

Alabama Sentencing Commission

Minutes of Commission Meeting
September 27, 2002

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, September 27, 2002. Present at the meeting were:

Honorable Joseph Colquitt, Chairman, Retired Circuit Judge, Professor,
University of Alabama School of Law, Tuscaloosa
Honorable Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
John Hamm, Department of Corrections, Montgomery
Edward "Ted" Hosp, Esquire, Legal Advisor to the Governor, Montgomery
Honorable O. L. (Pete) Johnson, District Judge, Birmingham
Emily Landers, Deputy Director of Constituent Services Governor's Office
Montgomery
Honorable David Rains, Circuit Judge, 9th Judicial Circuit, Fort Payne

Advisory Council:

Bernadett Chapple for Representative John Knight, Montgomery
Chaplin Adolph South, Tuscaloosa
K. Long for Senator Escott-Russell, Birmingham

Speakers:

Dr. Tammy Meredith, Applied Research Services, Inc.
Dr. John Speir, Applied Research Services
Ms. Wanda Jones, VOCAL
Rosa Davis, Chair, Offender Seriousness Committee

Staff:

Lynda Flynt, Executive Director, Alabama Sentencing Commission
Melisa Morrison, Research Analyst, Alabama Sentencing Commission

Others Attending:

Mike Cason, Montgomery Advertiser
Cynthia Dillard, Board of Pardons and Paroles
Sharon Bivens, Legislative Fiscal Office
Tom Simon, Alabama Department of Public Safety

Introductory Remarks

The meeting convened at approximately 10:00 a.m. Chairman Colquitt called the meeting to order and made introductory remarks. Chairman Colquitt stated that the Commission is moving forward and that there have been several subcommittee meetings held throughout the month, as well as meetings by Rosa and Lynda with Legislators and other public officials. In the next 30 days or so, it is expected that there will be a preliminary draft of the legislative report presented to the Commission.

Chairman Colquitt stated that by the next meeting, or meeting in November, the Commission should be voting on proposals for the legislative report that must be ready for presentation in March 2003. In that regard, meeting dates were set for Friday, October 25th, November 22nd, and December 13th.

Chairman Colquitt reviewed the agenda for the meeting, noting that a major focus of today's meeting would be data presentations by Dr. Tammy Meredith and Dr. John Speir of Applied Research Services (ARS). They would present the Commission members and staff with their latest update on the data they have been assimilating and the simulation model that they are creating. Judge Colquitt explained that Tammy and John had just been granted the simulation contract and were beginning work on Alabama's model.

Dr. John Speir, Applied Research Services, Inc.

Dr. Speir explained to the Commission that the presentation today was an informal one and would discuss issues that the members had raised in previous meetings such as the accuracy of the data on the incarceration of first time offenders and the unusually high number of non-violent offenders that appeared to be going to prison. He told the Commission that it was actually hard to find out from AOC sentencing data on who actually wound up in a state prison, i.e., those who are going to the state penitentiary (not serving time out in county jails). Another issue that came up in other meetings was the number of new admissions as compared to revocations.

Dr. Speir explained to the Commission that one of the major problems they had encountered with the merger of databases was in identifying defendants because of the state's lack of a common identifier. Utilizing SID #, FBI #, AIS #, social security number, and AIS #, along with names and conviction date, they have come up with their own ID #, and have obtained improved results in matching the defendants in all databases.

Dr. Tammy Meredith, Applied Research Services, Inc.

Dr. Meredith addressed the members of the Commission and advised that the revised data is based on new data files that were obtained from DOC covering another year of data (from July 2001 to July 2002), so that they now have a 4-year felony cohort representing approximately 64,000 felons, with very recent data. The Commission can now utilize this data to develop sentencing recommendations based on historical practices. Because of the problems that occurred in the data, ARS spent the summer determining how to better link the databases. By using the first half of the defendant's last name, first initial, social security number and conviction date, they were able to come up with their own common identifier. Historically there has been a lot of misinformation in the state because of volume of cases based on counts and charges rather than people.

