

# Alabama Sentencing Commission

Minutes of Commission Meeting  
September 14, 2007

The Alabama Sentencing Commission met in the Large Classroom of the Judicial Building in Montgomery on Friday, September 14, 2007. Present at the meeting were:

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

## **Advisory Council:**

Eddie Cook, Associate Director, Board of Pardons and Paroles, Montgomery  
Eugene Pierce, Franklin County Community Corrections  
Chaplin Adolph South, Tuscaloosa  
Walter Wood, Executive Director, Department of Youth Services, Mt. Meigs

## **Staff:**

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

## **Others Attending:**

Hon. Pete Johnson, Chair, Chief Justice's Drug Court Task Force  
Representative John Rogers, Chair, Joint Prison Committee, Alabama Legislature  
Robert Oakes, Pardons and Paroles  
Rick Sellers, Concerned Citizens  
Sharon Bivens, Legislative Fiscal Office  
Diana Summerford, Alabama CURE  
Rosemary Collins, Alabama CURE  
Barbara Pugh Mays, OK Unlimited, Inc.  
Carolyn Bowdin, Alabama CURE  
Scott Rouse, Deputy Legal Advisor, Governor's Office

### **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 and noted that the Commission would hear reports from various segments of the government on a number of issues, as well as reports from the Legislative, Education and Sentencing Standards Committees regarding ongoing work as it prepares for the 2008 Legislative Session. He announced that the Commission staff and two Commission members attended the National Association of Sentencing Commission's Annual Conference held in Oklahoma City on August 5-7 and that there would be information distributed from that meeting to apprise the Commission members about what is going on from a nation prospective.

### **Report from Alabama Department of Corrections**

Vernon Barnett, ADOC Deputy Commissioner, provided the Commission members with an update on the Department of Corrections. He noted that the Department had been talking to Lynda Flynt and Rosa Davis for quite some time about changing the way that they report the number of inmates at the Department of Corrections. He explained that the Department had normally reported a number somewhere between 28,000 and 29,000 inmates as the inmates that the Department is responsible for. Since this number also included offenders diverted to community corrections programs and offenders serving time in other states and federal prisons, it did not reflect the number of inmates that were actually housed within the Department of Corrections' facilities. He noted that the number of offenders housed within the Department's facilities is actually around 25,000. The new reporting system that will be reflected in the October monthly report will specify those inmates under ADOC's jurisdiction and those that are actually in custody.

Mr. Barnett stated that the Department of Corrections population is still at about 198% capacity. He reiterated that the discrepancy between those two numbers is made up of inmates that are in community corrections, federal custody or inmates that the Department has a transcript on but have not been moved in from the county jails. He announced that the Department is currently maintaining about zero inmates in the county jails that are over the 30 day "transcript ready" limit. While that number fluctuates and will continue to do so until there is a wholly automated system, he noted that the new system should be fully automated by spring of next year. At that time the internal system will be a completely web-based system, moving away from the antiquated system implemented in 1979 which is not compatible with the database of the Administrative Office of Court's (AOC) or any other database system.

Mr. Barnett indicated that there had been a lot of press about the under-funding for the Department of Corrections. He noted that the Department does get many recommendations regarding what to do about the under-funding. He stated that a few months ago the Department had a \$31.3 million budget shortfall and by taking out capital improvements, they were able to reduce this amount to a \$26.6 million operating budget shortfall. He explained that most of the Department's budget was devoted to personnel costs. The Department is understaffed and the officer-to-inmate ratio is about twice what is considered to be optimal. Mr. Barnett explained that the Department took the existing

plan and accelerated it to help meet the new financial constraints. He noted that it is counterproductive for inmates to end their sentence (EOS) out of the Department of Corrections' system. When they reach the end of their sentence the Department gives them \$10.00 and a one way bus ticket to wherever they want to go in Alabama, releasing them back to the community.

Mr. Barnett stated that the Department was also experiencing problems with the number of inmates that have mental health issues—many of them quite severe. Indicating that these inmates were recycling through the system, he noted that the Department currently has active mental health caseloads of 2,500 inmates. These men and women are going cold turkey off of their psychotropic meds, engaging in antisocial behavior and are coming back into the prison system.

Mr. Barnett stated that the Department was finding real deficits in social services. The Department is looking at about two or three thousand inmates a year ending their sentences without any supervision. He noted that the Department is now trying to transform its system so that no one will EOS without rehabilitative assistance. While they think that is a good goal, it is not one that they are going to achieve because that would include sex offenders, which at this point, ADOC does not know how to deal with constructively. Mr. Barnett stated that there are a number of pilot programs throughout the United States that claim to be successful. So far ADOC has not been able to confirm their success, therefore they have not currently adopted a plan on how to reintegrate them into society in a beneficial manner.

Mr. Barnett advised the Commission members that the Department had to come up with \$26.6 million in order to avoid laying off its officers. Initially, the Department had planned land sales; however, getting out of the farming business has proved to be a very controversial. People do not understand that you cannot make money farming when your labor force is not getting paid. The Department has actually lost millions of dollars in the last decade on farming. Mr. Barnett stated that farming operations are run out of a separate fund and, by law, cannot be supplemented from other resources. The Department is restructuring that entire operation and greatly diminishing farm work. The inmates who have been working in the farming operations will have other work opportunities that will be far more constructive because they will be actually developing skills they can use when they are released.

Mr. Barnett noted that major reforms included the return of all the Louisiana inmates and accelerating the transfer of inmates to work release and minimum custody. Mr. Barnett explained that one of the things that he and the Commissioner discovered when they got to the Department was that the classification system was not working efficiently. They have now addressed those problems and the classification system is now working more efficiently.

Other updates of the Department include:

- Converting Montgomery Pre-release Center to a women's facility which has approximately 280 beds. This center is attached to Kilby and has secure fencing.
- Opening the Limestone Prerelease Center and Therapeutic Center - The Prerelease Center is an old canning factory at the Limestone prison that has been converted. It is a secure facility and will eventually have 300 more medium beds.
- The Therapeutic Facility is the new Columbiana facility. As part of the therapeutic facility all the inmates that are chosen to go into that facility receive intensive psychological screening to determine who the psychopaths are, which will be very helpful for the step down programs. Mr. Barnett noted that the psychopaths, like the sex offenders, are a group of offenders that they honestly are not sure what to do with in any constructive manner. So far they have found no one who has any proven method of dealing with those types of offenders and getting them to change their behavior in a constructive way.
- Implementing a supervised reentry program (SRP) pursuant to Section 14-8-60 of the Alabama Code, the pre-discretionary leave (PDL) statute. This program is key to the new reentry program, making budget cuts, and implementing revenue enhancers; however, it is also controversial. With the SRP program, Mr. Barnett noted that the Department is assuming the same risk that Parole does when they parole inmates.

