

Alabama Sentencing Commission

Minutes of Commission Meeting June 22, 2007

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, June 22, 2007. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa
Hon. Terri Bozeman Lovell, District Judge, Lowndes
Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Cynthia Dillard, Executive Director, Board of Pardons and Paroles, Montgomery
Lou Harris, D.P.A., Faulkner University, Montgomery
Hon. David Rains, Circuit Judge, 9th Judicial Circuit, DeKalb

Advisory Council:

Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery
Deborah Daniels, Birmingham
Denis Devane, Birmingham
Kent Hunt, Associate Commissioner, Alabama Department of Mental Health
Chaplin Adolph South, Tuscaloosa

Staff:

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

Others Attending:

Chief Justice Sue Bell Cobb
Barb Tombs, Vera Institute of Justice
Sharon Bivens, Legislative Fiscal Office
Callie Dietz, Administrative Director of Courts, AOC
Ralph Hendrix, UAB TASC
Robert Oakes, Pardons and Paroles, Montgomery
Miriam Shehane, VOCAL
Jeff Williams, Director, Community Corrections Division, ADOC
Griffin Sikes, Director, AOC Legal Division

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m. with Chairman Colquitt calling the meeting to order and making introductory remarks. He thanked everyone for attending, noting that there were a number of items to be addressed and a number of people were in attendance that the Commission would be hearing from. Judge Colquitt introduced Chief Justice Sue Bell Cobb, who addressed the Commission briefly, commending them for their reform

efforts. Judge Colquitt then introduced Mrs. Callie Dietz, the Administrative Director of Courts, noting that Mrs. Dietz had worked in several different positions within the Administrative Office of Courts before becoming director and that her support for the Alabama Sentencing Commission was essential and greatly appreciated. Judge Colquitt reminded the members that the Sentencing Commission relied on the Administrative Office of Courts quite some time for assistance, support and help in a lot of different ways. On behalf of the Commission members, he thanked Mrs. Dietz for taking time out of her busy schedule to attend the meeting.

Callie Dietz, Administrative Director of Courts

Mrs. Dietz addressed the Commission and Advisory Board members, stating that she was very pleased that the Commission had invited her to attend the meeting today. Noting that the Sentencing Commission was created based on the recommendation of the Judicial Study Commission, Mrs. Dietz announced that she had asked Frank Gregory, former Administrative Director of Courts, to reconstitute the Judicial Study Commission, which had not been active during the last seven years. She stated that this was a very important body that should continually meet to review and assess subjects of major import to the judicial system, the criminal justice system and the state. She announced that the Judicial Study Commission will begin meeting again this fall.

Mrs. Dietz stated that one of the things that she and Mr. Gregory had talked about doing was a thirty year celebration of the Study Commission and the court system. This study would highlight some of the issues that have been undertaken and studied by the Study Commission. Among those issues to highlight and mention is the Sentencing Commission, which was studied and recommended by the Judicial Study Commission. She stated that the success of why the Sentencing Commission has worked so well certainly goes to Judge Colquitt, Lynda Flynt, Rosa Davis, and those who have continued to push the agendas that needed to be given priority and made us aware of unwarranted sentencing disparities and what we need to correct this problem.

Mrs. Dietz referred to what the Chief Justice said when she spoke, saying that the criminal justice system is about fixing people, not building prisons. She noted that recognition of this fact is an essential first step for sentencing reform. Ms. Dietz noted that while there were people that did need to be incarcerated, there were also people that could be punished and served in other ways. Mrs. Dietz noted that she joined the Commission in wanting to utilize sentencing alternatives for appropriate offenders. She explained that the Commission should also make sure that the legislation we propose for expanding prison alternatives are quality programs - the very best that can be established. Ms. Dietz recognized that improving the quality of alternative sentencing programs involves an enormous training effort, noting that Lynda Flynt, Rosa Davis, and the Commission staff have done an outstanding job in this regard, and encouraged them in their continuing training endeavors.

Mrs. Dietz noted that the Chief Justice mentioned to the Commission that the Administrative Office of Courts was developing a questionnaire, which should be finalized in the next few weeks. This questionnaire will be given to all of the court

officials and employees at their summer conferences, in addition, it will be on line for any commission member that would like to complete it. Mrs. Dietz emphasized that while there will be a number of questions; the primary reason for the survey is to determine if the judiciary is doing well, where we need to improve and how. Ms. Dietz advised that the questionnaire would contain several questions directly related to the Sentencing Commission and the worksheets. It is expected that the Sentencing Commission will receive good feedback from those questionnaires when they are completed.

Mrs. Dietz thanked the Commission members for taking time out of their schedule and for the commitment that they have shown in making the Alabama Sentencing Commission to be, what she believes, the best in the country.

Chairman Colquitt noted that one of the organizations that has been with the Alabama Sentencing Commission since the early days has been Vera Institute of Justice. He advised the members that Barb Tombs, Director of Vera's Center on Sentencing and Corrections, was here today to give the Commission a report on projects that Vera is working on with Alabama and the technical assistance that Vera staff and associates are providing to the Commission. Introducing Ms. Tombs, Judge Colquitt recognized her knowledge and expertise in the sentencing field, noting that she has held various positions just since beginning work with the Commission: she was the Director of the Kansas Sentencing Commission and Vera Associate; later became the executive director of the Minnesota Sentencing Commission, and is now working with Vera Institute of Justices as Director of the Center on Sentencing and Corrections.

