

Alabama Sentencing Commission

Minutes of Commission Meeting April 29, 2005

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, April 29, 2005. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa
Vernon Barnett, Legal Advisor to the Governor, Montgomery
Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Donal Campbell, Commissioner, Department of Corrections, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
Stephen Glassroth, Esq., The Glassroth Law Firm, P.C., Montgomery
Rhonda Hardegree, Victim's Advocate, Lincoln
Lou Harris, D.P.A., Faulkner University, Montgomery
Hon. Ben McLaughlin, Presiding Circuit Judge, 33rd Judicial Circuit, Ozark
Stephen Nodine, Mobile County Commissioner, Mobile
Bill Segrest, Executive Director, Pardons and Paroles, Montgomery

Advisory Council:

Denis Devane, Prison Fellowship, Birmingham
Doris Dease, Network Victim Services
Joe Mahoney, Director, Mobile County Community Corrections

Staff:

Lynda Flynt, Executive Director
Chris Booth, Staff Attorney
Bennet Wright, Statistician

Others Attending:

Carolyn Bowdin, Alabama CURE
Annette Brown, Alabama CURE
Dot Burrell, Alabama CURE
Rosemary Collins, Alabama CURE
Becki Goggins, Criminal Justice Information Center, Montgomery
Steve Hayes, Department of Corrections, Montgomery
Shelly Linderman, VOCAL
Miriam Shehane, VOCAL
Diana Summerford, Alabama CURE
Kim Thomas, Chief Legal Counsel, Department of Corrections, Montgomery
Jeff Williams, Department of Corrections, Montgomery

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks.

Introduction of New Advisory Council and Commission Members

Chairman Colquitt introduced new advisory council members: James Hayes from Etowah County Sheriff's Department; James Henderson, Chief of the Clayton Police Department; Joe Mahoney, President of the Alabama Association of Community Corrections and Director of the Mobile Community Corrections; Mike Coppage, Director of Public Safety; and Walter Wood, Director of Youth Services. The chairman also introduced Rhonda Hardegree, Victims Advocate who has been appointed by Governor Riley to serve as a member of the Commission and Steve Nodine from the Mobile County Commission, a new member that filled the position formerly occupied by Mobile County Commissioner Sam Jones.

Nomination to Advisory Council

Chairman Colquitt announced the nomination of Ms. Shelly Linderman to serve as a member of the Advisory Council. Ms. Linderman is very active with VOCAL and was nominated by Governor Bob Riley. The nomination was seconded and Ms. Liberman was elected. Chairman Colquitt welcomed Ms. Linderman to the advisory council.

Introduction of New Staff Member

Chairman Colquitt introduced the Commission's new staff member, Mr. Bennet Wright. Bennet is joining the staff as a statistician. He is presently teaching at Auburn University and completing his Master's degree in sociology and will begin work for the Commission May 16, 2005.

Chairman Colquitt congratulated the Commission on its foresight in recommending voluntary sentencing standards that will withstand the type of constitutional challenge raised in *Apprendi v New Jersey* *Blakely v. Washington* and two recent federal cases *Booker v. U.S.* and *Fanfan v. U.S.* These challenges were aimed at presumptive or mandatory "guidelines" that require a finding of a specific finding by a trial court judge to make an upward departure from a recommended sentence or sentence range. These cases have required both the United States government and states such as Arizona and Washington to rethink their guideline sentencing. Chairman Colquitt noted that in the early days of this Commission the Commission was concerned about and considered the possible effects of *Apprendi v New Jersey*, which was the first of the decisions related to the application of sentence enhancements. He noted that the Commission initially thought *Apprendi* was rather limited; however, after *Blakely* and *Ring v. Arizona* and all of these cases, we are still not sure what it means, but it may mean a lot more than we even anticipated. The beauty of it is that throughout the work of this Commission over the last several years, the Commission recognized the warning signs inherent in *Apprendi* and has been able to plan around those pitfalls and not get caught up in *Apprendi*-type issues. Judge Colquitt stated that the Commission was fortunate to have come along at a

time when we already knew about the direction the federal court was taking with regard to sentencing laws.