The Supervisory Reentry Program will be for both males and females. The current number in the halfway house in Birmingham is over 70. A former hospital has been converted and it provides an increased level of supervision over several of the other halfway houses. At one time DOC had the old SIR and PDL programs. The Department has brought those officers back in and they are now heading this reentry effort.

The first month that the inmates are out, each inmate must have a sponsor who the agency has checked out in the community or they have to go to a halfway house that the Department has checked out and confirmed as valid. They also have to show employment. If the inmate has HIV/Aids and leaves the DOC facility, (s)he must have a home plan, social services, medical, and a job that they are capable of working. This system was setup through the Department of Public Health. The Department of Corrections, in conjunction with Public Health, is rolling this program out to all the rest of the inmate population. It is not ready for implementation yet, but hopefully it will be by the spring. By working with the community employers, the SRP officers will hopefully be able to place these people in situations where they will be productive.

During the first month that an inmate is out, their SRP officer will have contact with each one of them twice a week. After the first month if they have done well, they will report once a week, then once every two weeks, and then once every four weeks. Mr. Barnett noted that they are restructuring the internal operations of DOC so that it is a step down program. The Department is about a year and a half to two years away from implementation. Under the plan, inmates will go into the therapeutic center, go out of the therapeutic facility into work release, and from work release they will go to SRP or parole.

Inmates that are excluded include those who act up while they are on the inside, assaults on a correctional officer, failures in community custody, homicides - past or present, etc.

- Potentially damaging hiring freeze or layoffs could occur, depending on the budget. If the Department is required to cover deficits in revenue through layoffs it cannot staff several of its institutions and will be required to close three of them. With sufficient revenue, the Department can operate in FY 08 at an increased tempo and get all the inmates back from out-of-state facilities by November 2007.
- Work release minimum-out increase – Goal of 1000 inmates in minimum out – That's the folks that are out there in white that you see working government buildings and for the Department of Transportation. The target is 3,300 inmates in work release by October 1, 2007. The Department's goal is to try to return to the same level of inmates in work release as there was in 2002 and before.

Currently, DOC has a little over 2,000 inmates in work release. Mr. Barnett noted that this is not moving as fast as planned. The Department built in several more months after October 1st into its plans. However, the fact that it's not going as fast as planned is not detrimental to bringing inmates back from Louisiana. Savings from canceling Louisiana's contracts will be 12.4 million dollars a year. When you consider this amount, which is what DOC has been paying, less the increased cost when they move back to Alabama (about \$2.5 million annually); there will be a net savings of 9.9 million dollars.

The inmate flow is: 900 males in Louisiana and 200 males at Kilby. These are the ones who must vacate the Montgomery Pre-release Center so that women can be placed there. The Department has move a total of 1,180 males. As of last night they only have 167 males still in Louisiana and 360 females.

Mr. Barnett stated that the Department of Transportation was DOC's biggest investment employer of minimum-out inmates. He noted that one of the controversial things that the agency has done historically was to provide that the minimum-out inmates worked for free. The Department has been providing free labor for all the counties, cities, and state agencies all these years and now it charges. The Department of Transportation was the first one to step up and agree to pay. He noted that the counties are not very happy about this arrangement; however this is the new arrangement and it will continue.

The accelerated work release brings in another 11.7 million dollars, less \$2.5 million for staff, netting an increase in revenues of \$9.2 million. Other revenue enhancers are timber, livestock, and, inventory equipment sales (about \$2.7 million). The Department will see an increase in canteen and commissary revenues due to increased stock and also allowing the inmates to spend more, increasing the visitation area, and vending. Historically, the agency has not been getting any revenue from the vending machines in the visitation areas and has renegotiated that contract to where it does receive revenue. Mr. Barnett noted that a conservative estimate of the increase in collections from inmate labor, DOT, and others should be around \$1.5 million.

Ms. Davis commented that a few years ago she saw figures that work release was bringing in about \$17 million a year and asked if that was still the case. Mr. Barnett stated that was when DOC actually had more people on work release, around 4,000 or 4,500, and that now they have only about 3,200 inmates on work release. Ms. Davis noted that previously the costs to keep the work release inmates was about \$21 million, but since they brought in approximately \$17 million to ADOC, those 4,000 inmates were costing ADOC substantially less, an estimated \$4 million.

Mr. Barnett explained that the Department has experienced growth from industries hiring inmates and that there are corporations waiting to employ inmates. He noted that these industries are paying the inmates an elevated wage for good jobs. He announced that the Department plans to continue working with these businesses and the inmates so that more will have the ability to be placed in these high-end jobs. The employers are really having a good experience with them; they have assured the Department that they will hire the inmate after he/she ends their sentence or is placed on parole. The idea is to train everybody so that when they are released they can find a job where they can live on their own independently and support their family.

Mr. Barnett noted that a lot of the counseling the Department is providing is also designed to include the family. He stated that many times these folks go back to a bad family environment which is not constructive and they fall back into their former criminal patterns. Now there are some inmates that are making \$20.00 an hour. In addition, the Department's partnership with post secondary is one of the groups training the inmates.

Chairman Colquitt, asked if the inmates get to keep their jobs when they are released or do they have to vacate them. Mr. Barnett stated that they have that option. The Department has many people who are coming to them wanting to employ people. Without any effort, the agency has far more available jobs than inmates.

Ms. Davis noted that, in essence, the inmate is paying a great deal out of the income they are generating to learn these jobs. So they are actually being held accountable by having to pay for the education and job training that they are getting.

Mr. Barnett indicated that another positive aspect of this project is that they can earn their way down within the DOC from medium custody on down. They can continue to earn

up. He noted that many offenders coming to the Department of Corrections have never worked before. The agency is seeing more and more of that among the younger offenders that are coming in. Since they have the option to keep the job, then they are already with an employer who knows who they are and knows what baggage they carry. They don't care as long as they come to work and do a good job. Also one of the big problems is that these inmates can't get their identification papers, i.e., driver's license, etc. By virtue of the program that Alana Park of Public Health has put in place at DOC, they have been able to get past a lot of those road blocks.

Deduction/Overtime – Mr. Barnett announced that the Department is in the process of updating their computer system and everything will be completely automated. He explained that in the past everything in DOC has been on paper, which has caused a number of problems.

Elaborating on the costs, Mr. Barnett noted that the Department is paying an extraordinary amount for natural gas at several of its facilities, but are in the process of renegotiating those contracts. The Department has obtained permission to use some of the land sales money on a therapeutic facility.

Mr. Barnett indicated that the land sales money is going toward capital improvements. There has never been any sort of preventive maintenance done in the correction system. The Department recently had a comprehensive engineering study which recommended repair and remodeling at an extremely large figure, that the agency will never have. Some of the more alarming things that the study found are: the Department doesn't have a functioning fire alarm in the entire system; most of the locks on the doors don't work; and there are roofs that have been leaking for over a decade. The also recently discovered that the plumbing had rotted out. Mr. Barnett explained that when they were built, a lot of these prisons had concrete poured over the plumbing; therefore, in order to address the plumbing problem, it will be necessary to destroy the floor to get to the pipe. Just to bring the facilities up to some sort of safety code, it will cost somewhere in the neighborhood of 90 million dollars. The agency does not expect to get 90 million dollars from the General Fund, but it plans to take the money from the land sales and phasing in repairs and remodeling over the next few years to make these facilities as safe as possible for the people who live and work in them.