Report from Vera Institute of Justice

Barb Tombs, Director, of Center on Sentencing and Corrections, addressed the Commission, stating that she has worked with Alabama for a number of years, even before development and implementation of the sentencing standards. She noted that Alabama was recently the recipient of a grant from Pew Charitable Trusts, in which Vera has partnered with Pew to work with the state of Alabama to implement sentencing reform and correctional reform policies throughout the state. Ms. Tombs explained that one of the things that they have been doing is taking a more comprehensive view of the important reform issues and the impediments that may exist in the state. One issue that is paramount to address is that Alabama has multiple agencies such as community corrections, probation and parole, court referral programs and drugs courts, some of which provide overlapping services rather than a true continuum of services. While they all play a role in community supervision, there needs to be some well-defined areas of responsibility, goals and standards. Ms. Tombs noted that one of the projects they are working on is a presentation on media coverage, entitled "Keep Your Heads Up." This is being done in an attempt to keep everybody on the same page, with everybody focusing on what needs to be done and identifying the actual activities and task that each individual organization or group plays in the overall picture of criminal justice reform.

Ms. Tombs noted that in looking at all the different issues Alabama is facing in the correctional policy and sentencing arenas, we are just now working through the implementation stages of the sentencing standards, which are very important. Among the many issues that are going on simultaneously, we are first looking at the degree of compliance with the recommended sentence under the standards. Ms. Tombs stated that the Commission staff is doing a lot of work in trying to determine how to evaluate compliance, what tools are necessary for that evaluation, and then will conduct the actual evaluation itself. She noted that even though the standards have been in place for less than a year (October 1st is the initiation date), there was still a lot of leg work to do before you actually have the data necessary for evaluation. Ms. Tombs noted that in looking at the e-worksheets there are on-going issues concerning the actual technology part of making sure they are operational. She emphasized that you try to create a worksheet that captures all the possible sceneries.

Ms. Tombs explained that the education process was an important aspect of successful implementation of the sentencing standards, and that the Commission should continue with its efforts to train people on how to complete the worksheets accurately and complete with all data variables. Judges, prosecutors, defense attorneys, probation and parole officers, and community corrections officers and employees should be committed to completing the worksheets and should understand what the information is used for. Ms. Tombs noted that when working toward achieving our statutory mandates and pulling the system together, the Commission should remember that "Data is Our Friend." She stated that when you make a positive change by developing sentencing standards, certain things are going to happen. It is very important to evaluate what happened, what went wrong and what might need to be modified. Ms. Tombs explained that to do a good evaluation you must have data, and it is not just the Sentencing Commission's data, it is data from community corrections, pardons and paroles, DOC and CJIC. It is essential that these data systems are compatible and that staff from each of these departments talk to each other and work together on an ongoing basis.

Ms. Tombs reported that there was funding be provided for members of the Sentencing Commission to attend a national sentencing commission conference held by the National Association of Sentencing Commissions in Oklahoma City on August 5-7, 2007. She stated that member's attendance will be supported by a grant from the Pew Charitable Trusts. Ms. Tombs asked for interested members to contact either Judge Colquitt or Lynda Flynt.

Judge Colquitt reiterated that from the Commission's prospective, it is hard to really imagine how the Commission would be where it was, if it were not for involvement and support from the Administrative Office Courts and Vera Institute of Justice. He noted that the Commission really appreciates all of advice, assistance, and support that Vera has provided and is pleased that Pew Charitable Trusts decided to provide Alabama with technical assistance. Chairman Colquitt stated that part of the Commission's challenge all the time is trying to reach out and find organizations and individuals that can assist the Commission, provide experience, and advice to it. He further stated that it is really refreshing to have someone who has been in this particular type of function for quite

some time and knows what's going on, knows what the possible alternatives are, how to approach some of these issues, and try to maximize opportunities.

Chairman Colquitt mentioned that he told this Sentencing Commission at its very first meeting that, from his prospective, it did no good to create all kinds of ideas and programs if you couldn't get them implemented. He explained that the first step in getting them implemented was to get the legislators to buy into the ideas, pass the laws, and then get people in the system to actually use them. Judge Colquitt told the Commission members that Commission has succeeded in achieving these goals: the legislature has signed on to the sentencing laws; the Commission is in the process of implementing the sentencing standards and worksheets; and the Commission is already starting to work on developing the second set of sentencing standards based on "time served," – the Truth-in-Sentencing Standards.

