

# Alabama Sentencing Commission

Minutes of Commission Meeting  
April 6, 2001

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, April 6, 2001. Present at the meeting were:

Hon. Joe Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa  
Hon. Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit, Montgomery  
Rosa Davis, Chief Assistant Attorney General, Chair, Structured Sentencing Work Group, Montgomery  
Jack Doane, Judicial Data Center, Administrative Office of Courts (for Mike Carroll, Chief Information Officer of AOC and Chairman, Technology Work Group)  
Cynthia Dillard, Assistant Executive Director of Field Services, Board of Pardons and Paroles  
Honorable Mike Godwin, District Attorney, Brewton  
Becki Goggins, The Sentencing Institute, Montgomery  
Mike Haley, Commissioner, Department of Corrections, Montgomery  
Lou Harris, Ph.D, Faulkner University, Montgomery  
Edward "Ted" Hosp, Esquire, Legal Advisor to the Governor  
Hon. O. L. (Pete) Johnson, District Judge, Jefferson  
Don Parker, Executive Director, Board of Pardons and Paroles, Montgomery  
Doug Parker, Director, DeKalb County Community Punishment & Corrections Authority, Inc., DeKalb County  
Hon. David Rains, Circuit Judge, 9<sup>th</sup> Judicial Circuit, Chair, Mandatory Sentences Work Group, DeKalb County  
John Rice, Court Referral Officer, DeKalb County  
Rob Sachar, Program Coordinator, Unified Family Court Project, Administrative Office of Courts (for Hon. John Davis, Retired Circuit Judge, Chairman, Juvenile Work Group), Montgomery  
Steve McBee, Department of Corrections  
Dr. Rich Hobson, Administrative Director of Courts, Administrative Office of Courts  
Lynda Flynt, Executive Director, Alabama Sentencing Commission  
Jim LaBaza, Senior Research Analyst, Alabama Sentencing Commission

## Speakers:

Don Parker/Steve Sirman, Pardons and Paroles  
Dr. Merle Friesen, Retired Psychologist

The meeting convened at 10:00 a.m. Chairman Colquitt called the meeting to order, made introductory remarks and asked anyone attending the meeting for the first time to introduce themselves. He expressed his regrets to the Commission for not attending the last meeting due to the death of his mother.

Chairman Colquitt stated that the work groups have started meeting and that today he wanted to report to the Commission members the progress made since the last meeting. He stated that there was some discussion of the structure of the work groups and that he had prepared a few comments about the tasks assigned to each group.

Chairman Colquitt expressed appreciation to all of the work group members and advised that he would contact members not present by letter, communicating with them some ideas about their function as work group members and their particular areas of assignment.

### **Membership of Advisory Council**

Chairman Colquitt first expressed appreciation for the people who will be involved in two different capacities, as members of the Commission and members of the Advisory Council or one of the six work groups. He explained the structuring of the Commission and Council, noting that the Commission itself is composed of about 16 people, with the Advisory Council of the Commission created to afford broad-based input and communication with all affected groups, parties, interest and individuals.

The Advisory Council has a certain number of people appointed based on their occupations or positions. By statute, there are other people who may be appointed by the Commission. The Advisory Council is required to meet at least once a year. He further stated that he sees the Advisory Council as being a great resource to the Sentencing Commission; first, because they come from such broad areas with many different backgrounds, experiences, qualifications and interests that they will be able to communicate with the Commission and provide advice as the Commission attempts to change policy and makes recommendations to the Legislature. In addition, they will serve as a sounding board for some of the Commission's ideas. It is also hoped that they will help get the word out to the citizens of Alabama about the Sentencing Commission and its work so that if various groups either want information or input or if they would like to have speakers on certain topics, there will be an open line of communication with the citizenry of Alabama.

Chairman Colquitt stated that he hoped that each member of the work groups would take a copy of the Alabama Committee on Sentencing report that was given to the Judicial Study Commission about a year ago and review it carefully, since this document is the culmination of a year's study of the Alabama system by a very broad-based group of some fifty individuals. The report identifies what the Committee found was right and wrong, what could stand improvement, and what is probably as good as we can expect within the sentencing scheme for the state of Alabama. Additionally, the report proposed

certain goals and objectives, one of which was to get a Sentencing Commission established and operational. That objective has now been met. (*See Appendix A*)

Chairman Colquitt reminded everyone that, considering the work of the Judicial Study Commission, Alabama is approximately 18 months into this project. To date, there have been numerous studies and monies spent.

