

# Alabama Sentencing Commission

Minutes of Commission Meeting  
April 5, 2002

The Alabama Sentencing Commission met in the Mezzanine Classroom at the Judicial Building in Montgomery on Friday, April 5, 2002. Present at the meeting were:

Honorable Joseph Colquitt, Chairman, Retired Circuit Judge, Professor,  
University of Alabama School of Law, Tuscaloosa  
Honorable Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General, Montgomery  
Stephen Glassroth, Esq., Glassroth & Van Heest, P. C., Montgomery  
Dr. Michael Haley, Department of Corrections, Montgomery  
Lou Harris, D.P.A., Faulkner University, Montgomery  
Edward "Ted" Hosp, Esquire, Legal Advisor to the Governor, Montgomery  
Honorable O. L. (Pete) Johnson, District Judge, Birmingham  
Emily A. Landers, Deputy Director of Constituent Services, Governor's Office,  
Montgomery  
Honorable P. B. McLaughlin, Presiding Circuit Judge, 33<sup>rd</sup> Judicial Circuit, Ozark

#### Advisory Council:

Chandra Payne for Sen. Escott-Russell, Alabama Senate, Montgomery

#### Speakers:

Callie Dietz, Director, Family Court Division, AOC, Montgomery  
Wayne Dunn, Community Corrections 14<sup>th</sup> & 24<sup>th</sup> Circuits  
Edward "Ted" Hosp, Esquire, Legal Advisor to the Governor and member of the  
Alabama Sentencing Commission, Montgomery

#### Staff:

Lynda Flynt, Executive Director, Alabama Sentencing Commission, Montgomery

#### Others Attending:

Andrew Dollar, Governor's Office, Montgomery  
Becki Goggins, The Sentencing Institute, Montgomery  
Angelo Trimble, ACADV, Montgomery  
Frank Vickery, Board of Pardons and Paroles, Montgomery

### **Introductory Remarks**

The meeting convened at approximately 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. Chairman Colquitt stated that the Commission is moving forward with regard to its data compilation. The Commission received reports as to where it stands with regard to the actual assimilation of its database and how that is going to help with the Commission's work in the near future.

Chairman Colquitt gave the Commission a brief overview of the agenda that included the following: a report from the Governor's office on *Status of Short-Term*

*Solutions to Prison Overcrowding Problem* presented by Ted Hosp, Legal Advisor to the Governor; Lynda Flynt, Executive Director of the Alabama Sentencing Commission reported on *Crime Bills of 2002 General Session*; *DOC Status Report* was presented by Dr. Michael Haley, Commissioner, Department of Corrections (The Department of Corrections will submit a report on policy and procedures to the Governor, Attorney General and the Alabama Sentencing Commission on June 1, 2002); *Community Corrections Update* was presented by Wayne Dunn, Director, Court Referral Program for the 24<sup>th</sup> Judicial Circuit, Callie Dietz, Director, Family Court Division, AOC and Mike Carroll, Director, Chief Information Officer, Judicial Data Center, AOC.

Chairman Colquitt stated that today there will be formation of committees. The committees will be working with regard to offense seriousness ranking and offender seriousness ranking. Chairman Colquitt emphasized that the Commission has to start deciding policy questions of what is important to Alabama in terms of classification of crimes and classification of offenders. Commission members were asked to submit their preference as to which committee they would prefer to participate on. Chairman Colquitt expressed the importance of having well-balanced groups making sure that groups such as victim's groups, prosecutors and judges, etc. are evenly spread between the two groups. Judge Ben McLaughlin and Rosa Davis will chair the committees, Rosa will be Chair of the Offender Seriousness Committee and Judge McLaughlin will chair the Offense Seriousness Committee and they both will submit reports to the full Commission at the June 2002 meeting.

### **Report from Governor's Office on Status of Short-Term Solutions to Prison Overcrowding Problem**

#### *Law Suit and Jail Overcrowding Problem*

Ted Hosp, Legal Advisor to the Governor addressed the Commission giving an update on the status of the Governor's short-term solutions to the prison-overcrowding problem. Mr. Hosp explained that about a year ago at the Governor's request a working group convened to work on the problem of state inmates in county jails. Mr. Hosp stated that there is a lawsuit, *Barbour County v. Haley*, dealing with the state's problem of leaving state inmates in county jails over the judicially imposed 30-day limit. The case has been going on for decades and it has been a problem for more than 20 years.