Chairman Colquitt noted that within the state of Alabama, the Commission also has to work with many different organizations, agencies, and individuals. One of the organizations that the Commission works closely with, and which is directly impacted by sentencing decisions, is the Department of Corrections. Judge Colquitt commented that during the Commission's short time of existence, DOC has had several commissioners and that the Sentencing Commission has been very fortunate to have the present commissioner, Richard Allen. Commissioner Allen has been very supportive and interested in the work of the Sentencing Commission and has been willing to work with our staff very closely. Among the innovative ideas that has been pursued by Commissioner Allen is establishing a Community Corrections Division with a full time director and support staff. Mr. Jeff Williams is the director of the Community Corrections Division of the Department of Corrections and has been doing an outstanding job trying to improve existing programs and establish new programs throughout the state. Judge Colquitt stated that Mr. Williams is extremely interested in what the Sentencing Commission is doing and has been very supportive of its work. He, along with other from the Department of Corrections, has assisted the Commission greatly by helping gather all of this data that Barb Tombs mentioned was so vital to our work. Judge Colquitt introduced Mr. Williams, advising that he would address the Commission and bring them up-to-date on the activities and plans of the Department of Corrections, particularly, in the area of community corrections.

Report from Jeff Williams, Director, Community Corrections Division, Department of Corrections

Jeff Williams addressed the Commission members, stating that despite the overcrowding conditions; this was the first time in the 25 plus years that he has been with the Department of Corrections that improvements are being made. He noted that many of the areas where changes are occurring have not been effectively addressed for quite some time in our state. Mr. Williams emphasized that Commissioner Richard Allen has been, and is, the reason problems are being identifying and addressed. Commissioner Allen is taking the issues directly to the people of Alabama so that they can better understand the situation and problems facing the Department of Corrections. Mr. Williams noted that the numbers of DOC inmates has topped 29,000, but that the Department is relying on a

number of on-going reforms such as the voluntary sentencing standards, community corrections, probation and parole and alternative sentencing options to reduce the inmate population.

Existing Community Corrections Programs and Felony Diversions

Mr. Williams announced that as of this date, there are 39 counties in Alabama that have a community corrections program, noting that they want to see this option in all 67 counties for use as a sentencing alternative for appropriate cases. The newest county to obtain approval to establish a community corrections program was Morgan County. Reviewing the existing community corrections programs, he indicated that basically all of the counties in the northern part of the state have a program.

Reviewing felony diversions for the current year, Mr. Williams reported that through April of this year there have been about 700 diversions. More than 500 of those have come on the front-end where the court sentences a felony offender directly to a community corrections program. About 200 have come from institutional diversion, with the Department of Corrections and judge diverting felony offenders to community corrections programs. These inmates can be offenders convicted in counties that may not have had a community corrections program available at the time of sentencing or where they were given a prison sentence because the court felt the offender needed to go to prison for some time. Those 700 diverted inmates are not anywhere near the programs' capacity levels. He noted that the Department is still working with those counties to divert more folks on the front-end and to consider accepting institutional offenders.

Mr. Williams stated that last fiscal year the Department of Corrections was extremely aggressive in trying to identify ways in which the Department could, through the use of the community correction's budget, help expand and improve these programs to give the courts more confidence in using the programs. Mr. Williams noted that as he traveled around the state last year there were a number of recommendations made on ways that the Department could assist, one of which was to help the programs with staffing so they could offer better supervision for offenders in the field.

The Department of Corrections provided more than two million dollars to several programs last year to help them expand, increase their staff, perhaps move into facilities, and provide other resources that they needed to strengthen their program. Mr. Williams noted that even in spite of that their goals for those programs and for community corrections, as it stands utilization of community corrections is still considerably short of where it should be. The ACOC Division of Community Corrections is working very aggressively and looking for ideas and input on ways in which the Department might better expand and get more nonviolent felony offenders into community corrections. He stated that one of the things that the Department truly hopes will happen with community corrections is the recognition of a clear definition on "community corrections programs." Mr. Williams advised that the Department is working with the community corrections programs to better define their duties, responsibilities, and what levels of supervision should be.

Reviewing the statistics from 2006, Mr. Williams stated that last year there were over 1100 new felony offenders diverted to community corrections programs, with several hundred carryovers from the prior fiscal year for which the Department of Corrections reimbursed the programs at a per diem rate. He noted that the Department paid a little over two and a half million dollars in reimbursements to the programs during FY 2007.

New Programs and Counties Considering Establishing Programs

Mr. Williams announced that there are several counties now that are considering or in the process of developing a community corrections program. He noted that although the progress is a lot slower than he would like to see it, there are a number of issues that face the counties locally that must first be addressed in order to develop a program. For instance, sometimes not all of the stakeholders are on board when you initially approach the governing officials and judges about establishing a program. Mr. Williams stated that **Baldwin County** is now much closer to developing a community corrections program because they are convinced that they need a community corrections program. They are now in the process of hiring a director so that they can move this project along.

Mr. Williams stated that he visited **Washington, Choctaw, and Clark Counties** and spoke with Judge Baxter late last week and discovered that Judge Baxter has the support of all of the county commissioners and sheriffs in each of those counties. The other judges are also onboard and are in the process of developing a plan that they can submit to the Department of Corrections. Mr. Williams also visited the **17th Circuit** encompassing Sumter, **Greene, and Marengo counties** and met with Judge Montgomery, Judge Hardaway, and the district attorney in 17th circuit. He advised that they are all supportive of developing a community corrections program and are in the process of putting together a plan. **Russell County** with Judge Bellamy is very supportive and is also working to submit a plan. **Barbour and Covington counties** are working to submit a plan as well.