There are now at least five cases telling sentencing commissions, legislatures, and courts what you can and cannot do as a matter of constitutional law in devising sentencing guidelines. The *Apprendi* and *Blakely* type cases are of great interest to this Commission but so far, do not appear to apply with what we are doing.

Judge Colquitt advised the Commission members that there are only two legislative days left in the General Session (the final day being May 16th) there would be a report on the Commission's legislative package from Lynda later in the morning. He stated that Lynda would update the members on what has been going on in the Legislature regarding our package and what the members could do to help get the bills passed.

Report from the Governor's Office

Commission member Vernon Barnett, Deputy Legal Advisor to the Governor, reported the Governor has appointed a Task Force on the effects of prison overcrowding. He noted that although some of the problems have been mitigated with the recent reforms initiated by the Sentencing Commission and through the Governor's office, additional action needs to be taken as soon as possible. Vernon stated that the Task Force is chaired by Mr. Mike Stephens from Birmingham, and members include Dr. Lou Harris (who is the reporter); Lynda Flynt; Miriam Shehane; Bill Clark of Birmingham who is past president of the Alabama Bar Association; Representative Victor Gaston from Mobile; Bob Harper, retired Circuit Judge from Lee County; now in private practice; Judge Jim Hill, St Clair County who has a particular interest in community corrections; and Randy Hillman, Director of the Office of Prosecution Services.

It was announced that the first meeting of the Task Force was scheduled for May 10th and will be held in the RSA Plaza 5th floor conference room from 9:00 a.m. to 12:00 p.m. Vernon noted that this will be an open meeting and he encouraged interested Commission members to attend. Explaining the plans for the Task Force, he advised that the Task Force will have seven or eight meetings and will be taking testimony on various aspects of Alabama's prison system. The Task Force will continue to define the problems in the prison system and will address additional areas in which an immediate response can be taken.

Vernon advised that the Governor will call on the Department of Corrections and Pardons and Paroles to partner in this effort and give testimony to the Task Force. He explained that the Task Force would be looking for additional immediate solutions to problems inherent in crowded prisons.

Vernon told the Commission members that the Governor has also established a Re-Entry Task Force to look specifically at providing more effective re-entry options for offenders, since it is axiomatic that better re-entry options can have a positive effect on recidivism rates. Vernon encouraged the members of the Commission to participate in both projects.

Report from the Department of Corrections

Donal Campbell, Commissioner of the Department of Corrections reported to the Commission on the current status of the Department. He stated that, as of today, the in-house population of DOC was **23,625, and the total population was 27,300**. In regard to the use of out-of-state prisons, he noted that Alabama currently houses 270 female inmates in Louisiana and have used this option since 2002. He explained that this option was necessary to hold the Tutwiler population at 700, the level agreed upon in settlement of the Tutwiler lawsuit.

Commissioner Campbell brought the members up-to-date on the status of state inmates housed in county jails, advising that there are currently 1,672 males and 162 females housed in county jails awaiting transfer to DOC facilities. Of these, over 372 inmates have been held in the county jail over the 30 day limit. He noted that DOC had that population at zero until four months ago, but DOC's ability to intake new inmates has slowed over the past 3 or 4 months. The Commissioner explained that although the buildup in the county jails may be due to the slowdown of paroles, one reason DOC was able to keep up with the county jail population was because of the additional space created within the existing structures, which was made possible by making adjustments to some facilities. For example, the security level was increased at three of facilities to house a higher level of offenders and a couple of community correction (DOC work release) centers were converted from level two to level four facilities.

The Commissioner announced that the Department is also seeking additional funds for community corrections programs. He stated that the Department has requested permission to spend some existing federal funds on community corrections and that this request is pending with the Department of Justice.