Mr. Barnett stated that when the new administration came in, they discovered that the Department's financial accounting system had crashed and no one could recover it. The accounting was being done on a note pad for a 360 million dollar budget. Now that the Department has had some change in staff and other changes they have found all the money, as well as accounts that they didn't know they had. The Department is putting in an automated system so that every cent will be tracked at all times. Mr. Barnett said that the Department is cautiously optimistic that it will be able to raise enough money and do enough construction projects over the next three years to address the major problems in DOC's facilities.

Mr. Barnett reviewed some of the planned land sales: Red Eagle north of Montgomery County, the cattle ranch, which has gotten much publicity; the building located at 101 South Union, which the Department has already sold for 1 million dollars; and the Wetumpka property, the property around old Kilby prison. The Department is also looking at joint development projects on three other properties in high growth areas, which will create an income stream to the agencies over the next 20 years.

He announced that the therapeutic facility will open on November 1, 2007. The inmates will receive careful psychologically screening coming in and will receive four months of intense therapy. The idea behind the therapy is to dig deep under the issues and address whatever is there: substance abuse, addictive behavior and generally issues from childhood, etc. There will be two months of training from the post-secondary department in one of the high end skill sets. From that point, the inmate will go to one of the Department's work release facilities that are being revamped, where they will be able to work in that skill set. The inmates will receive national certification, so when they reach the end of their obligation to the state of Alabama, if they want to, they can leave the state. Post-secondary has also agreed to find them jobs in Mississippi and Louisiana if they want them, because skilled blue collar workers are in tremendous demand in the southeast right now. If they don't want to leave Alabama, they can keep their job. If an inmate wants to relocate they will have references, a job history, social security card, and driver's license. It will also give more inmates an opportunity to build up a nest egg. Forty percent of work release inmate's pay goes to the Department. The other 60%, 20 percent goes to them and 40% goes to pay costs, fines and restitution until those are satisfied and then the inmate gets the remainder. He noted that many of these men and women could save up a fairly large sum of money, since they are not allowed to spend but \$75.00 a week.

Chairman Colquitt noted that if the Department is selling off land to spend money to catch up maintenance that probably should have been done in the 1960's, eventually it will run out of land. He asked if the Department has created a plan for the future up-keep of the facilities.

Mr. Barnett reported that they are putting a new roof on Holman prison because it has been leaking for 10 years, which is part of the reason for the large pool of liquid underneath it. Rather than paying someone to put on the roof, the agency plans on entering into a lease purchase agreement. Under that arrangement, the contractor will be responsible for all maintenance and care of the roof for 20 to 30 years.

Carol Steckel of Medicaid recently announced that they were expecting a 190 million dollar shortfall next time around. Mr. Barnett stated that the DOC has planned for the worse case scenario. If the choice is medical care for an under privilege child or helping out the prison system, the DOC is going to lose out every time. However, more and more of the legislators are realizing the severe problems that the Department is facing. The Department has invited legislators to come in and take a look at the books, if they want to see where the money is and where it is going. Representative John Rogers, chair of the Prison Oversight Committee, has been a major supporter of the Department. Mr. Barnett

stated that even though there is support from several of the legislators, there is a limit to what they can do because of the limited funds available available in the general fund.

### **Report from Joint Prison Committee – Alabama Legislature**

Chairman Colquitt announced that Representative John Rogers, chair of the Joint Prison Committee, had a matter to come up that caused his absence this morning and Lynda Flynt and Rosa Davis who attended their most recent meeting, would give the committee a joint report on the Prison Committee's activities.

Ms. Flynt stated that it was a very good meeting and for one of the first times the Legislature realized the extent of work the Sentencing Commission was doing and had been doing. They asked for the Commission's support for what their committee is trying to do to help the prison system, and said that any bill that the Commission wanted to get passed they would support. Ms. Flynt asked members to keep in mind that the Oversight Committee will be introducing bills and helping support the Commission's bills.

Ms. Davis noted that one of the things that she felt was very impressive about the committee meeting, was that in the last few years the Prison Oversight Committee has not really reached out for assistance with ideas on what could improve the criminal justice system and the prison system in Alabama. Ms. Davis stated that she got the strong impression from the meeting that the committee members strongly support what the commissioner of corrections is trying to do and are willing to stand behind him. She further stated that one of the things that most impressed her was the suggestion by the chair of the committee, that the committee members reach out and bring to the table the interested parties in the criminal justice system to meet with them on a regular basis to bring ideas for legislation or just to bring ideas that the legislature could look at to change what's happening in the Alabama prison system. The Sentencing Commission recognized shortly after it got started that this was going to have to be a joint effort of all of the agencies and public officials that are involved in the criminal justice system. The insight that the Prison Oversight Committee appears to be gaining in that process is very important for Alabama right now.

Bennet Wright, statistician to the Commission, attended the meeting also and talked about numbers and community corrections. Sharon Bivens was there from the Legislative Fiscal Office. Mr. Wright noted that Chairman Rogers indicated that he wanted to get the other legislators more involved than they had been, and the fact that He understood that the real importance of a concerted effort, was to him, the most important aspect of the meeting. Chairman Rogers announced that he was going to have a meeting in the Star Wars room and try to get everybody together.

Ms. Flynt noted that another important legislative committee was the committee on women prisoners, and advised that the Prison Oversight Committee has changed its name to the Joint Prison Committee in the Legislature.

## **Report from Board of Pardons and Paroles**

Cynthia Dillard, Executive Director, gave an update on the Board of Pardons and Paroles. Ms. Dillard mentioned that one thing that was noteworthy from the Joint Prison Committee meeting, which she and the Chief Justice also attended, was that the Chief Justice told the committee members that she was about fixing people not building prisons.

Ms. Dillard noted that the Board now has a new member, Bill Wynn. Mr. Wynn began July 1<sup>st</sup> and will be with the Board until he is confirmed during the next legislative session. Ms. Dillard stated that if Mr. Wynn is not confirmed during the next legislative session, or if there is a special session that does not last long enough, then he will stay on until the regular session in February. If he is not confirmed, he will not be on the board and the Governor will have to appoint someone else.

Ms. Dillard noted that the Board had a large increase in the number of parole hearings in the last quarter, mainly since Bill Wynn has been there. There are several of reasons for this. During the first two quarters of the calendar year, the Board has held 3,247 parole consideration hearings with a grant rate of 27%. During the last nine weeks, the Board had 1,280 parole consideration hearings with a grant rate of 49%. The Board anticipates holding at least 865 hearings in October and 930 in November. She explained that the number of hearings is going up for a number of reasons. The Board has more nonviolent cases now to consider. When the Board started the special docket, the first year it heard every single person that was eligible for parole at least once, if not more than once, who was serving for a nonviolent offense. A lot of those were denied and set off for a year or two years. Since the special docket stopped, there have been a huge number of new entries in the system, with many being nonviolent offenders.