Links were also improved by going to the Parole System's records by court case numbers and picking up the FBI number from their files for 1/3 of the felons in the cohort. Then when ARS went to CJIS they got a lot more records. Thus they matched court data and CJIS data four different ways. With this new information, clarification has to be made in the figures provided to the Commission previously. Before the Commission was told that 61% of the cohort were defendants with no prior felonies. Now with the new data, this figure has dropped down to 44%. Although Dr. Meredith stated she was not convinced that she has everyone's prior criminal history, she is much happier this time because the figure is much lower. Another problem was that many CJIS records do not contain disposition information. There is a disposition reporting problem, especially for old records. By matching these with AOC records ARS was able to find 5% of these.

Dr. Speir has been working on enhancements to prison admissions, i.e., to determine the number of admissions that are new commitments and those that are due to revocations of probation or parole. When DOC cites 700 admissions a month, they are counting everybody and we need to break this figure down by the types of admission. We now have a handle on parole and probation violators. Split sentences are a lot easier to profile now that we have probation and parole data.

The Commission members were given handouts of updated tables and copies of Applied Research Service's PowerPoint presentation. *See Attachment A* Dr. Meredith explained that the top 25 felony crimes at conviction represents (87%) 9 out of 10 of the offenders in our felony cohort and that is the reason we are always talking in terms of the "top 25 offenses" rather in terms of the 400+ felony offenses in Alabama. She stated that half of the top 25 offenses include only 5 offenses. The top 5 offenses (possession or receipt of controlled substance; theft 1st and 2nd, felony DUI, and burglary 3rd) account for almost 50 percent of the bodies. Of the top 10 offenses, you see a few changes: the top offense is still possession of drugs and the top 10 offenses are still property, drugs and alcohol. Possession of a drug is still 19% of your bodies. Theft of property 2nd and 1st are ranked 2 and 5, respectively. Felony DUI actually got promoted to 3rd and theft of property 2nd pushed out possession of marijuana (now 6th).

Using the definition for "violent offenses" previously adopted for data purposes (offenses, current or prior, that involve personal violence or sex crimes), 9 % would be defined as violent and 91% would be non-violent. Misdemeanors are not included – only felonies. Burglary is not included within this definition, but we are still working on the proper definition.

Dr. Speir noted that a lot of increases have been found in felony DUI, but we should be very careful when we talk about admissions because a lot of them never make it to prison. Also, even those that are labeled "non-violent" do not necessarily mean that they are good people that shouldn't be incarcerated. Dr. Meredith explained that the last time they were before the Commission a lot of members had problems with the number that was reported as going to prison – at that time it was reported that 69% of the convicted felons were sentenced to some time to serve. Now you see that it is down to 57% and that is because they made some decisions about who they wanted to

exclude, i.e., those that got credit for time served, those getting just jail sentences. This new percent seems to match DOC's data (750–800) for monthly admissions, which makes ARS feel more comfortable about the data. It was explained that the second table, table 2 in the handout, shows the percentage of people sentenced to prison for each of those top 25 crimes and it shows the number of bodies sentenced annually for each crime and the percentage that goes to prison.

Dr. Speir stated that this week they were finishing up determining how many people that actually got convicted in court actually landed in a DOC bed, not jail – these figures don't reflect that yet. They are one more figure away from that determination, which will be made by them looking at every time a body is moved in the system, according to DOC data. It looks like now (but not definite) that perhaps 25-30% of all convictions actually get sentenced to DOC facilities. The pie chart and table 2 actually reflect the number of felons sentenced by the court to time to serve.

Addressing a question from Judge Rains, Dr. Meredith explained that those that EOS from the county jails are included in their 64,000 cohort but are referred to as not among DOC's prison population. He requested specific information about who ends up in the county jail since it is part of the Sentencing Commission's responsibility to study and help resolve the overcrowding problem in jails as well as DOC facilities. Dr. Meredith and Dr. Speir assured Judge Rains that this would be done, with the movement of bodies file that DOC is in the process of giving them now.