The Commissioner stated that the proposed budget for DOC next year is \$304.8 million dollars. The House has passed the proposed budget of \$307 million dollars, of which \$2.5 million dollars will be additional funding for community correction programs. This proposal also includes merit raises for DOC employees. He stated that within the past three weeks DOC received a supplemental appropriation to award eligible employees merit increases for the current fiscal year. DOC has requested an additional \$24 million dollars in supplemental appropriations just to close out the current year.

Next year's proposed budget also includes the payment for the 27th pay day. Although there is a bill that was passed in the House that will reduce pay periods from 26 to 24 pay periods annually, subsistence pay is a supplemental for Corrections that will increase from \$11.00 to \$12.00 per day. This is in addition to salary costs. The proposed budget also includes increases for mental health contracts.

Commissioner Campbell stated that DOC also built in funding for a technical violator program that could be brought on line if DOC receives the funding. He explained that technical violators were inmates who have violated parole without being charged and

convicted of additional felonies. A number of such offenders are returned to prison each year and could be managed without being returned to prison.

Commissioner Campbell reported that he also hopes to receive funding for a reentry program. He reported this is an issue he has raised for the past several years as something the state desperately needs.

Commissioner Campbell reported that the health care reports in the media are not accurate and that he hopes to issue a correct statement over the next few weeks.

Kim Thomas reported on the Kirby case.

Kim Thomas, DOC Chief Legal Counsel, explained the Department of Corrections involvement in developing procedures since the *Kirby* case was decided by the Alabama Supreme Court. He reminded Commission members that the Kirby decision was the decision that resolved the issue of whether or not the retroactive application of the Habitual Felony Offender law amendment was constitutional and whether a circuit judge had jurisdiction to consider a motion filed beyond 30 days after sentencing to reconsider the sentence based on the changes to the habitual offender law that occurred on May 26, 2000. In *Kirby* the Court held that a circuit judge has jurisdiction to reconsider a sentence based on a change in the law granting such jurisdiction. The Court also found that the circuit judge makes the decision (as a finding of fact) whether an inmate is considered violent or nonviolent. The Court held that the judge can call on the Department of Corrections and the Board of Pardons and Paroles to issue a report that the judge would consider before he made a decision on whether the offender is eligible for resentencing and before resentencing if the offender is eligible; however, this is not a prerequisites to the Courts authority to reconsider the sentence.

Mr. Thomas stated that DOC's lawyers read the decision to say that the Department should supply information regarding the inmates conduct while incarcerated. Before the *Kirby* decision came out there was some question because of the Executive Order issued by Governor Seigleman as to whether the Department of Corrections should offer some judgment or opinion as to whether the inmate was nonviolent or violent. After *Kirby*, it is settled that the judge decides whether the inmate is eligible for resentencing.

DOC decided to be proactive in this area for several reasons: 1) DOC is not sure of the number of petitions that will be filed after the Kirby decision. 2) DOC felt it was very important that information be distributed to the judges to aid them in making the decision. For this reason, it was important that DOC send only the most accurate information to the courts. DOC decided the information should include positive as well as negative information. DOC also had an interest in providing this information in a user- friendly format for a useful presentation of information.

He explained that under the internal procedure established by DOC, DOC receives a judicial order for a report. This order is sent to the Legal Division and/or the Central Records Division of the Department of Corrections. Interestingly enough, since the *Kirby* decision DOC has received 39 orders from judges in 17 different counties. Mr.

Thomas stated that there are basically 7 different varieties, but through the help of AOC a model or a standard type of order was developed; however, very few judges use that sample order. He continued to explain the process, stating that when a court order is received, DOC checks the offender's institutional file to determine the programs completed by that inmate (which included not only participations but programs that they have completed till the end). DOC is receiving certified copies of those completions. Sometimes the programs are numerous and may include educational i.e., a GED certificate and the actual scores on those GED tests; other vocational training; substance abuse; mental health treatment; and even some religious type programs.