Ms. Dillard noted that the Board has caught up tremendously on the victim notification cases, while several years ago they were over two years behind. Currently, they are working on October 07; however, she said that does not mean the Board is going to be able to have the hearings that are scheduled for October 07. The Board has had all the hearings for 2006, and is now having most of the victim notification hearings within three to six months of their docketed date, mainly due to the legislation that passed in 2004. The main factor that helped the Board, was that it does not have to identify, locate, and notify victims of robberies of businesses. They can notify them at the last known address. She explained that the victims of robberies of convenient stores and fast food places do not stay at those jobs very long. Since many of the violent cases are robberies, this change in notification requirements has helped tremendously. The victims group agreed because that is not their main concern; their main concerns are the Class A felonies that involve personal violence or family violence. That helped the Board more than anything to get its numbers caught up. In addition, the Board has 12 people who work fulltime just on locating victims. The Board has agreed to add some Thursday dockets for just non-victim cases in October and November. They are almost up 40%. That is without the added number of hearings.

Ms. Dillard advised that this month they are supervising 38,506 probationers, 7,482 parolees, and 501 offenders who are on both probation and parole. The Albertville office has opened and they will soon be opening up an office in Geneva for the first time. The Board of Pardons and Paroles continues to operate the two transition facilities, the male facility in Thomasville, and the female facility in Wetumpka. They are keeping the male facility at capacity and are probably at the point of having 60 openings at the female facility in Wetumpka.

Ms. Dillard stated that Chief Justice Cobb sent a memorandum dated August 30, 2007, to the circuit judges to consider, rather than revoking probationers for technical offenses, to consider specially putting some of the female probationers in the L.I.F.E. Tech Center, and males and females in community corrections programs around the state.

Ms. Dillard noted that some of the female inmates that they would have paroled to the transition center in Wetumpka are declining parole, because they are going to work release. They have more freedom rather than being at the transition center for six months. The Board is currently considering if they can't parole them, before they have that option.

The Board began talks this week with Commissioner Houston at Mental Health about the possibility of purchasing the Wetumpka facility. In the past he did not want to sell it, but now they are discussing the purchase. The Board has been leasing the facility very cheaply but has expended a lot of money on repairs because it is very old. They are about to sign contracts next week to spend \$2 million for repairs.

There are also three buildings at L.I.F.E Tech Wetumpka that need to be leveled. They are the newest buildings on the property, but they have some structural problems. The foundations and some of the plumbing are still in good shape. Technical violator centers could possibly be built there, which would be preferably to Thomasville, so that people around the state would have a shorter drive. It would be more centrally located between the technical violators centers and it would be easy to staff. It would also be easier for transportation back and forth from DOC.

Ms. Dillard noted that the other main thing that has been going on since the Commission last met is that the Board is in the process of trying to get its own servers with Pardons and Paroles statistical information. Robert Oakes has devoted his life for the past month, and will for the future two or three months, on that project. Ms. Dillard stated at this point they cannot even give people a report on a number of the questions they get asked because all of their information has been housed at the Administrative Office of Courts, noting that it is a real problem for Pardons and Paroles, the Sentencing Commission and for anyone else that wants statistical information.

#### **Report from Chief Justice's Drug Court Task Force**

Pete Johnson, Chair of the Task Force, stated that he was a member of the Sentencing Commission the first four years. He commended the Commission for the work that it has done. He noted that he helped many of the 15 counties that have drug courts get started.

He was involved with helping about half of them get started before he retired last November. In January he wrote a letter to every judge in Alabama who was in a county that didn't have a drug court, encouraging them to establish a drug court, and offering to assist them.

Judge Johnson noted that Chief Justice Cobb has provided, and continues to provide, the leadership needed for drug court expansion. There are about 15 or 16 counties that are going to start taking pleas in drug courts within the next three to six months. Judge Johnson said that he expects an additional 10 to 15 counties will come on board and start taking pleas within the next year. He said he is traveling all over the state, indicating that he visited Judge McLauchlin and the other judges in Dale County yesterday afternoon.

He stated that the Sentencing Commission staff is working with the Drug Court Task Force, noting that Bennet Wright and Melisa Morrison are very involved on the evaluation committee. The Task Force also has a Legislative Committee chaired by Judge Joe Laird and Lynda Flynt has been working with him. He noted that the committee is scheduled to meet within the next month and that they have already met twice.

He announced that the next meeting of the Task force will be held on the first of November, with the main agenda devoted to legislation that the Task Force is going to recommend, which he hopes to provide to the Sentencing Commission. At the time of that meeting, the Commission can look at and help the Task Force with the bill in the legislature. He said that the Governor's office and Commissioner Allen have been very supportive of the work of the Task Force.

The Task Force held a three-day training seminar a couple weeks ago at the Judicial Building, where people from Alabama and from all over the country came and made presentations. The training was held at the end of August and 93 people attended. Judge Mike Joiner and Foster Cook of UAB TASC and their training committee coordinated the training. Judge Johnson said that the Chief Justice told him that training had to be provided for these courts and the Task Force plans to provide training for new courts in February at the Judicial Building.

Judge Johnson noted that those that have an addiction and are not hurting anyone but themselves and their family don't need to go to prison unless there is just absolutely nothing else to do with them; and that is what drug court is about. He stated that in the meeting last week there was a judge from north Alabama that said, "These are people I'm going to put on probation, otherwise how can I tell the people that I'm going to change the prison population?" Judge Johnson stated that if someone was placed on probation 10 years ago that had two or three convictions, they were a drug addict, and they are still a drug addict. The way to address their addictions is to put them in drug court. In a year, the court may have had 10 offenders that would have otherwise been sent to prison. He advised that under the Habitual Felony Offender Act the sentence would be a minimum of 15 years in prison. Before the sentencing guidelines, a judge would be required to impose a 15 year prison sentence. While no one county is going to make a big difference in the prison overcrowding situation, with judges, citizens, sheriffs, district attorneys, and

treatment providers, police chiefs and everyone else working together to help solve the problems of drug abuse and addiction, it is going to make a difference.

Judge Johnson thanked everyone for their support and offered to answer any questions they might have about the work of the Drug Court Task Force. He told the Commission that since he retired in November, he worked every day until the middle of February and then went to work for Judge Cobb as an advocate for drug courts.

Lynda Flynt asked Judge Johnson to give the Commission his contact information so that if anyone wants him to come and speak to a group they will know how to get in touch with him. Judge Johnson provided the group with his contact information: email boysstate@brooknet.com, cell phone: (205) 567-1736. He volunteered to go anywhere and talk to one person or a group, noting that some of the poorest counties in the state (Dallas, Perry, Bibb, Wilcox and Hale) have got an amazing community corrections director and are going to have five drug courts by next year.