Mr. Williams noted that there still remain a number of obstacles to overcome as we move to develop community corrections. He reminded the Commission members that any time you are developing or starting something new, some of the concerns as to whether or not there should be community corrections in a particular area sometimes are raised by the district attorneys in those areas. While most are very supportive, there are some who are not. Mr. Williams noted that there is much more that can be done to improve the programs to make them a viable option and alternative that the court can feel comfortable with utilizing. Mr. Williams emphasized that the Department is always open to suggestions and input that might help it to accomplish this very important goal of providing an alternative sentencing option.

Mr. Williams stated that the Department of Corrections is looking forward to working with Vera Institute of Justice, the Administrative Office of Courts, and Pardons and Paroles. He thanked everyone for their support.

Rita v. United States, 127 S.Ct. 2456, 168 L.Ed.2d 203, 75 USLW 4471 (June 21, 2007). Chairman Colquitt noted that one of the things that he has tried to do over the years when the Commission meets is to bring the latest developments in the law regarding sentencing to the Commission's attention, because these do affect recommendations that the Commission makes. He stated that the case, *Rita v. United States*, supra, was decided this week by the United States Supreme Court, involved the federal sentencing standards. He reminded the Commission members that there have been an ongoing series of cases starting with *Apprendi v. New Jersey*, which involved New Jersey law, to cases involving the federal sentencing guidelines. All were concerned with the role of the judge versus the role of the jury in deciding facts in regard to sentencing issues. There is now a fairly well established law where there are certain areas of judicial activities that the court has to let the jury decide the facts and then the judge can decide what to do having those facts established by a verdict from the jury.

In this case, a federal judge sentenced an individual within the range of the federal sentencing guidelines and based that decision on various facts about this particular individual. This defendant objected to the sentence because he thought it was too severe. The sentence was 30 months. On appeal, the federal circuit court established a rule that in reviewing a judge's sentencing under the federal guidelines, since they were no longer mandatory, the appellate court would presume that any judge that sentenced within the guidelines was acting reasonably when he imposed that sentence. The federal appellate court looked at this 30 month sentence and they said that it's within the guidelines and there is nothing in the record that shows that this judge did anything wrong. The United States Supreme Court accepted the case for review.

Chairman Colquitt stated that there was a lot interest in the case, noting that we are still trying to understand where the federal courts are on the issues surrounding sentencing standards and guidelines, i.e., mandatory versus presumptive or permissive versus voluntary. He noted that in *Rita* the United States Supreme Court came down with a fairly strong case - a vote of 8-1, which means that the justices were not very split on these issues. Justice Souter was the lone dissent. Chairman Colquitt stated that the bottom line of the case appears to be that there is nothing impermissible about a federal appellate court establishing a rule that if the judge sentences within the standards then that sentence will be presumed to be reasonable. That, in essence, supports the idea behind having some type sentencing scheme, guidelines or standards. If they are mandatory we are probably going to have to have fact finding by a jury but if they are basically permissive then the judge might actually be able to consider some facts that were not found by the jury.

Chairman Colquitt stated that in this particular case the defendant was in a position to assist law enforcement in uncovering the criminal activity, but he lied to the grand jury. He was tried and convicted for perjury and obstruction of justice. When the judge sentenced him under federal standards, the judge took the type crime into consideration. The appellate court held that the sentencing judge did not act unreasonable and that the

sentence imposed, 30 months incarceration, was totally within the guidelines. The United States Supreme Court this week affirmed the Circuit Court of Appeals ruling.

Chairman Colquitt noted that the United States Supreme Court is really active at the present time in looking at sentencing issues, because in cases that they ruled on in the past, the Court has left unanswered and raised so many questions, some guidance in this area is needed. The Rita Opinion is one of the cases where the Court attempts to address some of the issues, and there are other cases in the pipeline.

Report from Cynthia Dillard, Director, Board of Pardons and Paroles

Introducing the Director of the Board of Pardons and Paroles, Cynthia Dillard, Judge Colquitt noted that she was going to provide the Commission members a report from the Board of Pardons and Paroles, which he recognized as an essential agency that the Sentencing Commission has collaborated with in many areas. Chairman Colquitt reminded the Commission members that from the very beginning of the Sentencing Commission, Ms. Dillard was one of the people always present at our meetings, even when she was not a member of the Commission. He acknowledged that Ms. Dillard was now the director of the Board of Pardons and Paroles and a member of the Sentencing Commission.

Ms. Dillard gave the Commission an update on changes that have taken place at the Board of Pardons and Paroles. She reported that Chairman Sidney Williams' current term will end on June 30th and that William Wynne, Jr. has been appointed by the Governor as Chair for a six year term beginning July 1, 2007. Ms. Dillard noted that Mr. Wynne previously served as a special parole board member for Alabama in 2006. She also announced that Chris Norman was the new interstate compact administrator. Mr. Norman is a former probation/parole supervisor. He has worked in the Wetumpka, Mobile, and the Bay Minette office.