The second focus of DOC's *Kirby* procedure is the inmate's central records file located in Montgomery, which contains the inmate's disciplinaries or behavior citations. The incident report that causes the issuance of the disciplinary against the inmate is included. Also, a new report, a time sheet that is an inmate summary, containing all types of useful information, is included in the packet that DOC sends to the judge.

Mr. Thomas stated that Orders vary. For example, in the Orders coming from Jefferson County the judge requests 11 different items. The Time Sheet alone contains 8 of those 11 items. He noted that DOC also certifies all sentencing orders for the inmate. Often inmates have multiple convictions from different jurisdictions.

Thomas pointed out that AOC and Sentencing Commission staff developed the model of how these petitions should be circulated. Lynda pointed out that this model was presented to the Criminal Rules Committee for consideration but the Committee voted to take no action on that recommendation. Thomas recommended the adoption of a standardized model, including a motion or petition, order for information, response, response time, and a final order. Based on some of the language in *Kirby*, these motions are treated as part of the original case rather than as a new petition.

The typical *Kirby* Order requires that DOC provide reports within anywhere from 30 to 120 days. Of the 39 petitions, 17 of those have ordered a response within 30 days. Mr. Thomas stated that thirty days was really too short a time-frame for DOC to gather all of that information, noting that sometimes seven days will pass since the date the order was signed from the date it is received by DOC. He said that it would be beneficial if there could be possibly a longer standard response time, noting that the *Kirby* decision requires merely a reasonable time. It was explained that the *Kirby* decision did hold that if DOC failed to respond or failed to provide information within a reasonable time, it would be deemed as a waiver by the prosecution of the DOC information.

Mr. Thomas stated that he believed that relief has been denied in each case in which DOC has been required to respond; however, there may be some cases in which relief has been granted but DOC did not respond in these cases. Commission members and members of the audience indicated that there had been at least 3 or 4 that they knew of where relief had been granted.

He told Commission members that there were possibly 2 judges who would not do a written order directing the Department to provide information that they simply pick up the telephone and call to find out the sort of behavior this person has been engaged in since incarceration. Thomas speculated that this could have happened in those 3 or 4 cases in which relief was granted.

Report from Board of Pardons and Paroles

Parole Releases

Bill Segrest, Executive Director of the Board of Pardons and Paroles, reported that he is aware of 2 cases in which life without parole sentences have been reduced to life sentences. He explained that when Pardon and Paroles receives the Order, the Board applies the same established procedures for setting the parole consideration date. These cases will be set based on serving 10 years (considered as one-third of a life sentence), except for the seven excluded offenses in which consideration comes only after 15 years. That's excluding cases where those seven specific offenses have been committed, so far the cases of the 15 year variety involve Burglary 1st degree and Manslaughter.

Mr. Segrest reported the results of implementing the special dockets that began in April of 2003. He stated that in April of 2003 the Board considered a total 477 persons for parole. The number of persons considered for parole increased to 862 in June 2003, and 1002 in July of 2003. The Legislature established the second parole board in October of 2003. The panel underwent training for 2 months and began hearing cases in December of 2003. In December of 2003, both Boards' combined considered 1219 total cases. He explained that this was not just special docket cases, this was total cases. Bill stated that the month with the most inmates considered for parole was February of 2004, at which time the combined boards considered 1591 cases for parole. He noted that an interesting thing happened in April of 2004; some political pressure was applied because there was a lot of concern about the fact that nonviolent inmates were being considered for parole. For example, some of the offenders with a 15 year sentence were being considered for parole after serving only 4 or 5 months. Pardon and Paroles was considering everyone whose current offense was not a violent offense as determined in the Sentence Reform Act of 2003. He advised the members that there were some people serving 30 years, perhaps two 15 year sentences concurrently, who had been in prison for 5 months who were considered.