Mr. Hosp reported that there were about 2,000 state inmates who were over 30 days ready in the county jails. There were a total of over 3,000 state inmates in the county jails. That number was decreased in the late fall to about 200 over 30 days ready with a great deal of effort from Community Corrections and the Board of Pardons and Paroles. Community Corrections took on a great number of inmates through their programs. The Board of Pardon and Paroles and staff instituted a new intensive supervision parole program. Nine new officers were hired who could supervise these inmates on a more intensive basis, because they were typically going to be getting parole earlier than they would have otherwise.

#### ***Programs Implemented***

In addition to the new intensive supervision parole program and the efforts of the Community Corrections programs, the Department of Corrections reinvigorated the SIR

program that is dedicated or directed primarily toward lower risk inmates who can be put into a supervised situation. After about eight months of working, they were able to reduce the numbers who were over 30 days ready to about 90%. Unfortunately, there is a rise of state inmates in the county jails who are over 30 days ready.

#### *SIR Program Reinstated – Work Release Programs*

Mr. Hosp reported that many of the things that they are doing are short-term type solutions. They are looking at inmates that, from a risk assessment standpoint, can be out doing work release, SIR program or on parole. Those are people who, under the current sentencing scheme, technically would be still behind bars. Mr. Hosp stated that they are trying to work the system in a way that does not put the public at risk, but at the same time will relieve some of the pressure that is on the counties. From the counties prospective, they have been forced to bear this burden for decades.

Mr. Hosp stated that one of the long-term solutions that they have been working on is the implementation of reentry programs. Mr. Hosp commented that hopefully we would start seeing positive results from the reentry programs in the next few weeks/months. The reentry programs that are being piloted in a couple of counties will allow judges an additional option in terms of bringing inmates out of prison into a supervised situation. If a person serves his/her term, come out of prison and goes back into the community without some kind of bridge, the likelihood of that person succeeding in society is significantly decreased. What they are trying to do on these programs (intensive parole and reentry program) is work toward developing some sort of bridge. Instead of supervising hundreds of inmates an officer would supervise 30–50. That is one of the programs that will really have long term benefits.

#### *Drug Treatment Facility In Birmingham*

Mr. Hosp stated that drug treatment and creating new facilities that focus on substance abuse is something that the Governor has tried to focus on. Mr. Hosp reported that they are in the process of opening a facility in Birmingham that will house approximately 50 offenders. Chris Retan will operate that facility in Birmingham. Hopefully, that program will branch out into pilot programs throughout the state. The Governor's plan had wanted to open up regional facilities throughout the state. This is the first piece to that puzzle. A similar program is being developed for Montgomery.

#### *DOT Work Camp- East Thompson Facility*

Mr. Hosp reported that they are looking at starting up a DOT work camp. They are remodeling an East Thompson facility that had previously been used for that purpose. Unfortunately, that remodeling effort required more work than originally anticipated. Mr. Hosp stated that they are going to use an accelerated bid process similar to what was used with the bridge in Jefferson County where the contractor was offered incentives to finish early and penalties if they finished behind schedule. The remodeling of the East Thompson facility will provide about 150-160 beds. The Governor's plan wants to expand that program statewide. The Governor has also focused on non-violent inmates being made to work for their food, shelter and clothing. The consequence of the efforts they are making is that they running out of eligible inmates who are appropriate to be put back in work release programs, intensive parole or SIR, etc.

Mr. Hosp commented that at this point (having found different places to put inmates and having worked for a year now) with an increase in state inmates in county jails is another illustration that the Sentencing Commission's work is truly going to be the only hope of solving the prison-overcrowding problem. There will be a hearing on April 23<sup>rd</sup> in front of Judge Gordon where they will determine whether Judge Sashy is going to impose sanctions on the state for failure to remove all of the state inmates from the county jails. Mr. Hosp further commented that he is hopeful to the extent that if he does order sanctions they will be light, because so much of what they have been able to accomplish has been the result of their being able to divert money to different places to get these programs working. If that money is diverted to paying sanctions, some of these programs are likely to, unfortunately, fall by the wayside.

Mr. Hosp stated that Governor Siegleman has prioritized state grants to counties that have community corrections programs and drug courts.

### **Discussion on Status of Short-Term Solutions to Prison Overcrowding Problem**

A question and answer period followed Mr. Hosp's presentation. One question was whether Mr. Hosp had any opinion as to what is causing the rising rate of crime? Are the folks doing worse crime from the worst background or have they been thrown out of beds in various programs?

Mr. Hosp responded that there are combinations of factors that are causing this rising rate in crime. One is that there are not enough options for sentencing in the state. Mr. Hosp further commented that he doesn't think that there is more serious crime or that the level of offenders is getting any worse. With the current sentencing structure, if a bed exists it gets filled.