Ms. Dillard noted that Pardons and Paroles has opened a new office in Abbeville and Albertville, bring the number of offices to 63 statewide. She noted that probation and parole officers are currently supervising 39,000 probationers, about 7300 parolees, and over 1000 that are on both probation and parole supervision.

Ms. Dillard stated that she recently received a call from Commissioner Allen saying that he needed some help because he was completely out of beds for females in Wetumpka, the women's work release, and in Louisiana. Parole-wise there really was not any way the Board could help with early releases, but with help from the Department of Corrections the Board ran a roster of the split sentence females that would be serving the last year of their split sentence term. Jeff Williams and Roger at the Department of Corrections assisted the Board by contacting judges to see if they were willing to let the females out within their last year to go to the Life Tech facility in Wetumpka where they would remain for at least six months. She explained that, as LifeTech participants, these women would receive intense substance abuse treatment, other mental health treatment if needed, vocational rehabilitation, and GED or education. Ms. Dillard noted that a tour of

the Life Tech facility in Wetumpka and Tutwiler was given by Pardons and Paroles to representatives of the Sentencing Commission, Community Corrections staff, VERA Institute and representatives from the Department of Corrections.

Ms. Dillard stated that they have had a very successful experience with the Life Tech in Wetumpka program. It has been over three years now and they have a recidivism rate of less than 4%, which is excellent. The Thomasville facility for men has been open for over a year and it seems to be going well, but the male inmates don't seem to be as well behaved as the females.

The Thomasville facility has recently been opened to receive males serving a split sentence. Ms. Dillard explained that the sentencing judge may want to send an offender to participate in the LifeTech program to serve the end portion of their split sentence or in lieu of revoking them to prison. She noted that it must be a diversion either on the front-end or back-end. There are some openings at the male facility, after having a waiting list for about eight months. The facility has now been opened up to any judge that is interested in sending males there to participate in the six month program.

Chairman Colquitt noted that it's always interesting to visit some of our institutions and programs. He suggested that those interested in what is going on in corrections, should take the opportunity to tour some of these facilities, and look at their programs. He stated that when he was on the court he tried to go to one every corrections facility because he always wanted to know where he was sending people and what was happening to them after they got there. He noted that it is very important in studying our criminal justice system to have a first hand knowledge of what's working and what's not working.

Chairman Colquitt noted that one of key aspects of the Commission's function as a Sentencing Commission has been to draft legislation and to acquaint all the legislators and the public with what is included in the legislative package. He noted that the Commission is now in the implementation stage of the initial sentencing standards and is going through all of the trials and tribulations of getting that started, as well as finalizing the electronic version of the worksheets and collecting data and analyzing it to determine compliance. In the mean while, the Commission is still proposing legislature, the Commission is called on to comment and provide impact statements on bills introduced by others such as the Governor, the Attorney General, the Department of Correction, the Board of Pardons and Paroles or the District Attorneys' Association, AG's office or district attorney's association or maybe one of the state departments, Corrections or Pardons and Paroles. He introduced Lynda Flynt asking her to give the Commission an update on the 2007 Legislative Session.

Legislative Report – Brief Review of Annual Report, Lynda Flynt, ASC Director

Ms. Flynt reminded members that the Commission voted to have only one bill introduced in the 2007 Regular Session and that was the Victim Notification bill. She noted that, with the help of Ellen Brooks and Miriam Sheehan, they had several meetings until they got a compromise. Although the bill did not pass, she noted that there was really no opposition to the legislation, it just that it got bogged down and pushed to the side along

with several other bills. Ms. Flynt stated that there were a lot of crime bills introduced but that did not pass during the session.

Ms. Flynt advised the Commission members that there were 99 crime bills introduced just in the House. Members were provided with a legislative summary, and told that the only major crime bill that was approved was a local act for Jefferson County relating to sex offenders. This Act prohibits more than one adult or unrelated juvenile criminal sex offender from establishing a residence or other living accommodations in a resident where another criminal sex offender lives (whose name is on the sheriff's official public sex offender list). She noted that there are exceptions for sex offenders that are owners or leasees or the spouse of an owner or leasee. The bill further provides that any owner or leasee of the property who knowingly, willingly or intentionally violates the law can be fined up to \$5,000. Ms. Flynt stated there were several bills introduced prohibiting the residence within so many feet of different facilities such as schools that were more restrictive than the general law, but those did not pass.

It was noted that there was a problem county jails are experiencing with the new Sex Offender Notification act. If the sex offender doesn't find a residence, and notify officials of their intention to live in a nonrestricted residence, when they are released from prison, the sheriff is waiting to pick them up on the charge of violation of Notification Act and they take them to the jail. The jails are backing up especially in the counties in which the prison facilities exist.