He addressed the members of the work groups, offering the following advice: (1) They have been given a hands-on task and asked to conduct an in-depth review of their respective topic, determine the short comings of the system in that area and identify these in their report; (2) Each group knows what the goals are, not only from the objectives included in the Judicial Study Commission's report, but also from the statutes creating the Sentencing Commission; and (3) The work groups, operating under the statutory directives, should come up with proposals to actually meet the needs of the state of Alabama and develop a sentencing system which addresses the legislative mandates for truth-in-sentencing, elimination of unwarranted sentencing disparity, expansion of sentencing options and the protection of public safety.

### **Nomination of new members to the Advisory Council**

Chairman Colquitt proposed that the Commission consider creating a system by action of the advisory council that nominations from any member of the Commission would go through the chair, the chair will refer it to the executive committee and the executive committee will act on the nomination. If the executive committee either does not act or declines to appoint that person, then any member can bring it up at the meeting of the Commission and then the Commission can make the appointment. Motion seconded. No discussion. Majority approved. Motion Carried. He stated that the reason for doing that is that it is easier and quicker in the interim to get together with the executive committee then with the full Commission in order to get the advisory council staffed and moving.

Judge Colquitt announced to the Commission that Dr. Lou Harris from Faulkner University was appointed by Chief Justice Moore to serve on the Sentencing Commission. This was a vacancy that had never been filled for a person who comes from the scholastic community. Chairman Colquitt thanked Judge Johnson for agreeing to serve as chairman of the Mandatory Sentences Work Group of which Judge Rains is acting chair.

### **State Funding and Pending Legislation**

Chairman Colquitt stated that an important issue is obtaining state funding for the Sentencing Commission. He asked Lynda Flynt, Executive Director, of the Commission to give the members a report on the funding status of the Commission. She advised that the Commission has been operating under a federal grant since it was established last year, and that the enabling legislation creating the Commission did not provide for appropriations from the state general fund.

Ms. Flynt stated that since the Commission was created as an agency of the Supreme Court, they attempted to get funding for FY 2002 by including the Sentencing Commission as a line item in the Supreme Court's budget request. The request submitted to the Governor specifically set out the Sentencing Commission, requesting \$227,000. When the Governor reduced the amount the Supreme Court was to receive (a little more than the amount that the Commission was requesting), his budget failed to list the Sentencing Commission as a separate line item. An amendment was drafted to the General Fund Budget to include the Commission; however, it has passed the House now and the only hope for amendment will be in the Senate. Senator Smitherman is going to help with that and he also is going to get a separate bill introduced. The Commission's federal grant funding runs out at the end of September. Ms. Flynt explained that the possibility of continuing grant funding is also in jeopardy since the federal government is unlikely to be willing to subsidize a state agency which the State is not even willing to fund. She requested the members of the Commission to talk to their legislators or executive branch officials on behalf of the Sentencing Commission and ask that adequate funds be provided for the Commission's continued operation.

### **New Rules of Board of Pardons and Paroles – Steve Sirman**

Chairman Colquitt introduced Don Parker, Executive Director, Board of Pardon and Paroles, who was scheduled to report on the new rules issued by the Board of Pardon and Paroles. Don addressed the Commission and announced that he was having their general counsel, Steve Sirman, explain the rule changes to the Commission members. Mr. Sirman gave an overview of the new rules implemented by the Board of Pardons and Paroles relating to the parole and pardon process; changes primarily dealing with the scheduling of the parole consideration dates, how a case goes through the Department of Corrections intake unit, how it gets through notice process, how it gets to the Parole Board and the effect of the mandatory minimum and enhancement statutes on parole consideration. (*See Appendix B and Appendix C*)

### **Offender Risk Assessments**

Chairman Colquitt stated that it's very important that the Commission and also the work groups and Advisory council always be acquainted with some of the various programs and laws and procedures so that they do have a little more knowledge about what's going on then they otherwise might have. He further stated that sometime in the recent past he started seeing articles talking about risk assessment and that back in the study days of the Sentencing Study Committee they had a report on what risk assessment involved. He stated that it might be a good idea to bring the members of the Commission and work groups and Council up-to-date with the concept of risk assessment. Dr. Friesen has consented to come to us and give us an overview of risk assessment. The Commission is not going to take any action now on risk assessment. That whole topic actually will go to a work group to see how, or if, we are going to fold in risk assessment into sentencing practices.