#### *DOC and P&P FY 2003 Budgets*

Mr. Hosp commented that one very serious concern that he has in the coming year is the budget that was passed for the Department of Corrections and the Board of Pardons and Paroles. Their budgets were cut over what the Governor recommended. Six hundred of the people that would have made progress through this project are in this intensive parole situation. The legislature cut the money that has been used to pay the salaries of these officers. The Department of Corrections has been cut over 6 million dollars. The Department of Pardons and Paroles budget was cut \$400,000.

Judge Ben McLaughlin asked how many of the people in the county jails were felony DUIs before that time that would have been felony misdemeanors. Becki Goggins commented that since the felony DUI law went into effect it has had an overwhelming impact on the prison population. That is accounting for about 650-700 admissions a year. Those are new admissions that you didn't have before the Felony DUI law was passed.

Angelo Trimble recommended that the Governor also include counties that have coordinated community responses to domestic violence. Mr. Trimble stated that it doesn't cost any extra money, it just requires people and agencies to come together and identify problems and reprioritize their efforts and work together to overcome those problems.

## **DOC Status Report**

### *Alabama #1 in Correctional Officer Training*

Dr. Michael Haley, Commissioner, Department of Corrections, addressed the Commission referring to an interesting report that was published by *Southern Legislative Research Council* headquartered out of Baton Rouge. They cover a 16 state regional area that is basically the southeast. Alabama is number one in the amount of training that is provided for correctional officers. Officers are required to attend a 12 week 480 hour training academy. Each officer has to have a minimum of 40 hours of advanced in-service training each year. Dr. Haley stated that not only is Alabama number one in the 16 state southeast region, but number three nationwide in the amount of training that is required of officers. There are 92 people in the current academy class who will be graduating on April 25<sup>th</sup> in Selma. Governor Don Siegelman will be the speaker for the graduation.

### *DOC Budget*

Dr. Haley stated that the budget that was passed by the Legislature is really going to be devastating to the Department of Corrections. It's more than 6 million dollars less than the amount that the Governor had recommended. It makes it very unlikely that the Department of Corrections will be able to comply with some of the federal court orders.

### *Security and Reclassification of Facilities and Inmates*

Dr. Haley noted that Ted Hosp mentioned all the programs that are ongoing, and the fact that they are having such an impact on the Department of Correction's inmates. Dr. Haley stated that for those inmates who are eligible to go out into the community to participate in these programs, it is beginning to have a very significant impact on the Department of Corrections, requiring them to upgrade their security. Some of the minimal security systems have been upgraded to medium security facilities. The most notable one is located in this area (Elmore County). Elmore has been a minimal security facility. A new security fence has been installed at that facility. The Department of Corrections is very rapidly running out of this classification of inmates. It is very important to have this classification of inmates for at least a couple of reasons: The Department of Corrections depends on these inmates for income of the department. The department has to generate internally to meet its operating budget of over 1 million dollars a week. Dr. Haley stated that as far as he can determine they are the only Department of Corrections in the nation that has to do similar type things. The Legislature will provide the Department of Corrections for the next fiscal year approximately 2 hundred million dollars for over 26,000 inmates.

### *DOC Overcrowding Problem*

Dr. Haley stated that Department of Corrections is basically at 190% capacity in their prisons. The infrastructure is designed for 13,600 inmates (kitchen, laundry, sewage disposal, etc.). The Department has over 26,000 inmates at this time. The depletion of minimal security inmates impacts the budget because it impacts work release. As the number of minimal security inmates is gradually depleted in the system, it is going to impact the services that the Department of Corrections provides to governmental agencies. The Department of Corrections provides, based on minimum wage, over 12 million dollars worth of free labor to municipal, county and state agencies. As that pool

of eligible inmates decreases, DOC will have to start cutting back on the amount of services that can be provided to the municipalities, counties and state agencies.

Dr. Haley stated that he had a very interesting visit about two weeks ago from Jim Gundle, Executive Director, of the American Correctional Association. In Mr. Gundle's letter that he sent to Dr. Haley he thanked him for arranging tours of DOC's facilities. He stated that he finds the Alabama prison system to be doing extremely well considering tremendous budget constraint.

Addressing status of compliance with the Governor's Executive Order requiring DOC to propose a procedure for implementing the recent amendment to the Habitual Felony Offender statute, Dr. Haley explained that the Legislature passed a bill last year (HB61) that relates to habitual offenders and provides further eligibility for parole consideration for nonviolent offenders. The Governor followed up with an Executive Order (Executive Order #62) that addresses HB61 and requires the Department of Corrections to develop a process for evaluating all of the nonviolent offenders who are possibly affected by HB61. The Governor has given the Department of Corrections until June 1<sup>st</sup> of this year to come up with a system for evaluating these offenders.