Kirby Amendment of the Habitual Felony Offender Act – Ms. Flynt explained that the way the act was originally worded, the presiding judge was the only judge other than the sentencing judge that could reconsider a sentence for those offenders that met the *Kirby* criteria. Ms. Flynt noted that the *Kirby* criteria is limited to 4th and subsequent offenders that were convicted and sentenced either for a Class A felony offense under the Habitual Felony Offender Act and given life without parole or convicted of a Class B felony and sentenced to life imprisonment. Under the amendment of the Habitual Felony Offender Act, sentencing judges were given the authority to reconsider sentences imposed after the date the new law went into effect. The new option for punishment would life for those sentenced for a Class A felony to life without parole. For repeat offenders convicted and sentenced to life imprisonment for a Class B felony, the judge could modify the sentence to imprisonment for no less than 20 years in prison. The Act, as originally passed was prospective only. A year later, the second amendment to the Habitual Offender Act passed which made the provisions for reduced sentences retroactive. It is this amendment that was the basis of the *Kirby* opinion. When the Legislature amended 13-8- 5- 9.1, the provisions specified that reconsideration of sentence would be limited to the sentencing circuit judge or the presiding circuit judge and the new law was expressed in terms of the judge considering a person for parole. There was an exception added allowing the presiding circuit judge could appoint any circuit judge to hear the petition when the sentencing judge is not available. This act, Act 457, went into effect July 14, 2007.

Arrest Power of Community Corrections Programs in Montgomery – Ms. Flynt explained that this was a local act providing for arrest powers of community corrections employees. She noted that the Commission had discussed proposing a bill of statewide application, as an amendment to the Community Corrections Act, which would authorize employees of any community corrections program that met the P.O.S.T. (Peace Officers Standard Training) criteria to have limited law enforcement authority. This bill would allow any community corrections program that wanted arrest authority to have it without passing a local bill. Ms. Flynt stated that the Association of Community Corrections did not want to pursue an amendment to the Community Corrections Act for that purpose and, therefore, the Commission voted not to pursue it. The Act that passed was one that Don Parker introduced to allow the Montgomery Community Corrections officers to have limited arrest power and to also issue search warrants in limited instances, provided that the employees or the director were P.O.S.T. certified.

SB265 - This is one of Attorney General King’s bills dealing with child victim witnesses, authorizing video taped depositions and also the use of close circuit equipment for any victim or witness under the age of 16 that was involved in a sexual crime. These video tape depositions would be requested upon motion of the district attorney or attorney general. It would be within the judge’s discretion whether to authorize such depositions; with the standard being “upon good cause shown,” and with notice to the defendant. The Act limits the number of people that could be present at the deposition to the prosecuting attorney, the defendant’s attorney, and any person the judge considers that contributes to the child’s well being and who has dealt with the child in a therapeutic setting. It includes a provision that the State shall provide an attorney for the defendant with reasonable access to review and hear the video tape deposition prior to trial, without limiting this provision to indigents. It also requires that any and all costs shall be paid by the state. The district attorney is to submit the bill to the Comptroller and the Comptroller is to pay it from the Fund “Court Costs Not Otherwise Provided.” Ms. Flynt noted that the monies in the Fund are probably non existent now. She stated that the Act also included a provision that the Supreme Court can adopt a rule for the use of video tape deposition in both criminal and juvenile cases.

Colbert County Pretrial Diversion Program – This Act is basically patterned after several other local pretrial diversion bills that have passed and which are sometimes the authority under which drug courts operate. Ms. Flynt stated that this specific bill grants major discretion to the district attorney to determine who is eligible to participate in these programs. It also allows the district attorney to charge up to \$750 for felony offenders and \$500 for misdemeanants to participate, in addition to a nonrefundable \$100 application fee.

In response to a question on whether the Sentencing Commission was asked by the Legislature if the Commission supported or opposed that bill, Ms. Flynt responded that it had not. She noted that Judge McLaughlin had a similar bill from his circuit last year and he did ask for her comments. Ms. Flynt stated that she told him where she thought the problems were and some of the provisions were changed to address a few of those problems.

Ms. Flynt stated that she had compiled a list of counties that had pre-trial diversion laws and had summarized these in an excel spread sheet to reflect the major differences. Ms. Flynt noted that some of the local acts are very broadly worded and some judges have expressed concern about these provisions.

Ms. Flynt stated that there are also provisions in the local act for expungement of the destruction of court records. She noted that Alabama doesn't have a general expungement statute of court records, else except for the sealing of juvenile records. Ms. Flynt stated that when she was at the Administrative Office of Courts they tried to get a general expungement record bill passed so that it would be limited to only certain types of offenses such as where there is no evidence of a crime and the case is dismissed. There was some opposition and she believes that the reason for the opposition was because there was a local pretrial diversion program that authorized the district attorney to expunge records under an existing pretrial diversion program.

Griffin Sikes, Director of AOC Legal Division

Ms. Flynt introduced Griffin Sikes, new director of the legal division at the Administrative Office of Courts. She noted that Mr. Sikes had been in private practice and has very extensive knowledge in civil practice.