#### **Update on Use of Standards and Worksheet Submission and Data Issues**

Rosa Davis, chair of the committee, noted that there are difficulties with a few counties where they are just not generating the sentencing standards worksheets. She noted that there are some judges who have been a little bit slow to get on board with using the worksheets and considering the standards.

Ms. Davis stated that the Court of Criminal Appeals has already considered two cases involving the worksheets and use of the sentencing standards - both decided on August 31<sup>st</sup>. The first one is *Brown v. State*, 2007 WL 2459344, and it is out of Jefferson County, in which the trial court sentenced the defendant to life imprisonment for murder. The defendant appealed on a number of grounds, one of which was the fact that the trial court erred by not follow the sentencing recommendation in the worksheet for murder. The trial court gave no reason for not following the sentencing standards recommendation. The Court of Criminal Appeals held that (1) The statute provides that the judge “may” give a reason for failing to follow the sentencing standards recommendation. The judge is not required to give a reason; and (2) The statute specifically provides that the use of the worksheet or failure to use the worksheet is not appealable.

The other case, *Ducker v. State*, also decided on August 31<sup>st</sup> is out of Houston County. The defendant Ducker was sentenced on October 11, 2006, which was 11 days after the effective date of the worksheets. The judge did not state for the record that he had considered the worksheet recommendation. The Court of Criminal Appeals held that, according to the statute this also is not an appealable issue

Ms. Davis asked members of the standards subcommittee to look at their calendars sometime in the next month, because she will contact them via e-mail to schedule a meeting date. She said that the Committee will be looking at compliance and coming up with compliance rules, which the Commission staff has already begun. She also advised that the Commission staff will be conducting training sessions around the state to work

with clerks on how data is being entered into SJIS, AOC's computer system, when a sentence is being recorded. The Commission staff has requested that some changes be made in the mainframe so that it can more accurately keep up with sentences in the system.

Ms. Davis indicated that the Standards Committee will be looking at what we have designed for truth-in-sentencing and if there are changes that need to be made in the outline that we have already included in the statute. She noted that there were some questions that have come up about youthful offenders and explained that defendants that are granted youth offender status are not now covered under the sentencing standards; however, the committee will discuss this issue further.

In the last couple of months, the issue about splits has come up. The Standards Committee may need to provide a better definition in the worksheet instructions to clarify that we the standards have NOT changed the split sentencing law. Another issue that came up was in regard to compliance, i.e., If a judge complies with the in/out recommendation but does not sentence according to the sentence length tables, are you in compliance? There was a misunderstanding of at least one judge who thought you could follow the "in-out" recommendation but not the sentence length and vice versa and still be in compliance Ms. Davis indicated that she will be talking to people around the state next week to see exactly what problems they are having and which issues need to be clarified.

Ms. Davis asked Commission members to look over a sample uniform sentencing order that had been drafted by Commission staff, with modifications made by members of the Uniform Sentencing Order Committee. She specifically requested input from members of the Commission who were judges, noting that a uniform order would be very helpful and essential to test compliance with the sentencing standards. Ms. Davis said that the purpose of a uniform order is not to change how someone is sentenced, but rather, to ensure that the sentence complies with the law and is done in a more uniform fashion.

Bennet Wright, statistician for the Sentencing Commission, gave members an overview of the work that he and the Commission's analyst, Melisa Morrison, have been doing. Mr. Wright noted that the two largest issues that they are now working on are the compliance structure issue and truth-in-sentencing. He noted that when they actually built a compliance structure, it was necessary to get a handle on what types of sentences are given in Alabama. They looked at 129,000 sentenced offenders since 1998 in Alabama and, after analyzing the sentencing screen, found out there have been over 200 different types of sentences entered on the mainframe. The problem is how to compress those 200 different sentence types down a more reasonable amount. He indicated that while many of these sentence types are good, there are a lot of sentence types that are not easily identifiable or able to be categorized.

Mr. Wright stated that one of the biggest issues that the Sentencing Commission must address how to make sure that the sentence the clerk enters on the mainframe is an accurate reflection of the sentencing order. In some cases, what the clerk has entered on

the sentencing screen in SJIS is not necessarily representative of the sentence entered in the court order. Sometimes that is due to data entry errors and sometimes because of the lack of available options on the mainframe system. The Sentencing Commission staff is requesting that some changes be made to the mainframe system to allow some of these different sentences to be entered.

Mr. Wright mentioned that the Commission staff recently had an opportunity to attend the National Association of Sentencing Commissions conference. Mr. Wright noted that one of the sessions that he and Rosa Davis attended with the United States Sentencing Commission was on how to actually analyze sentences in terms of compliance. Mr. Glenn Smith was available at the conference and explained how the United States Sentencing Commission measured compliance. By federal statute, the district courts and appellate courts are required to send five PDF files to the U. S. Sentencing Commission on every case they hear or decide. They have a staff of 40 people to handle just the submissions and compare the sentencing orders with the sentencing guidelines. The Alabama Sentencing Commission is going to have to consider other methods for comparing worksheet submissions and sentencing orders, which is why it is so important that the mainframe system collects all the information. Mr. Wright stated that the Sentencing Commission is now looking at some of the creative sentences. The Commission staff is pulling available case action summaries and court orders to determine if what the clerk reported is an accurate reflection of the court order. Mr. Wright further stated that the Commission will have to pull random samples of over 100 different sentence types.

Mr. Wright reported that he and Melisa Morrison are very active on the evaluation subcommittee of the Drug Court Task Force. Through the encouragement of Judge Pete Johnson, they were invited to sit on the Evaluation Subcommittee in Birmingham. He thanked Judge Pete Johnson and Foster Cook for inviting them to serve on the committee, indicating that he and Ms. Morrison were interested in how the data will be collected as the drug courts expand in Alabama. This will be a very important tool for evaluation of these drug courts, since the Commission still needs to have empirical proof that they are working.

Mr. Wright explained that the Commission has also been involved in and are continuing work, with the support of Vera Institute of Justice, to modify the drug court and community corrections surveys. The Commission is still in the process of deciding how to collect the drug court information. The Commission needs to collect more useful information from community corrections as well. Through Jeff Williams at the Department of Corrections and the Association of Community Corrections, the Commission staff is in the process of determining better ways to collect information about the programs and program participants.

Mr. Wright mentioned that before the development of truth-in-sentencing standards major data issues must be resolved. In developing the initial standards that are now in effect (time imposed standards), the Commission staff was required to review PSI information to gather information about factors such as type of crime, victim injury, prior

criminal history, etc. that are important factors considered by the sentencing court. As we move towards truth-in-sentence (time-served), the Commission will need to look at these same factors, as well as the actual amount of time served on imposed sentences. He noted that the Sentencing Commission is having problems matching up some of the EPSI data to the AOC data. This is one example of how the Sentencing Commission can be very useful in recommending ways that data is entered, collected, organized and housed, for more efficient and reliable data analysis in the future.