During that one year period, Pardons and Parole considered over 9,000 people for parole. Mr. Segrest emphasized that was just on the special docket. Of those people who were considered for parole, about 40% were granted. That means about 60% were denied. The ones that were denied were the ones serving a 15 year sentence or a 30 year sentence and had only been in for 5 months. Those were being denied, and were a part of the 60% that were being denied; however, there was a lot of consternation from various places about the fact that these people were even being *considered* for parole. That pressure got to the Board and in April 2004, the Board revised the criteria for consideration. After this revision, fewer inmates were considered for parole.

In March of 2004, the Board considered 1558 persons for parole; in April 2004 that number went down to 851; in July of 2004 that number went down to 516. That's the two boards combined. That's all cases, not just special docket cases. In December of 2004 that number was down to 548. It was about that time that the DOC population started easing back up and Mr. Segrest stated that he thought that was the primary reason for the rise in the prison population.

Mr. Segrest stated that everyone with 5 years or less is placed on the current docket and right now the current docket is August of 2005. He explained that if a case came in right now and it had five years or less imprisonment ordered, it would be placed on the August 2005 docket. If the inmate had previously been considered for parole on the special docket and denied, the new set date would now be as ordered by the hearing panel at an open public meeting, rather than being put right back on the docket. This means that if the Parole Board denies parole and sets a case off for 3 years or less, the staff no longer has authority to change that set-off date. If it is set off over 3 years, the inmate has the option to petition for a special hearing after the 18 months has passed from the date of denial. If the sentence is over 5 years up to 15 years, and it is for a nonviolent offense, the special docket set date will be after the inmate has served one year in confinement, as opposed to a setting on the current docket. If the sentence is over 15 years imprisonment, then it is placed on a special docket after the inmate has served 2 years.

As of January of 2005, only 471 of that over 9,000 paroled have been revoked. That is a revocation rate of 11%. Mr. Segrest stated that he believes the revocation rate may increase over time, since it should be much higher than the normal revocation rate. For the special docket, Mr. Segrest said he believed revocations would be in the 30 to 35% range.

Technical Violator Centers

Mr. Segrest reported the need for a technical violator center to hold inmates returned to prison for probation and parole revocations. This center would be used for probation or parole technical violators. It is particularly needed for drug users and probationers and parolees with supervision issues. These offenders do not necessarily need full prison but do need more custody. Segrest noted, however, that the "technical violator" data needed further study. The unavailability of Forensics to quickly analyze evidence causes offenders who have new offenses to returned to prison as "technical violators," which may skew the data.

Interstate Compact

The Commission members were advised of the interstate compact for the supervision of adult probation and parolees who go out of state for supervision. Bill explained that the interstate compact director of the state of Alabama was an employee of the Board of Pardons and Paroles. He noted that it was cumbersome process under the compact to get a person transferred from Alabama to another state and it has become more cumbersome with the recent instances of sex offenders leaving the state going to another state and continuing to commit crimes. The surveillance of a person from one state to another has necessarily increased and because of that, the requirement for transfer from one state to

another has become more cumbersome. Mr. Segrest estimated that it can be done, usually in about 2 months after application for transfer to another state. Because of this time lag, often if a person is going to another state for a job, the job availability is no longer there by the time he is approved through the compact.

Parole Transfers

Bill stated that there are inmates on detainers paroled to other states but that there is some history on that. The parole of one inmate, a rapist, to another state caused real problems and the Board is hesitant to use this avenue of release. The interstate compact has language in it that says that no paroling authority will parole a person simply to go to another state. Under the compact each state is encouraged not to parole anybody to another state that would not be paroled to the streets in Alabama. Inmates, with the agreement of the receiving state are, however, paroled to the other state from Alabama.

Risk and Need Assessment Instruments

The Board has added a new tool for use in parole consideration. As of April 1, 2005, every person on the hearing docket has a risk assessment in the file available to the Parole Board. Mr. Segrest provided the Commission with a copy of the risk assessment instrument. Mr. Segrest pointed out that all parole in Alabama is discretionary, a privilege, not a right. A parole hearing is an administrative proceeding where the Board considers any and every bit of information available and makes a decision on each particular case whether a parole should be granted. This assessment tool does not change that. This assessment instrument is merely another tool that can be used by the Parole Board in making this decision.