Another change in the data from what was previously released to the Commission was the proportion of offenders with a prior felony conviction as compared with first time offenders. Dr. Meredith stated that before the members were told that 61% of the cohort were first time offenders but the new data now reflect that there are only 44% that are 1st offenders and 56% have prior felony convictions. Tables 3 and 4 reflect sentencing patterns by people defined by their prior records. The numbers are drastically different for those with no priors this time and the numbers are more reasonable and reflect your previous concerns that the percentages presented previously were too high.

In response to questions from Judge Johnson and Judge Colquitt, Dr. Meredith explained that the priors shown in tables 3 and 4 included any prior felony and that table 4 shows anyone sentenced to some time, not necessarily those that go to prison. Judge Johnson noted that we need to include those in the jail - even if not transferred to DOC because the sentence length among only people transferred from county jails to a DOC facility will not give the Commission the true picture needed. Table 3 is 64,000 people – everyone “sentenced” to prison. Judge Rains stated that the table itself implies that it is showing the prisoners that actually went to prison.

After several questions were posed to Drs. Meredith and Speir, Judge Colquitt explained to the members that they should realize what Tammy and John are telling us which is that we have a database that can be queried any way we want. We are just asking different questions – it is just that she may not have that graph up here at this time. All of this data is relevant to certain issues. If we want to know what

percentage of people stayed in the county jail and never went to prison; they can tell you that. They can break the non-prison down further.

It was emphasized that these tables and graphs were not for distribution at this time and that several tables would need to be further refined and better defined. Also, we have to know what the question is before ARS can provide answers. They can provide information on numerous issues.

John Hamm noted two instances in which it appears that defendants with more prior convictions received lighter punishments than those with less priors. Dr. Meredith explained that these figures were not wrong, it could be because of the types of priors in the different groups, sentencing practices, and because these represent averages, which include the high and low numbers.

Dr. Speir went over Tables 5 and 6, The Impact of Prior Convictions on Time Served in Prison, noting that he had no particular reason for equating a life sentence with 45 years. This figure does not actually reflect what time is being served on a life sentence. Judge Colquitt noted that when he was a trial judge they did rate life sentences as 30 years and the reason was because you become eligible, at least in my day, in 1/3 of your sentence or 10 years, whichever is less, and therefore a life sentence became eligible in 10 years, so it was equal or the same as a 30 year sentence. But eventually we will be looking at real data at what life sentences have been meaning over a more recent periods and once we have this we can remove assumptions and put in data. Dr. Meredith promised to do this and do some analysis to present to the Commission.

Ellen Brooks noted that the maximum penalty for manslaughter was 20 years and the table shows maximum time to serve is shown as 335 months – 27+years. Dr. Meredith stated that this was probably an error under the column showing no priors and she would look into it, as well as the missing data for possession of marijuana 1st.

Active Alabama Prison Population – (Page 5 PowerPoint handout)

Dr. Speir reviewed data on “active standing population” – a snapshot of who was in the prison population. As of August 2002, there are currently 27,528 state inmates including those in county jails and DOC facilities. Thirteen percent have been convicted of murder (#1 most frequent crime), 2,408 inmates are in the jail according to the last figures ARS has, about 1,000 of that group are concentrated among our top 5 offenders. About 198 felony DUI cases are still sitting in the county jails; of the active inmates felony DUI was 2nd. Looking at felony DUI, Dr. Speir stated that there has been a real increase in felony DUIs over the last few years (someone noted that it only went into effect in 1996). According to the data ARS has, there are 786 felony DUIs in the penitentiary where DUI is the most serious offense – of those 198 are in the county jail. What this tells us is that felony DUI is not a “silver bullet” that will resolve all of Alabama’s problems. It was reported that there were 1,400 felony DUIs in state custody. He researched that and found out that that figure represents

defendants with “a” felony DUI conviction – not necessarily the only offense – they may have other convictions; 1,400 is the “most serious” conviction.