Ms. Flynt emphasized that the projects that the Commission is working on is going to provide more accurate and reliable data. A uniform procedure for data entry has not been developed or training provided on data entry for court specialists until now. There has been no uniform sentencing order, which is desperately needed.

### **Report of the Commission's Legislative and Education Committees**

Ms. Flynt noted that both the Education and Legislative Committees are chaired by Dr. Lou Harris. Dr. Harris asked Ms. Flynt to present the Education Committee's report to the Commission. She stated that the Education Committee met and concluded that not only was training needed for the judges, prosecutors, probation officers, and defense attorneys on the implementation of the sentencing standards and completing the worksheets, but that training was also needed for the people that actually entered the sentences into the system so that there would be some type of uniform entry. The committee decided that due to funding it would concentrate on only three regional workshops, where the participants would obtain CLE credit. Other strategies that the committee discussed in is having Melisa Morrison do an online tutorial going over the electronic worksheet.

Ms. Flynt noted that there has been a change in the IT Division of AOC with the director of the IT division retiring, and that the Commission staff is now working with new programmers. It has been a transition period, but both AOC and the Commission want to work closely with Pardons and Paroles, the Department of Corrections and the other departments to ensure that the agencies have computer systems that are compatible and collect essential information. Ms. Davis asked Commission members to look over a sample uniform sentencing order that had been drafted by Commission staff, with modifications made by members of the Uniform Sentencing Order Committee. She specifically requested input from members of the Commission who were judges, noting that a uniform order would be very helpful and essential to test compliance with the sentencing standards. Ms. Davis said that the purpose of a uniform order is not to change how someone is sentenced, but rather, to ensure that the sentence complies with the law and is done in a more uniform fashion.

The Commission wants to hold three regional sentencing standards workshops in Huntsville at UAH, Birmingham at Cumberland, and Mobile at the Criminal Justice Center. The committee plans to talk to Judge Graddick, Presiding Judge, regarding holding the workshop at the Criminal Justice Center in Mobile. The other way that the Commission hopes to reach the court specialists would be through their conferences. The Commission staff has begun traveling around the state and talking to court clerks about

data entry. The Commission will make a presentation at three different conferences: October 5<sup>th</sup> in Montgomery, October 18<sup>th</sup> in Rainsville and November 30<sup>th</sup> (the location has not been decided at this time). In addition to those training sessions, the Commission staff is planning onsite visits. The focus is going to be on the counties that have indicated that they need help. Judge Rains has asked that the Commission staff visit his court and talk to his people. A tentative meeting has been scheduled for October 29<sup>th</sup> or 30<sup>th</sup>.

It was also mentioned that Callie Dietz or the Chief Justice should send a memo to the clerks asking that they use the uniform system and that they attend the training sessions. The Commission has already asked the Chief Justice to send a letter to the judges requesting that they consider using the reentry transition centers in lieu of revoking an offender's probation. The Commission was asked to include and emphasize in its Reference Manual what correct and incorrect sentences are, and include the uniform sentencing order. Ms. Flynt stated that before we pursued data entry training we wanted to talk to leadership groups that were familiar with SJIS, the work of the clerk's offices and data entry. In this regard, the Sentencing Commission staff contacted Trisha Campbell, who worked for AOC for years and is now the court administrator in Lee County, and scheduled a meeting to discuss several issues. Out of those discussions, there were about 10 changes recommended that should to be made to the mainframe to capture information essential to the Sentencing Commission and data analysis. She noted that the Commission staff wants to get active clerks and court specialist involved in the training and are looking at getting some of the more experienced clerks, such as Corrine Hurst and Mary Moore who is the President of the Clerks Association.

Ms. Flynt advised that the Sentencing Commission is continuing to work with Vera Institute of Justice. Vera has recently completed a white paper that was requested by Commissioner Allen on the community corrections of the state of Alabama and what their recommendations would be after comparing other states' community correction programs. She advised that Vera is also working on community corrections standards with Jeff Williams and are going to have a work plan that will be provided to the Commission as soon as it is finalized. In addition, Vera is assisting the Commission by conducting a community corrections survey, which should be finalized by the end of the next month and distributed in late October.

The Commission staff, in conjunction with AOC, is working on a system-wide computer program to capture vital information on community corrections programs. The MIDAS system which is now being utilized as a case management tool needs modification because it is primarily a client-based information management system for the CRO and community corrections programs and does not capture the information in the format that is needed for statistical analysis. Until the system is modified, the Commission will have to rely on information obtained from community corrections' surveys. The Commission is also looking at a drug court survey. It is hoped that the Pew Charitable Trust will be involved with the drug courts. Representatives from Pew have talked to the Chief Justice and indicated that they have an interest in helping in this area.

### **Legislative Committee Meeting**

Ms. Flynt stated that the legislative committee meeting had good attendance, and indicated that minutes of the meeting are included in the member's packets. Referring to the handout of legislation provided to the members, Ms. Flynt explained that she included bullets summarizing the major provisions of each bill, as well as fiscal notes and comments (in italics) on one of the bills expected to be introduced by another group, regarding limitations on probation and parole.

**Victim Notification Bill - (Tab H)** Ms. Flynt noted that Ellen Brooks chaired a committee to work out the provisions of this bill. She explained that the committee was created after Pardons and Paroles mentioned to Governor Riley that they were having problems because of the current wording of the Victim Notification Act. The Board said that Alabama had the harshest notification requirement of any state and that it was basically bogging down the parole system. At the request of the Governor and Pardons and Paroles, the Sentencing Commission scheduled meetings with victims' advocates and tried to work out a compromise, one of which was redefining the term "victim" to refer only to human victims. There was also an exception included for the diligent search and notice standard for Class A drug offender, felons and for burglary 1st. The Act previously provided that diligent search would apply to any felony involving violence; however, it didn't define what violence was. Under the proposed amendment, felonies involving violence refers to those involving any physical injury or the death or threat thereof to a person or of another and actually defines the new diligence standard. It redefines or clarifies who is included as an "immediate family" member and extends notification to include those outside the family when there is no immediate family member. There is also a provision authorizing the family of a victim that died to designate a person to serve as a representative for notice, but does not require the designation a representative. The proposed bill also contains a requirement shall be sent by certified mail with return receipt requested. If someone refuses a certified notice it is provided that mailing shall be deemed adequate notice after 14 days elapses from a subsequent notice delivered by regular mail. This provision was included to prevent the victim or victim's family from delaying a parole hearing by refusing notice.