This assessment was built specifically for use in Alabama and built from Alabama cases over a 3 year period. The instrument is short and not complicated. The risk assessment rates criteria or the factors that are common to whether or not a person will re-offend with force, will re-offend with new victimization, or will be successful on parole. Some of the things considered on the risk assessment instrument are the offender's age, whether there is a current detainer on the individual, and the type of prior offenses, (theft, car theft, robbery, burglary, stolen property, criminal trespass, damage to personal, arson are more likely to recidivate as are assault, sexual assault, or using a weapon in the commission of an offense). Victimization is a factor the Board considers in making its decision. Victimization is considered separate and apart from the risk assessment. .

Mr. Segrest explained that at the same time Dr. Wagner developed the risk assessment instrument for parole, he also did three other reports based on Alabama cases. He did a "needs" assessment where officers fill out an instrument on each individual person under their supervision and that needs assessment will identify the needs that this person has; for instance, substance abuse treatment, education, anger management, and employment training needs. There are nine areas that this needs assessment will assess and the needs will be prioritized. Officers are now trained to base supervision on meeting the needs that are assessed for that individual person rather than merely making contact with the individual supervised. For instance, if education is a need, then the officer must take positive steps as often as necessary to make certain that person is enrolled in an adult

basic education class. If it is substance abuse treatment, the officer must take steps to get that person enrolled in a substance abuse treatment program. That assessment is done again after six months. The needs/priorities may change, and hopefully they will, because in that six months some needs will have been met. Also there is a risk assessment instrument that is done at the same time. This risk assessment will assess the risk this person has for re-victimization and that will determine the level of surveillance that the officer applies to the case. If it is a very low risk assessment score then a lot of this needs-based supervision may take place on the telephone. If there is a high risk, the office must maintain stricter surveillance over that person while they are in the community. That's part of that three day training that we just conducted, and it is now being utilized statewide. The Board will evaluate the use of the instruments and needs based supervision for effectiveness. Currently both the risk and needs assessments are paper documents. The Board is working toward including the information in an electronic format.

Bill stated that right now the institutional parole officers at each institution are taking information from files they have available. For those who are out-of-state, central office personnel are doing the same risk assessment using files to gather the information. All officers, management, and clerical staff have been trained, with the exception of one make up session, in the use of the risk assessment instrument. Mr. Segrest invited the members of the commission to attend this 3 day make-up session at L.I.F.E Tech.

Evaluation of Services Provided

The Board is currently undergoing an evaluation that is being performed by Auburn University, Montgomery. The evaluation will assess the satisfaction of those who have an interest in the probation and parole system, especially the circuit court judges. This will be done through the use of a blind survey. All the judges will receive a survey to fill out and send back to a consulting firm to tabulate the results. Surveys will also be submitted to probationers and parolees for their input. It was noted that a third group that needed to be considered were crime victims and the evaluation should include the victim's input into the comprehensive evaluation

Improved Supervision

Another change the Board is making is how supervision is maintained and the role of the officer in supervision. Until recently, supervision was based on the number of contacts with a probationer or parolee. There are five levels of supervision that determined how much contact the supervising officer would have and what types of contacts that person would have with the person on probation or parole. Under this system the number and type of contact is based almost solely on the level of supervision. For instance, for a Level II offender, the officer must have a face-to-face contact each month and must verify employment through collateral contact. If an offender came to the office and brought his wife and they went into the office and paid his fee that took care of the entire requirement. This could be accomplished in less than 3 minutes. There was no quality control on the supervision that was received. The Board is changing from this type of supervision to supervision for results or evidence-based supervision and needs-based supervision.

