in pretrial diversion programs came about based on a request of Pew Charitable Trusts. They asked for some information and she volunteered to obtain it. Ms. Davis stated that Pew is just mapping what we do in our criminal justice system in disposing of cases. It's not an endorsement, it is just factual.

Ms. Davis told the Commission that she is probably writing or may be joining in a brief with David Barber. She stated that if she joins in David Barber's brief then she doesn't really need to ask the Commission, since she will be acting separately as an Assistant Attorney General. The Attorney General has been invited to write a response in the Alabama Supreme Court on an issue concerning a sentencing that occurs when the sentence imposed is not in compliance with either the standards recommendation nor under existing law and is, therefore, an illegal sentence. In this case, the trial judge followed the sentence length recommendation of the sentencing standards but not the in/out recommendation. Therefore, his sentence was outside the standards – noncompliant - and therefore he had to follow existing law and sentence under the Habitual Felony Offender Act on the priors the district attorney proved. Ms. Davis stated that she is going back over all our minutes to be sure that this complies with the Commission position is, i.e., a trial judge must follow both the in/out and, if it is an "in" recommendation, the sentence length recommended for compliance. This is what the Commission staff has taught and the position the Commission has adopted from the beginning.

Ms. Davis moved for the Commission to file an amicus brief, if she has time to draft it, supporting that position in this mandamus. Ms. Davis asked members what they thought about the concept of the Commission filing an amicus brief in this case. She questioned whether the Commission should stay out of it and just let her file as the Chief Assistant Attorney General.

Chairman Colquitt stated that the Commission has to work with the judges and he doesn't want the Commission to be put in an adversary position. He further stated that he thinks that we get laws passed and it is up to law enforcement, DA's, judges, etc. to follow the law. He noted that there are all kinds of ways to answer legal issues: mandamus action, AG opinions and appellate court rulings, etc. He stated that he doesn't want to see the Commission entangled in all of those arenas.

Ms. Davis withdrew her motion.

The next commission meeting has been set for September 5, 2008.

### **Adjourn**

Chairman Colquitt asked if there was any other business to come before the Commission. There being no further business, the meeting was adjourned.