Ms. Flynt stated that there were several issues brought up regarding the bill's provisions, noting that the main ones (brought up by Eddie Cook) were on page 3. She advised that the bill was actually in draft form, and is the only bill approved by the legislative committee. She noted that the administration of the Board of Pardons and Paroles recently advised that they had problems with this bill and did not want it introduced. Ms. Flynt asked Cynthia Dillard for any comments that she had regarding this bill, explaining that this bill was the result of problems that they were having and the Commission would require their support in backing any bill involving them directly.

Ms. Dillard explained that for years they have been asking for help with the victim notification requirement because there is no other state in the nation that has to identify, locate, and notify victims. All other states notify upon request. She explained that "upon request" means that the victim will tell you where they are. She assured the Commission that the Board wants to notify victims and they want victims to have their say. The Board

has introduced legislation before and did have a bill passed that achieved improved notice requirements in 2004.

Ms. Dillard noted that their attorney Steve Sirmon and Ellen Brooks did most of the work on the proposed bill. Ms. Dillard stated that right now the Board thinks that it is better off to leave the law as it is and not to try to amend it again. The changes from the 2004 bill have helped the Board, but the proposed bill would require the Board to notify more people and would require them to send up to 50% more notices. Not only would the Board have to send certified notice, as it is required to do by law, if the person didn't pick the notice up the Board would be required to keep checking to see if they picked it up or refused it and then they would have to send them another notice by regular mail. Ms. Dillard further stated that she has always thought that more victims would receive their notice if they sent it regular mail, but the victims have never wanted them to do that. About 50% of the people don't pick up their registered mail and then they would call and say they didn't get a notice. She explained that it is much cheaper for Pardons and Paroles to send notice by regular mail. The proposed bill would require them to do both - send notice by certified mail and registered mail and check periodically to see if they pick up their certified mail, which would result in having to prolong the hearing, changing the hearing date because registered mail will go back and forth 3 times. When the Board sends out the notices, they have to include the date, time, and place of the hearing. They have to receive it at least 30 days before the hearing. Logistically it is impossible.

Chairman Colquitt stated that the Commission had a recommendation from the Legislative Committee that it pass the Victim Notification Bill; however, since this was a bill originally requested by the Board and Pardons and Paroles, and the Board no longer wants it introduced, the Commission should reconsider their initial decision to introduce it in the next Legislative Session. The members voted not to include this bill in their legislative package.

Noting that certain bills were included in the handout for informational purposes only, the Commission members were asked to review a second bill located under Tab I. Ms. Flynt explained that this was a bill that was introduced last year and for the last two or three years. Although it is not a Sentencing Commission bill, the Commission has gotten credit or blame for it primarily because the Sentencing Commission's sponsors and members have sponsored the bill. She noted that it does contain some of the provisions that the Commission has voted in favor of in the past. Ms. Flynt asked the Commission members to go through this bill item by item carefully because it will come up next year, noting that it almost passed last year. Ms. Flynt feels that the Commission should take a position on it because it will have a tremendous impact on sentencing if it is enacted. The first provision of the bill deals with the split sentencing act, placing a limit on probation. It provides that if a person is on probation under a split and he is in satisfactory compliance for 21 continuance months, his probation will automatically terminate after 2 years. There is also a provision that says that the determination of probation could be denied based on an assessment by the Board of Pardons and Paroles using their risk assessment instrument and if the district attorney has a show cause at a hearing that indicates it would be a danger to the public or to public safety to release him from

probation. Ellen Brooks raised the concern that this provision places the burden on the district attorneys and also noted that the district attorneys would not have that information available as far as the risk assessment results.

Ms. Flynt noted that the bill also includes reinstatement provisions in the split sentencing section and also in the sections of the bill pertaining to parole and straight probation. According to these provisions, the probation period terminates after 24 months, but if the offender does not keep current with payment of his fines, court costs and restitution, probation can be reinstated. She stated that the Legislative Committee expressed concerns over these provisions, questioning whether the judge has continuing jurisdiction and if this would be deemed an unauthorized modification of the original sentence. Ms. Flynt also indicated that concerns were also expressed in regard to instances of non-payment by indigents, referencing Rule 26.11 of the Rules of Criminal Procedure requiring that nonpayment must be “willful,” which would not apply to indigents.

Referring to page 5, Ms. Flynt noted the statistical data included regarding revocations, indicating that the figures really do not support the concept of the bill limiting probation and parole to 2 years because there are very few offenders that are not revoked within 2 years. She pointed out that the revocations based on technical violations shows a marked increase in recent years.

The Commission members were asked to review a proposed amendment of the split sentencing statute which referred to boot camp on page 6. She noted that since the Department of Corrections is doing away with boot camp, this provision should be eliminated, to avoid any confusion and eliminate the possibility that judges continue to sentence a defendant to boot camp. Commissioner Allen has asked that if the committee does amend the split sentencing statute that portion dealing with booth camp be deleted because it’s no longer operative.

Referencing Section C at the bottom of page 6, relating to revocation of the probation part of a split sentence, Ms. Flynt indicated that the Commission had voted on this amendment before, and she included the Commission’s old bills with bullets summarizing the major provisions in each member’s packet. It was explained that this amendment was recommended based on the appellate court’s interpretation of revocation of the probation portion of a split sentence. Pursuant to the split sentencing statute a judge can sentence a defendant to up to 15 years (or 20 years) imprisonment, with up to 3 years (up to 5 years for a sentence over 15 years but less than 20 years) to serve and the remainder suspended, followed by a period of probation. The imprisonment imposed (up to 3 years or 5 years) must be served day for day, with the defendant prohibited from receiving good time or parole. It was noted that some judges have used the split sentencing statute to stack mandatory minimum periods of imprisonment when a defendant is convicted of more than one offense. Ms. Flynt advised the Commission members that Chief Justice Cobb has expressed concerned over that practice and has asked that the Sentencing Commission consider amending the statute to prohibit that practice. The split sentence statute was intended to provide the sentencing judge a way to get a defendant’s attention and was to apply to felony offenders that needed some period

of incarceration, but not for long periods of time. If judges are stacking the mandatory portion of splits on splits, they are requiring them to serve for longer periods of time and misconstruing the rationale behind split sentencing. Ms. Flynt noted that judges like to utilize the split sentencing statute because it has been interpreted to mean that the judge retains jurisdiction, and the general five year limit on probation that applies to straight probation does not apply under the split.

Ms. Flynt noted that the legislative committee recommended approval of these amendments to the split sentencing statute. It was decided that vote and discussion on this bill be tabled until the next meeting, at which time the Legislative Committee would report back to the Commission with a final draft of the bill.

The next bill included under Section J was to provide by statute the calculation and procedure for the parole release of serious offenders, which is now covered by a Rule and Regulation of the Board of Pardons and Paroles. The Legislative Committee voted not to pursue this bill.