Dr. Merle Friesen, Retired Psychologist presented a report on offender risk assessments. Dr. Friesen stated that he would just like to speak as a citizen and tell the Commission what he would hope that this Commission would do. He stated that he hoped everything is geared toward reducing crime and it's impact on the victims in the most efficient way possible. Dr. Friesen started his presentation on sharing what he believes is generally accepted. He referred to a Heritage Foundation summary of what has been learned in the 30 years that there has been a federal agency under the U. S. Department of Justice studying the impact of crime. That article says that there are eight lessons that have been learned. Dr. Friesen concentrated on the first four:

- (1) Most crime is done by a violent minority or predatory recidivist.
- (2) A minority of this minority is extraordinarily violent and persistent or both.
- (3) Most of these persistent predators are criminal psychopaths. There is a valid instrument to identify these people with good accuracy.
- (4) That police, prosecutors and judges can identify and isolate high rate violent predators.

The strategies to date utilized to deal with our crime problems have been very costly and partially effective. He advanced the idea that what we should be doing is identifying the psychopaths and treating them differently from the other defendants. His concept is explained in detail in *Appendix D*.

Chairman Colquitt stated that those of us who have been reading about sentencing and crimes and criminals for most of our adult lives will remember at one time we tried to figure out how to identify criminals in advance. Now we are using psychological testing and this is sort of the newest technique out and it is one of the things, I think, that we should be acquainted with and be conversant with as we address various ways of handling crimes and sentencing. It is actually a tool we need to look at and see whether or not we can implement it or if it needs to be implemented.

#### **Dr. Rich Hobson – Administrative Director of Courts**

Dr. Rich Hobson, Administrative Director of Courts, spoke to the Commission indicating that funding of the Sentencing Commission is one of the things that he has been concerned about, since it was cut out of the Supreme Court's budget. He related that amendments have been drafted to include the Sentencing Commission and that he realizes its importance and feels confident that funding will be available. Dr. Hobson thanked all the Commission members for attending the meeting and urged the Commission to continue to develop the good ideas that are needed to come up with some good solutions.

Chairman Colquitt stated that the Commission appreciates the support that it gets from the Administrative Office of Courts and from the Supreme Court. He stated that Dr. Hobson has been very helpful organizing activities and has been very kind to let the Commission use the facilities and thanked him for his report.

## **Work Group Reports**

**The Technology Work Group** report was presented by Jack Doane, Judicial Data Center, AOC for Mike Carroll, Chair of the work group. Mr. Doane stated that the work group has met several times and they met with a group from the Vera Institute of Justice to discuss some of the data aspects of sentencing. He stated that representatives from Vera came down and they did a little show and tell about our system and went through all of the data and the screens for them and they were impressed with the fact that Alabama has a totally automated trial court system. They indicated that Alabama has a much better starting point than other states do in this area. They were also impressed with the information available from the Department of Corrections and Pardons and Paroles.

There were several problems they found which we discussed in detail:

- (1) AOC has a case-based, rather than an offender-based system. An individual may have multiple cases, therefore, we must tie all the different cases together with the DOC database, which is individual-based. To do so we will have to create links and IDs that are going to tie into different data and pieces together.
- (2) CJIS is also another source of data that we identified and are willing to put all the pieces together.

After we get the data in one database, we must be able to analyze that data. The Vera Group has volunteered to send to the work group some of their analysis tools on how they analyze data and also some data structures to make sure that they are collecting all the different pieces of data. SPSS software has been ordered which is statistical analysis software. After we download our information, merge in Corrections information and Pardons and Parole we will be able to take the next step--analyze it. We will be able to give accurate answers to everybody, and for the first time, Alabama will have a valid data on criminal defendants.

The group is also working on contracting with an Atlanta-based firm, Applied Research Services, owned and operated by Tammy Meredith and John Speir, to assist in the collection and analysis process. Data can be looked at in so many different ways and for it to be looked at accurately and to meet the needs of the Sentencing Commission they are going to need a little bit of guidance and some ambitious effort in a short time frame.

Chairman Colquitt acknowledged the great efforts and reports that have been received from a number of enthusiastic people from various agencies, Corrections, Pardons and Paroles, Administrative Office of Courts--each has done an outstanding job. He further stated that the Commission could go up to the Legislature and throw all kinds of things before the Legislature but if we don't know what our recommendations are going to do, its impact on the criminal justice system, then we haven't done much. The thing is that this data can help us understand where we are and where we are going and what's going to change when we do it. This is a great effort and in every state that has been successful in dealing with sentencing matters and answering the questions, when you ask if you change this what happens and they can answer that—right now we can't. That's going to be the key when the technology work group reports.