Simulation Model

Dr. Speir explained the simulation model and the potential for forecasting that it will bring to Alabama and stated that he ran a sample simulation and found out that if you shut the doors and let no other person into the penitentiary for 5 years, based on the present active inmate population and time to serve you would still have a population of 13,000 – in ten years you would have an active population of 12,000. It was noted that the number of beds will vary depending on sentences imposed. Numbers may drop or increase. That is why simulation models speak in terms of “bed days.” This is what we will have to know to advise the Legislature on needs and legislative impacts and to determine priorities.

Questions/Ideas

Dr. Meredith asked the Commission to review the tables and present questions to her and John that they would like answered and could possibly be included in the Legislative report. Dr. Meredith proposed that they take the top 5 crimes to focus on for the report since they represent over ½ of the convictions. She noted that they tell you 1) that high volume is dealing with property, drugs and alcohol crimes; 2) they account for 22% of your inmate population and 40% of those walking in the front door of the prison; and 3) one in five of those people have no prior felony conviction – which is important when you are talking about alternatives to prison or building new prisons. In terms of admissions to DOC, we have seen a 140% increase over the last few years. We are also thinking about looking at theft of property statutes, receiving stolen property and looking at raising the level of value of property stolen and or received. (PSI survey form distributed, See *Attachment B*).

Another idea that Dr. Meredith mentioned was regarding drug possession – one out of four people that get time to serve have no prior felony convictions. What we want to know about these people are the quantity of drugs and we are going to get this information from Pardon and Parole PSIs. The PSI data collection is now going on, with Melisa and interns collecting those on inmates in the penitentiary and probation and parole officers collecting the information on others.

Reference Books

Applied Research Services is going to develop specific data books on the top 25 crimes with tables and graphs for each offense, showing who is getting non-prison sanctions, who is getting prison, what are the average sentences, what are the midpoints, what do sentence ranges look like for first offenders, disparity patterns, etc. This will be done over the next months and will be a reference point the commission members, not something that will be published.

Proposed Legislation – Parole Board

Wanda Jones, VOCAL

Victim’s advocate Wanda Jones addressed the Commission, presenting a proposed bill regarding the parole board that would add an educational requirement for board members and provide a disqualification mechanism for the recusal of board members and the filling of vacancies on the board when a member is sick or dies. She noted that in recusal situations a possible solution could be the use of administrative law judges. She also suggested a change in the law to allow the board to notify victims by means other than registered mail. Ms. Jones asked for the members to review the proposed bill and to let her or Bill Segrest with the Board of Pardons and Paroles know of any recommendations they may have. *Attachment C*

Miscellaneous

Other issues that were brought to the Commission’s attention were:

- Ted Hosp announced that a suit was filed yesterday on the constitutionality of the amendments to the Habitual Felony Offender Act.
- Rosa Davis stated that the Offender and Offense Seriousness Committees had completed their assignments and were not expected to have further meetings. She briefly reviewed the serious offender factors that had been identified and the goals she drafted for the Sentencing Commission. *See Attachment D.*

Some of the members questioned why there was a difference between the charge and goals included in the Commission’s enabling statute and the sentencing goals that Rosa was presenting. For example, the legislature charged the Commission to limit the DA’s discretion in charge bargaining. It was suggested that we not get too specific with goals since, to do so might cause the Commission to pick up “baggage that might be offensive to some.” Judge Rains said we could use the proposed goals in the Commission’s legislative report and say that the Commission also adopted these goals, along with the inclusion of cost aspects for achieving these goals. It was voted that we would include the proposed goals on the agenda for the Commission’s October meeting and would vote on them at that time.

- It was announced that a drafting committee needed to be formed to make recommendations for the legislative report regarding the development and implementation of voluntary guidelines, score sheets, truth-in-sentencing, parole and good-time/bad-time and post-incarceration supervision. Those named to serve on the committee to be chaired by Rosa Davis were: Judge David Rains, Judge Ben McLaughlin, Steve Glassroth, Ellen Brooks, Becki Goggins, Bill Segrest and Emily Landers. Rosa announced that the committee would meet Thursday and Friday, October 3rd and 4th and possibly October 11th and 18th.

There being no further business, the meeting was adjourned.