Medical Geriatric Bill – Ms. Flynt advised that this bill was one that was introduced by the Department of Corrections. Vernon Barnett asked that the Commission support this bill, as well as the bill on prison industry. The major provisions of the bill are that it defines a geriatric inmate as a person who is 55 years of age and is chronically or terminally ill. It does apply to inmates that haven't served their minimum sentence or to defendants convicted of capital murder. Ellen Brooks noted that it could apply to noncapital offenders that are serving sentences of life imprisonment or life without parole. It was noted that the Commissioner could revoke any furlough that was given under this bill if it was discovered that the person's condition had improved to the point that he would not be eligible for release. The engrossed version of the bill was the one that Vernon said that they wanted to pursue since there had been negotiation during passage through the legislature. Since the Commission members were provided with a copy of the bill as introduced, rather than the engrossed version, the Commission voted to table this bill for further review by the Legislative Committee.

The Commission also voted to table the Prison Industry bill that was to be introduced by ADOC, as the provisions that were outlined in the handout on page 16 may not all be included in the final version the Department decides to introduce.

#### Amendments of the Community Corrections and Punishment Act

Under Tab E there was included a proposal which would authorize the Commissioner of the Department of Corrections to initiate institutional diversions to L.I.F.E Tech, in a manner similar to the procedure now authorized for diversions to community corrections programs. The question arose that since L.I.F.E. Tech is actually operated by the Board of Pardons and Paroles, an amendment to this effect might not be appropriate in the Community Punishment and Corrections Act. The Commission moved to table this proposed amendment.

Community Correction Amendment – While the Legislative committee did have a positive vote of some of the provisions there were certain concerns expressed. The committee will be drafting up legislation; however, it was noted that the first amendment voted on was a provision authorizing the community corrections directors and employees to have limited law enforcement authority. It was noted that many directors and employees that are supervising the community corrections people do not have law enforcement authority. Judge Rains has indicated that this is a concern of his, and other judges. While some community correction programs have gotten local legislation passed, as Montgomery did during the last legislation, session, this would be a general bill that would *authorize*, not require, them to obtain law enforcement authority. The law enforcement authority would be limited under the bill and would require anyone that wanted this power to receive P.O.S.T. training as a prerequisite. Ms. Flynt stated that obtaining law enforcement authority would be one step closer to getting access to NCIC information, because it is only available to law enforcement agencies. The Committee approved this amendment to recommend for the Commission’s approval.

It was noted that the Legislative Committee failed to approve amendment of the Community Corrections and Punishment Act pertaining to escape. At least two judges had requested the Commission to consider amending the provision stating that it *shall* be deemed an escape from a state penal institute if an inmate fails to remain within the extended limits of his or her confinement to provide that it “may” be treated as an escape to allow judges discretion on whether or not to treat every failure to timely report as an escape. Ms. Brooks and Ms. Davis both argued that this was a crime and should not be changed. The committee failed to adopt the proposal.

Another proposed amendment to the Community Corrections and Punishment Act, noted on page 18 of the handout, was specifically providing that the court retained continuous jurisdiction over the defendant during the entire term of his sentence. The majority committee said that this was already the case and was not needed; therefore the vote was not to recommend this change to the Commission.

Another recommendation for amendment to the Community Corrections and Punishment Act was to clarify that the diversion of inmates to programs in other counties was allowed, whether the diversion was an institutional or front-end diversion. Since it was the opinion of the committee members that the current statute was clear on this issue, the proposed amendment was rejected.

The next two proposed amendments on pages 5 and 6 of the handout were approved. These included changing the definition of “excluded felony offenders” under Subsection 14 to strike reference to defendants convicted for selling drugs. It was explained that under current law, anyone that is convicted for sell drugs, regardless of amount, is prohibited from being sentenced to a community corrections program or diverted to a community corrections program. One of the problems arises from the fact that Alabama law defines the distribution of a controlled substance in that statute as selling or delivery – selling drugs, in amounts that do not reach the level for drug trafficking, is one form of

distribution and delivery is another, with only those convicted of the former (which is often not distinguished, and referenced only as “unlawful distribution”). Since both sale and deliver of drugs is a violation of the same statute, it is often not possible to know whether the defendant was convicted for selling drugs or not. The Commission voted to amend the statute to authorize anyone convicted of distribution of drugs to be considered for, and in exercise of the judge’s discretion, sentenced to community corrections.

The Commission voted to amend the Act to provide that those exclusions that are in the statute would not apply to anyone that was going to end their sentence (EOS) within 24 months that they would otherwise be eligible and recommended for participation in a community corrections program.

Ms. Flynt asked the Commission to vote on concepts for amendments approved by the Legislative Committee. She noted that three proposals that the Commission need to vote on were:

- Amending the Community Corrections Act to provide community correction officers and employees limited authority to arrest, provided they get certified under the Peace Officers Standards and Training program. Several members of the Commission voiced opposition to the amendment, advising that the community corrections programs in their circuit did not want law enforcement authority. It was decided that this issue should be brought before the Association of Community Corrections at their next monthly meeting and determine if they are in favor of a bill authorizing them to obtain law enforcement authority. It was noted that the proposal would not require them to obtain arrest authority, but only allow them to do so if they met the P.O.S.T. requirements. Ms. Flynt stated that Becki Goggins with CJIC had discussed this issue briefly when the question came up about the community correction programs obtain NCIC read only access. She advised the Association that she would provide them with the exact requirements to be considered “law enforcement for NCIC access purposes. The Commission voted to pursue this amendment, but only after ensuring that the Association supports the bill. The Legislative Committee was requested to come back to the Commission with a proposed bill, in final form, for their review and final approval, should the Association indicate that they supported this legislation.
- Amendment of Community Corrections and Punishment Act to change definition of “excluded felony offenses” to delete reference to defendants convicted of selling drugs as automatically prohibited from participating in a community corrections program. The Commission voted to amend 15-18-171 (4) 14 to delete reference to convictions for the sell of drugs from the list of excluded offenses.
- Amendment of the same subsection to provide that “excluded offense” provision does not apply to inmates that are within 24 months of ending their sentence if they are otherwise recommended for a diversion to community corrections program.

Some of the Commission members requested that, in the future, if the Legislative Committee is going to recommend legislation for the Commission to vote to include in its Legislative package, that the committee should have the bill in final draft form for the Commission's review and not request votes on mere concepts. It was noted that the Committee asked for their vote on the concepts this meeting to avoid many hours of wasted time drafting proposals that the Commission would not consider approving, and also because there was plenty of time for drafting the bills and resubmitting to the Commission for their final approval prior to the next Legislative Session.

### **New Business**

Ms. Flynt announced that Rosa Davis and Ralph Hendrix have volunteered to serve on the Legislative Committee.

### **Scheduling of Committee Meetings**

It was announced that the Legislative Committee of the Sentencing Commission would meet on October 15th in the formal conference room at the Judicial Building. Ms. Rosa Davis advised that she would contact members of the Standards Committee regarding scheduling a future meeting date.

**Schedule of Next Commission Meeting** – The next Commission meeting was scheduled for November 9<sup>th</sup>.

### **Adjourn**

There being no further business the meeting was adjourned.