Rosa Davis stated that at the technology meeting they brainstormed and came up with a lot of different information that they thought would be helpful and that they might need. In the structured sentencing group they added a few things which will be passed on to the technology group. Mr. Doane stated that Rosa had a very good point; as other groups identify some data needs - critical pieces of information needed to make decisions, to let them know so that they can start planning on being able to extract that data and be able to provide this information to the groups as needed.

**The Mandatory Sentences Work Group's** report was presented by Judge David Rains, acting chair of the group. Judge Rains stated that the work group met on March 9, 2001, and is tasked with the responsibility of making an assessment of the impact of mandatory sentences have on the prison population. The work group discussed this in general terms and decided that it would be helpful if they could collect data with respect to the prison population and the origin of those sentences, whether by mandatory sentences or by enhancements. The committee recognizes that there is a difference between mandatory minimum sentences and sentence enhancements. Because there is a difference the work group believes it is important to find out what part of the prison population is comprised of these different groups.

One of the pieces of data that they have asked for is how many people are there in prison who have been sentenced under an enhanced sentencing statute, i.e., the firearm enhancement, three miles of school or three miles of a housing project. In their first meeting, there were a couple of judges there who indicated that all cases out of their circuit where sales of drugs occurred within the three-mile radius carried that enhancement. Judge Rains stated that means that all defendants convicted in those circuits go to prison because the trial judge cannot grant probation.

In order for the work group to analyze how these statutes impact the system, they need to know how many people are in prison under those enhancements. Judge Rains further stated that the work group has to be able to consider sentencing options, what would the judge have done if he could have probated those sentences. How would it impact the system if those enhancements had not been in place at all?

The next work group meeting is scheduled for the April 20 in Birmingham, Alabama, in Judge Tommy Nail's courtroom. Judge Rains further stated that one of the things that he wanted the mandatory work group to do is to study the impact of sentencing under the split sentence statute, which is not truly an enhancement. It is not generally considered among the mandatory minimum statutes, but it is a mandatory sentence once split is given, since the minimum is a mandatory sentence that cannot be probated and the defendant does not receive good time. Although it is not a part of the mandatory work group's assignment he added it because he thinks it is very relevant to the question of the impact on the prison system.

**The Truth-In-Sentencing Work Group** report was presented by Chairman Colquitt, for Judge McLauchlin chairman of the work group. Lynda Flynt stated that Judge McLauchlin could not attend the meeting today but he did fax the work group's report. The work group met and the first item mentioned was the fact that they discussed risk assessment, an issue on how you might implement a risk assessment program with regard to sentencing and release. They also discussed minimum time to serve.

Considered were suggested sentences ranging from 25 percent to 85 percent. The work group is looking at information provided about other states. There are other states where convicted defendants must serve a minimum 25 percent or 50 percent or 85 percent.

**Other issues/concerns discussed:**

- Release guidelines.
- What might happen if you did away with the idea that a defendant had an automatic EOS? Post-incarceration supervision was discussed and it was proposed that everyone in the system would have some type of reentry programs/supervision when they left prison.
- Appellate review of sentences. Will have to consider whether or not there should be some type of appellate review of sentences with regard to disparity issues.
- Interested in seeing matters that were looked at by the structured sentences work group and other work groups.
- Would like to see any impact data that came out of the parole guidelines that have been promulgated.
- Would like to see more information on post-release supervision programs in other states.



- Interested in obtaining estimated cost data with regards to implementation to some of these post-incarceration supervision programs.
- Would like more information on current release mechanisms.

The next meeting is scheduled for May 25, 2000 in Montgomery at the Judicial Building.

**The Community Based Punishment Work Group** report presented by Lynda Flynt, Executive Director, Alabama Sentencing Commission and acting chair. Ms. Flynt stated that the work group has new members, added as a result of recommendations from the last work group meeting. As a representative from the adult education community, the group was fortunate to be able to recruit Dr. Lou Harris. Ms. Flynt asked the committee for further recommendations for a representative of a job placement organization or employment agency to serve as a member of the work group.

The work group wanted clarification as to whether they were to consider probation as “community based punishment, and if so, to what extent. The work group determined that it was to include probation, because it would consider pretrial release programs, drug courts and also those defendants serving split/reverse-split sentences. The probation members of the group are still not sure exactly how they fit in, since true community correction programs get the offender at the time they are released on bail in the counties that are lucky enough to have them. There are about 12 or 13 community corrections in operation now.