Griffin Sikes, the new director of Oak's Legal Division, stated that he had been with the Administrative Office of Courts for three weeks. He gave a summary of his legal experience, stating that he has been a lawyer since 1974, doing primarily civil litigation both from the defendant and plaintiff standpoint. He has practiced with law firms in Mobile, Birmingham, and Montgomery and began his own firm in Montgomery, where he was sole practitioner since 1985. Mr. Sikes stated that Chief Justice Cobb called him and asked him to take a look at the position as director of the Legal Division. He was intrigued by it and has greatly enjoyed the work. Mr. Sikes stated that he is proud of the work that the Commission is doing and wants to support it in any way that he can.

Brief Review of Annual Report

Lynda Flynt noted that the report must be sent to the federal grant person before being put on the Commission's website, since part of the Commission's work was made possible through federal grant funds. She noted that this year's annual report contains a lot of data; however, the Commission cannot get the data on compliance until the standards have been implemented and used for at least six months. Commission members were provided with a copy of the annual report.

Ms. Flynt noted that the Commission has put community corrections and alternative sentencing options as one of its priorities for expansion. She noted that the Chief Justice has made a commitment to expand drug courts and has a task force that recently met for the first time in an orientation session. The next meeting is scheduled for July 13th and will be held in the Judicial Building. The Commission staff does plan to attend that meeting and get very involved with that task force.

Ms. Flynt mentioned that as Jeff Williams noted in his presentation, it was a little disheartening, to see that diversions had dropped from last year. She stated that the reason for this could be due to many factors. Ms. Flynt explained that the decrease should not be blamed on the program, because it could be attributed to judges, prosecutors, or several factors. In addition, to the reimbursement for felony diversions, the DOC did provide some expansion grants. Because the alternatives are a key to our sentencing standards, sentencing under the standards is now an option for felony diversion reimbursement if the recommendation is prison and community corrections alternative is instead utilized by the sentencing court.

Ms. Flynt noted that the Commission is working with VERA Institute of Justice, DOC and the Association of Community Corrections to further define and outline the continuum of sanctions available through probation supervision and community corrections. She stated that a fundamental question that must be addressed is the difference between community corrections and probation and parole. Ideally, community corrections should be more intensive supervision, with in-house facilities available for drug treatment. Several of the community corrections programs are working towards that goal. Ms. Flynt advised that VERA has been asked by the Department of Corrections to do a white paper on community corrections in Alabama and provide advice on improving community corrections programs in Alabama.

Referring to page 38 of the annual report pertaining to drug courts, Ms. Flynt stated that that there are now 17 drug courts operating in 23 counties. She advised that Judge Pete Johnson, who was a member of the Sentencing Commission, is working with the Chief Justice's Drug Court Task Force, talking to the county commissions, judges, and district attorneys to try to get drug courts established in every county. VERA will also be working with the Task Force to have standards adopted and legislation drafted and introduced.

The Commission members were advised that the primary project of the Commission for the year will be the effective implementation of the sentencing standards. It was noted that the Commission is now receiving worksheets from a majority of counties, but not as many as had been anticipated. In addition, training for district attorneys, judges, clerks and court specialists, and other worksheet preparers is still a big issue. Ms. Flynt advised that when the staff entered and reviewed the worksheets, they discovered that the same sentences were being entered in various ways. Based on this experience, the Commission staff decided that they should sit down and talk to the clerks and come up with a uniform way to enter these standard sheets. Also the judges will need to understand the compliance rules, because when the Commission receives the worksheets, many times the judge includes an explanation about why he or she did not comply with the standards' recommendation, when they actually did comply. Ms. Flynt added that the staff have scheduled time during various judges conferences and will go over some of these major problems and issues. She noted that the Commission also wants to begin conducting the regional workshops. Lou Harris, chair of the education committee, will schedule a date for the educational committee to meet and map out plans for the workshops.

Ms. Flynt advised that once the Commission staff obtains the data, they will begin reviewing the worksheets submitted to determine the compliance rate. Bennet Wright and Melisa Morrison will be working on that project with Applied Research Services and Vera Institute of Justice. She noted that there were several different compliance measures that Bennet Wright plans to review with the Commission members today.

As in the past, Ms. Flynt stated that the Commission will continue its efforts to develop and improve intermediate sanctions, and this will be by primarily targeting drug courts and community corrections program. The Commission also plans to look at developing a uniform risk and needs assessment. Pardons and Paroles and the DOC have a risk needs assessment instruments and the community corrections programs have their own risk instruments. The Commission needs to look at all of those to see if there is a way that it could get uniformity throughout the criminal justice system, or at least recommend which one(s) appear to be the best. Ms. Flynt acknowledged that one of the Commission's legislative mandates was to look at risk needs assessment instruments. In addition, through Applied Research Services Inc., (ARS) will be updating or revising the simulation model that ARS developed to make it more user-friendly. In this regard, Bennet and Melisa have attended several training session on the simulation model. What this means is that after refinement of the model and staff training, the Commission will not only have a simulation model, but it will be able to run projections and not depend on ARS every time that it is trying to draft an impact statement for the Legislative Fiscal Office.

In addition to modification of the Simulation model, ARS is working on development of the Truth-In-Sentencing standards that were proposed to ready to introduce in the 2009 Regular Session and, if approved, go into effect October 1, 2009. Ms. Flynt stated that there is still much to be done, since the data has not yet been collected. These are the second set of sentencing standards that will be based on time-served data, not time imposed like the current standards.