#### *NIC Technical Assistance – Development of Risk Assessment Instrument, Evaluation of Classifications*

Dr. Haley stated that the Department of Corrections asked the National Institute of Corrections to provide them with technical assistance (that means that they will provide DOC the expertise at no cost). They provided the Department of Corrections with Dr. Jim Austin of Georgetown University. Dr. Austin worked with the Department of Corrections about 10 years ago to develop the classification system that they are currently using. Dr. Austin has already been to Alabama for two site visits to evaluate what is already being done and what needs to be done. On this project, Dr. Austin is reevaluating the Department of Correction's classification system presently in place to validate that what they are doing is what they need to continue to do. In conjunction with validation of the Department of Correction's classification system, Dr. Austin is developing the instrument that they will use to comply with the Governor's Executive Order, which will be ready by June 1<sup>st</sup>.

#### **Community Corrections Update**

Wayne Dunn, Director of the Court Referral Program for the 24<sup>th</sup> Judicial Circuit addressed the Commission giving an update on community corrections programs in Alabama. Mr. Dunn stated that he started in court referral in 1991 as a Court Referral Officer. He worked in Winston County until 1992 and moved to Fayette County and worked as a Court Referral Officer covering Fayette and Lamar counties. Mr. Dunn further commented that in 1994 the judges in Fayette, Lamar and Pickens decided that they wanted something more than just what Court Referral Officers could provide since Court Referral Officers are very limited statutorily in the services that they can provide. The judges wanted community corrections. They wanted somebody to collect fines and court costs, someone to do all kinds of drug testing, house arrests and monitoring. As a result, a community corrections program was developed there in 1995.

Mr. Dunn reported that currently there are about 20 employees in Fayette, Lamar, Pickens and Walker counties. There are about eight court referral officers, a case manager and also work release supervisors. In the last 2 years, a residential work release has been developed in Fayette County. As of March 1<sup>st</sup> a residential work release facility is being operated in Walker County. The Association does not receive financial help from the county, but operates totally independently. The Association did receive about \$30,000 from the Department of Corrections for supervising some felony diversions (usually supervise about 15 to 20 diversions).

Mr. Dunn stated that they see about 125 new defendants each month that are referred to community corrections or referred to a court referral, domestic violence program or just simply sent to them to collect their fines and court costs. They collect close to 1 million dollars a year in fines, court cost and restitution and, according to the Administrative Office of Courts, have the best collection rate in the state, especially for old restitution cases,

In 1996 Mr. Dunn stated that he became involved with the Administrative Office of Courts in trying to develop some software that could be used for Court Referral Programs. There have been several attempts since then to come up with something that CROs in the state could use to do all of their tracking and paperwork and also allow the Administrative Office of Courts (who supervises CROs) to keep track of what is going on out in the field. In Alabama there are about 20 counties that have community corrections programs and about 8 to 10 that are in a developmental stage.

Mr. Dunn stated that the Mobile County Community Corrections made a presentation of some software at a seminar conducted by the Department of Corrections last fall in Tuscaloosa. Mobile County probably has the most successful and biggest community corrections operation in the state. Mr. Dunn stated that recommendation has been made by the Community Corrections Association that there needs to be a central depository of information that could be used by Court Referral, Community Corrections, Department of Corrections, Alabama Sentencing Commission and any other relevant stakeholders that have an interest in what is going on with defendants and inmates in the state of Alabama. A grant has been submitted to ADECA for this project and an advisory group has been formed that is made up representatives from the Community Corrections Association, Court Referral Officer Association, the Alabama Sentencing Commission, the Department of Corrections, and the Administrative Office of Courts that basically will guide the individuals responsible for administering this software.

### **Presentation on Alabama Drug Courts – Callie Dietz**

Callie Dietz, Director of the Family Court Division of the Administrative Office Courts presented a report on State of Alabama Drug Courts. Ms. Dietz explained that the database that Wayne Dunn talked about in his presentation is a joint effort between a number of agencies. Court referral money is being used as the match money to provide new equipment and the Administrative Office of Courts database is being used to provide the court system with data. Ms. Dietz stated that they are working with Pardon and Paroles, CJIS and many others.

### *AOC Drug Court Survey*

Ms. Dietz reported that a survey was presented to each judicial circuit during the Judges Mid-Winter Conference in January to at least get some idea about their association with drug courts. The idea is to get an association together to talk, work with each other and exchange information on drug courts. Ms. Dietz provided the Commission with a handout on the *State of Alabama Drug Court's Statistics*. Ms. Dietz called the Commission's attention to the third page of the report that captured where they know drug courts have been. Also included in the report are some other counties that are interested in coordinating or developing drug courts. Ms. Dietz stated that they are developing a workshop to bring together people who have already done something with drug courts with judges that are interesting in developing drug courts around the state.