The work group also discussed the possibility of one agency handling probation and community corrections. The group requested clarification from the Sentencing Commission and Advisory Council as to whether or not it their responsibility to consider both felons and misdemeanors. Ms. Flynt stated that it is her understanding that the group would look at all crimes not just felons. When discussing misdemeanors and felons the issue came up about “state versus county” funding. Most of the community corrections get county funding but there is jail overcrowding of state prisoners. In regard to the Felony/Misdemeanor issue, Judge Colquitt stated that he would take a look at the enabling statute and report back to the work group.

The work group also has discussed the need for funding sources. There were some different ideas passed around but nothing concrete was established. They voted to establish community corrections similar to what is already in place in the 12 counties statewide, and this is to be accomplished in five years.

Ms. Flynt stated that someone on the Community Based Punishment Work Group spoke of the necessity to include misdemeanants, indicating that many defendants who are later convicted felons are people who have been previously charged and convicted of a misdemeanor and could have benefited from treatment programs. With treatment at the early stage for drug problems, in the long range you may be diverting would-be future felony offenders. The question remains, does the Commission want to include misdemeanants or focus strictly on felons?

Comment: There may be others who were originally charged with a felony and came out with a misdemeanor as a result of pretrial diversion or a plea bargain, or came out with nothing.

Rosa Davis agreed with Chairman Colquitt in saying that the Commission's legislation may be directed toward felonies. She indicated that the Commission should be able to answer the question. If some of what may be termed minor felonies now should come up as misdemeanors out of a recommendation of this Commission, she stated that she would certainly hate to go to the legislature and not be able to answer the questions on it.

Chairman Colquitt responded that is an issue that the Commission will have to look at besides what it wants to recommend. The Commission should also realize that with some of these proposals, there are very major issues which are important to the citizens of this state, matters such as probation officer supervision. You move from felony to misdemeanor, you may drop out from under the umbrella of probation supervision. The people that need supervision the most actually drop out of any program where you have supervision because you change the definition or classification of the crime. Every time we change something we must anticipate what it will mean to the overall scheme.

At this point Chairman Colquitt opened the floor for any issues that needed to be discussed or any business that needed to be addressed. He stated that most of the work at this time is being shifted to the work groups to bring back to the Commission to act on. He also stated that the Commission would hopefully in about 30-60 days start voting on some of the proposals and somewhere along the line start to draft legislation.

Jim LaBaza stated that the handout the committee received today is the completed copy of the Class of 1995 that the structured work group (Rosa Davis) requested. The package contained everybody that was incarcerated in the year 1995, and was provided by the Department of Corrections. He stated that he went ahead and tried to identify and explain on each page what the averages were, as well as the specific sentence per individual. The AIS number is there and identifies if we have repeat offenders. For example if it is blank and does not have a suffix, it means that individual is a first offender or committed to the Department of Corrections for the first time, if there is an "A" he has one prior conviction and incarceration. If there is a suffix of (B), that means two prior convictions/commitments, C 3, D 4, etc. If it is a suffix of (S) it is a sex

offender, (X) means sentenced to life without parole, Y indicates that the inmate is barred from parole.

**Question:** Is that a snapshot of the population on a day or is that actually a list of everyone who either came into the system during the year 1995 or was already in the system on January 1, 1995.

**Answer:** All those that came is “the class of 1995.”

**Question:** If it says they were released on parole that means that they came into the system in 1995 and went out of the system in 1995?

**Answer:** Not necessarily, they could have been paroled later. This is what happened to him after his admission to us in 1995. So he could have been paroled later.

**Question:** Chairman Colquitt: So what you are telling me is that this list shows everybody that came into the prison in 1995, but some of the information may come up later, such as he was paroled, he may have been paroled in 1998 but he was in prison at least one day in 1995?

**Response:** He was admitted in 1995 and there are some on the list who have been paroled.

**Question:** When was the end date on the run date of the report?

**Answer:** End date was March 30<sup>th</sup> last Friday. As of March 30 this is what’s currently in our system.

Rosa Davis commented that this is just a beginning of information that she requested for the structured sentencing group and it is beginning to look at the different kinds of snapshots you can get of who is being sentenced. Along with this, we are going to need AOC’s information on who was sentenced that year so that you get all of the probations, then you can also compare to see who actually went to the penitentiary. Another snapshot would be who is in the penitentiary today.

There being no further business, the meeting was adjourned.