L.I.F.E Tech Transition Facility for Women

Mr. Segrest reported that the Board's suggested General Fund appropriation includes money to continue to operate the Life Tech facility for females located in Wetumpka. This facility is very close to capacity, 200 parolees, with over 190 women enrolled. About 200 women have successfully completed the program. Of those that have graduated only 12 have existing problems. A lot of those were actually brought back to go back through some of the programs out at Life Tech rather than put back into prison. Alabama desperately needs a similar facility for males. Money for such a facility has been included in the 2006 budget request.

Mr. Segrest noted that over the last year and a half officer caseloads have decreased from over 200 per officer, to below 150 per officer. Some caseloads are as low as 100. The national recommendation by American Probation & Parole Association is 50 per officer. Alabama has not met that standard.

Community Corrections Update & Results of Jail Survey

Chris Booth of the Commission Staff gave a community corrections update and reported on the results of the Commission's jail survey. Chris reported that the Alabama Community Corrections Association headed by Joe Mahoney is taking a lead in working with DOC on community corrections. ACCA held its spring meeting in Mt. Cheaha this year. There was participation from all over the state. Presenters from the Finance Department, Examiners of Public Accounts and DOC provided useful information to the group.

Chris noted that the spring meeting led to a conference in Montgomery, facilitated by Lynda Flynt, to begin to work out problems with the administration of community corrections programs in Alabama. There were a lot of issues discussed, including the use of AIS numbers for felony diversions and how to handle escapes. All issues were discussed and specific questions presented. DOC representatives that were present requested time to present these questions to their staff attorneys and report their findings at the next meeting of the Association of Community Corrections.

The Sentencing Commission has also been involved with the risk assessment now used by some community corrections programs. This instrument was developed by Triant Corporation, a group out of Toronto Canada, that has applied business patterning principles to risk assessment for criminal offenders. Mr. Booth and Lynda Flynt attended a training session on the instrument in Mobile. It was a good learning experience to see how this tool works. Chris reported that the Triant assessment instrument is intended to measure not only potential risk for violence but potential risk for re-offending and is also a needs assessment tool. Mobile County and Montgomery County are using the instrument and Jefferson County and Shelby County are considering using it. Other program directors and staff members participated in this training to evaluate the instrument. The ACCA is using its influence as an organization to obtain group rates in these and other services for community corrections programs. Group rates have also been obtained for electronic monitoring.

Chris told Commission members that two counties, Baldwin and Morgan, are considering starting up community corrections programs. Baldwin County is also considering a drug court. Joe Mahoney and Chris Booth have visits planned to these two counties.

Reporting on the community corrections budget for felony diversion programs, Chris stated that the budget had remained at a level of \$2.9 million over the last couple of years. He advised that the House proposed budget for community corrections is \$5.2 million for 2006; however, this has to be approved by the Senate and Governor. The additional funding would allow for greater expansion of the programs. Even if the current \$5.2 million is adopted, the amount still doesn't reach the amount necessary to mandate a division in DOOC dedicated to community corrections. Chris stated that despite inadequate funding, Commissioner Campbell went ahead and appointed Jeff Williams as the Director of Community Corrections. Jeff has been on board in this position for 2 months, coming from his previous positions with DOC of warden and SIR officer.

With the cooperation of the Sheriff's Association, the Sentencing Commission has completed an updated survey of county jails. The Sheriff's Association collected the data on forms provided by the Commission and the Commission staff compiled the information. The response rate to the surveys was 81% or 56 counties. The survey provides a snapshot of the jails on a given date and should be repeated at least once a year. Chris told Commission members that the findings of the survey were interesting, with a little over half of the responding jails reporting 100% capacity or more. A couple of counties were over 200% capacities. A little less than half of the jails had 100% or less capacity usage at the date of the survey. For example, Macon County was at less than 40% capacity, while Etowah county has a capacity of over 800 inmates had only 600 beds filled.