Ms. Dietz commented that she would like to see some kind of coordinated guidelines so that when drug courts are trying to transfer individuals then drug courts in each of the different counties are providing the same kind of programs (not available at the present) and some kind of stabilized funding source. AOC is at the information-gathering stage at this time, trying to work together to find out what is out there and what can be done to support drug courts more than anything else.

Ms. Dietz stated that one of the reasons case management works is that you have got so many people all moving in the same direction and they pool their resources. Ms. Dietz further commented that they are interesting in trying to work with the drug courts and develop some guidelines so that those that are developing will all develop in the same manner. Drug courts that are operating can be evaluated and given technical assistance to develop in the way that they should.

### **Sentencing Commission Drug Court Survey**

Lynda Flynt provided the Commission with surveys that were drafted up as proposals, explaining that the drug court survey would be sent to the existing drug courts to find out exactly how long they have been operating, the program costs, and other basic information that no one knows at this time. The other survey is one that, hopefully, could be computerized to obtain information electronically but it is more of a defendant participant informational worksheet. Ms. Flynt asked Commission members to look over the surveys and submit their comment and suggestions to her.

### **Crime Bills of 2002 General Session**

During the working lunch Ms. Flynt distributed an updated status report of House and Senate bills. The Sentencing Commission's Senate bill (SB 263) was on the House calendar (special order calendar) but because of a filibuster it never came up. Ms. Flynt expressed her thanks to Attorney General Pryor and Rosa Davis for all their assistance in getting priority status for the bill—it is now number four on the special order calendar.

### **2003 Operating Budget/Grant Request**

Lynda Flynt, Executive Director, of the Sentencing Commission reported that the Commission is included in the budget this year for \$184,000. Ms. Flynt further commented that this is not the total amount that the Commission needs but it is \$1000 more than what came out of the Governor's contingency fund last year. She reported that



the Commission had to obtain grants from other sources and interagency transfers to be able to meet all of its expenses this fiscal year. Ms. Flynt advised that the Commission has just gotten a grant extended through September 2002, which was going to end in August and that another grant application will be submitted right away requesting \$227,000. On behalf of the Commission members, Ms. Flynt expressed appreciation to the Legislature and Governor for appropriations of \$184,000 for FY 2003 from the General Fund.

### **Senior Research Analyst Position**

Lynda Flynt, Executive Director of the Sentencing Commission, stated that the Senior Research Analyst announcement has been extended to April 12, 2002. She advised that the announcement has been sent to the major universities in the South and noted that the National Association of Sentencing Commissions published the announcement in their newsletter. The announcement has also been sent to all of the Sentencing Commissions that have e-mails and Becky Goggins of the Sentencing Institute has circulated the announcement at Auburn University of Montgomery.

Ms. Flynt mentioned that Drs. Meredith and Speir's contract would end soon. They have made a proposal to develop a forecasting model for the Sentencing Commission. It does appear to be reasonable but has to be approved by the Contract Review Committee.

### **Formation of Subcommittees**

#### Offender Subcommittee

Judge Ben McLaughlin, Chair  
Ellen Brooks  
Dr. Michael Haley  
Clyde Jones  
Judge David Rains  
Chandra Payne  
Senator Escott-Russell  
William Segrest

#### Offense Subcommittee

Rosa Davis, Chair  
Andrew Dollar  
Steve Glassroth  
Dr. Lou Harris  
Judge Pete Johnson  
Emily Landers

Judge Colquitt stated that a complete list of subcommittees would be mailed to Commission members and Rosa Davis indicated that she would provide the Commission members with a job description of what each subcommittee's duties will entail.

Lynda Flynt mentioned that Commission members would be mailed a copy of the publication *Sentencing Matters* (author Michael Tonry) when the copies arrived.

It was also noted that Lynda Flynt and Rosa Davis would work on a mission statement for the Commission and present it to the Commission members for their approval at a later date.

**Action Plan and Timeline**

Chairman Colquitt stated that the work of the subcommittees would be presented to the full Commission at the June meeting. The Commission will then start to take action on some of these proposals and incorporate them into the overall plan. The Commission will have the data report in May.

**Announcement of Future Meeting**

The next Commission meeting will be held on Friday, May 10, 2002 at 10:00 a.m. in Montgomery.

There being no further business, the meeting was adjourned.