Data Issues – Update on Use of Standards and Worksheet Submission Bennet Wright, ASC Statistician

Bennet Wright noted that although Rosa Davis was not present, she asked that he let everyone know of that the progress being made in implementing and utilizing the standards has been outstanding in most areas. Mr. Wright stated that both Ms. Davis and Ms. Flynt have been in constant contact with many of the major players - judges, district attorneys, probation officers, etc. to encourage uniform compliance and reporting and to also answer questions that arise and provide assistance when needed. Mr. Wright provided commission members with a handout listing all the counties and jurisdictions in the state with worksheet submission numbers covering four time frames over the course of 2007. He noted that the majority of counties have continued to submit more and more worksheets over time, with some counties having a break in their submission. One reason for this break in submissions is that some court clerks in counties where worksheets are manually completed, were holding them for a certain period of time before submitting them to the Sentencing Commission.

Mr. Wright indicated that the more and more people were utilizing the electronic worksheets, eliminating the need for copying of the worksheet and sentencing order and postage for mailing these to the Sentencing Commission. He emphasized that one of the major benefits of the electronic format is that the designated users are granted statewide access to youthful offender and juvenile records for the purpose of worksheet use. The electronic worksheet application also offers the user access to statewide criminal history; however, he cautioned that that it was still important to run an NCIC check to obtain a complete criminal history of the defendant, since the criminal history provided through the ASC website included court records from AOC's database, which included Alabama convictions and adjudications only.

One question posed was whether we knew the number of worksheets that had not been completed and/or submitted. Mr. Wright responded that while the Commission is still in the process of trying to develop a way to compare actual submissions to total expected submissions, there were a lot variables that will change over time, such as how far back the cases are docketed that someone is charged on. Mr. Wright further stated that we really don't have a way to extrapolate once someone's charged or indicted to determine how far out the trial may be held or when the actual sentencing will actual take place. He explained that the Commission would like to construct a model that would give it a ball park figure so that it could look at the number of applicable cases that it expected worksheets to be filled out on. Then, the Commission can look at the actual number or worksheets submitted to find out if it is getting a number with which it feels comfortable.

Question: I noticed that there are zeros on some of these are you making contact with some of these counties?

While some counties show that no worksheets have been submitted to the Commission or completed on-line, Mr. Wright emphasized that despite initial appearances, overall we have had a very productive and positive feedback. He indicated that there were various reasons for the zero submissions: some of it points to the need for further training. While we did hold numerous regional workshops before and after the standards were passed, some of the people in these counties were unable to attend. In addition, some of the people have training issues and others implementation issues. Mr. Wright noted that the education is an on-going project and the Commission will continue to hold workshops and individual training sessions for judges, district attorneys, probation officers, defense attorneys and other designated worksheet preparers.

Ms. Flynt noted that some of the problems found were that the judge was using the worksheet and he was giving them to the clerk and she would not send them to the Sentencing Commission, because she had not been advised of the proper procedure. It wasn't that the worksheets were not being completed, it was simply a miscommunication, which the Commission is addressing. Some of the clerks were simply not aware of the statute that required them to forward the completed worksheets and copies of sentencing orders to the Sentencing Commission. Mr. Wright pointed out that was the reason that he

indicated the number of “submitted” worksheets rather than the number of “completed” worksheets on the handout that was distributed.

Judge David Rains noted that he personally tried to take one of his dockets about a month ago and calculate a few worksheets on-line and that he had many problems, which he enumerated in a memo to the Sentencing Commission staff. Mr. Wright explained that when the Commission developed that e-worksheets application one of the difficulties that it encountered was that many of these systems are clerk dependant. When loading cases to the dashboard, the staff is finding out that virtually every county in the state does things different. The Commission is trying to get a uniform system statewide and is talking to the judges, district attorneys and clerks on a continuing basis. The Commission is trying to find that delicate balance where it can get the most functionality and capability for all counties on a statewide basis.

Ms. Flynt stated that she had entered worksheets from DeKalb County and noticed that there are often multiple cases and/or counts against one defendant, where worksheets had been submitted on all of the counts/cases, even those that were dismissed. She explained that dismissed cases did not require a worksheet and that multiple cases and counts sentenced at the same time should be merged for worksheet purposes. These issues and others are some the Commission staff can assist with, perhaps through a separate training session in DeKalb County.

Mr. Wright outlined the initial stages of developing the compliance structure that will be used to evaluate judicial compliance with the sentencing standards. He noted that compliance with the sentencing standards would be monitored through information entered on the sentencing screen on the mainframe application.

Distributing handouts to the commission members and requested feedback, Mr. Wright explained that the first item he was requesting feedback on was our initial attempt to classify the various sentence types that will be used for developing the compliance rules. The second item concerned how to deal with sentences of life imprisonment and life without parole, or if these sentences could ever be considered compliant depending on recommended sentencing ranges for applicable worksheet offenses.

Schedule Next Commission Meeting –

The Commission meeting has been tentatively set for September 14, 2007.

Adjourn –

There being no further business the meeting was adjourned.