Chris noted that there was a lot going on with community punishment and there was space in some jails that might be used for felony diversions or would be available to judges for county jail sentences. There are some county work release programs that might be folded into the system. He said that the Commission would continue to work with the ACCA, DOC, and other entities to find solutions and provide more community alternatives.

Concluding, Chris stated that there is a real information deficiency in the state, inasmuch as there is no statewide reporting system that can provide current and accurate information on county jails populations. Right now all reports are manual and all surveys are manual. The Commission could not collect this information even this efficiently, without the support and help of the Sheriff's Association. Funding and a statewide network for information must be established before an efficient means of collecting data in this area will be available.

Commission's 2005 Legislative Package

Lynda Flynt reported on the 2005 Legislative Session advising the members that all Commission bills had been introduced. Lynda discussed a number of bills that appeared to be in a position to pass the Legislature. (A list of those bills is attached to these minutes.)

She noted that there had been no strong opposition to the bills and that a number of bills, including the sentencing standards, were in a position to pass during the remaining 3 days of the Legislative Session. Lynda stated that it was her understanding that the last day any bill could go from the house of origin to the other house was Tuesday. She announced that most of the Commission's bills passed the house and were in the Senate, awaiting action on the floor. A summary of criminal bills and list of representatives and senators with phone numbers was distributed so that Commission members could contact their legislators for support. Rosa stated that Tuesday was going to be Sentencing Commission day in Senate Judiciary to consider Commission bills passed by the House.

Two bills, the Youthful Offender and Juvenile records bill and the medical/geriatric release bill, went to other Senate committees. The juvenile and YO records bill went to the Youth and Children's affairs Committee chaired by Senator Escott, one of the Commission's advisory council members. The medical/geriatric bill went to the Health Committee and Senator Means is chair of that. Lynda said that she and Rosa would talk to the chairs about getting those bills out.

Addressing other criminal bills of interest, Lynda mentioned that HB 647 and SB 365 affecting the length of time one remained on parole or probation were bills that were introduced and presently pending; however it would take a unanimous vote for it to pass either house at this time. Rosa noted that many folks in the Senate and House were very interested in these bills and this subject was included in the Commission's report as a matter to be considered next year. She said that the Commission staff would have to gather data on probation and parole and take a look at those two issues in order for the Commission to make a recommendation. Thus far, the Commission's analysis has concentrated more on the prison population rather than the free world population of parolees and probationers. There are problems in putting that data together that the staff is beginning to work out.

Closing Remarks

Chairman Colquitt announced that there were copies of an article published by the National Institute of Justice available for Commission members on the table at the front of the room. He noted that this was a report of a study on the effects of sentence lengths on criminal careers, stating that the report was 12 pages long and quite detailed.

The Chairman noted that the Commission needed a contingency plan should the Legislative package fail in the regular session. There was a motion made that if there is a

special session, the Commission should push for the inclusion of the sentencing bills in the Governor's Call. By unanimous vote, the motion was approved.

Chairman Colquitt stated that the Commission will have to undertake another series of seminars to teach the use of the standards, noting that they should occur primarily between the approval of the Commission's recommendations and implementation of the standards.

Scheduling of Committee Meetings

Rosa Davis noted that a meeting of the Standards Committee may be necessary once the Legislative Session ends, since there are several topics to consider and discuss. She reminded Commission members that the standards were, and should remain, an evolving process where changes can be made as needed. As everything passes, cosmetic changes can be made in the worksheets for ease of use but the substantive parts of the worksheets cannot be changed without legislative approval. Ms. Davis said she would contact committee members by e-mail as soon as the legislature acts.

Education Committee – Lynda stated that the Education Committee needed to meet soon and Chair, Dr. Lou Harris, stated that he would give Lynda a tentative date to schedule a meeting.

Chairman Colquitt thanked members for attending the Commission meeting. He thanked Lynda and Rosa, Commission staff and Commission members for tracking the legislation, keeping people informed, and urging people to contact their legislators.

There being no further business the meeting was adjourned.