Alabama Sentencing Commission
Drafting Committee

January 10, 2003
Proposed Minutes

Chairman Rosa Davis, Chief Assistant Attorney General and Attorney General Pryor's Appointee to the Sentencing Commission, called the meeting to order. Also present were:

- Hon. Ellen Brooks, District Attorney, 15th Judicial Circuit (Montgomery County);
- Cynthia Dillard, Assistant Executive Director; Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- John Hamm, Alabama Department of Corrections;
- Dr. Lou Harris, Faulkner University;
- Emily Landers, Alabama Governor's Office;
- Hon. David Rains, Judge, 9th Judicial Circuit (Cherokee and Dekalb Counties);
- Bill Segrest, Executive Director, Alabama Board of Pardons and Paroles; and
- Hon. Malcolm Street, Judge, 7th Judicial Circuit (Calhoun and Cleburne Counties).

Ms. Davis began the meeting by asking the committee to review the "violent offense" definition which was discussed at the Alabama Sentencing Commission meeting on December 13, 2002:

> *A violent offense is an offense that 1) has as an element, the use, attempted use or threatened use of a deadly weapon or dangerous instrument or physical force against the person of another; 2) involves a substantial risk of physical injury against the person of another; 3)is sexual in nature; or 4) is particularly reprehensible or heinous.*

Several members of the Drafting Committee expressed concern that the language relative to crimes that are "particularly reprehensible or heinous" could be too vague. This could allow local judges to have too much discretion in determining what constitutes a violent offense and could result in continued sentencing disparity in the context of the new voluntary guideline system. There was no consensus as to whether or not to strike this language in the final draft legislation submitted to the Sentencing Commission. However, the Committee did decide to move the Committee's general definition of violent offenses to the end of the paragraph in the bill which lists all of the specific offenses determined to be violent by the Committee and to include this as a policy statement of why these offenses were selected.

Next, Ms. Davis called the committee's attention to the section of the proposed legislation that defines the three punishment options which will be recommended to judges. These dispositions will be known as "active," "probation" and "intermediate" punishments. The Committee determined for the purpose of defining punishment options that split sentences should be included in both the active and intermediate categories. For instance, if a judge orders a

period of incarceration, the time spent by an offender in prison or jail should be considered as an active punishment. On the other hand, if a judge orders a probationary term as a part of a split sentence, then this should be classified as an intermediate punishment. Ms. Goggins indicated she would make these changes to the proposed bill, and these changes are reflected in the attached draft.

Additionally, the Committee suggested that the legislation should include a more comprehensive list of the types of punishment options that could be used as a part of an intermediate sanctioning program. These changes were made and are reflected in the attached draft.

The Committee discussed including a "fail safe" mechanism in the final draft of the proposed legislation that would ensure that parole would not be abolished in the event it is determined that judges are not significantly complying with the voluntary sentencing guidelines. There were two primary reasons for this concern. First, the state could face an unanticipated overcrowding crisis in its prisons if population projections are based on the errant assumption that guidelines will be followed. (i.e., if judges consistently render sentences that are longer than those suggested by the guidelines, the prison population growth rate will quickly exceed what is anticipated. With no parole possibility, there could be no way to avoid an overcrowding emergency.) Second, if there is no parole and certain judges frequently sentence offenders in excess of the recommended guidelines, then geographic disparity would continue to exist. Presently, the parole board can provide relief to offenders who are serving disproportionately long sentences compared to what offenders convicted of similar crimes would serve from other jurisdictions. The Committee agreed that the state should not adopt a significant policy change such as the abolition of parole unless it is clear that the issue of reducing unwarranted sentencing disparity is addressed.

Judge Rains suggested it might be a good idea to insert a provision stating that parole will not be abolished until there is at least 75 percent compliance with the guidelines. However, there was some concern that this would give the appearance that the state was moving toward mandatory guidelines.

Another idea that was suggested involved requiring judges who sentence offenders to a prison term that exceeds the maximum voluntary guideline sentence by 10 percent or more to reconsider the sentence once the offender has served the maximum time recommended. In the event a judge is no longer in office when the offender has served the maximum guidelines sentence, then his or her successor would be required to reconsider the sentence. Several members of the Committee noted that the Administrative Office of Courts (AOC) could set up an automated notification system that would inform judges when a case was due to be reconsidered. While the Committee did not make a specific decision as to how this process would work, the consensus was that requiring the reconsideration of sentences at some date in the future would definitely help reduce (if not eliminate) sentencing disparity.

There was no consensus as to how to ensure that there would never be a situation where the abolition of parole could have unintended negative consequences such as prison overcrowding and the perpetuation of sentencing disparity. However, the committee agreed that

before truth in sentencing guidelines are adopted the Sentencing Commission must carefully consider the effects of the abolition of parole and goodtime and the success of the initial guidelines to make sure that all of the goals of the sentencing structure are accomplished. If it does not appear the truth in sentencing goal will be met through voluntary guidelines, the commission should notify the legislature and recommend an alternative.

Ms. Brooks noted that some of these issues can be addressed through reclassification of some offenses felony offenses prior to the implementation of truth in sentencing. Ms. Davis reported that she felt this was true and that at least a partial rewrite of the criminal code probably would occur within the next several years to assist the implementation of voluntary guidelines.

Next, the Committee discussed how truth in sentencing sentences should be constructed to ensure that judges order both a minimum and maximum time that must be served in prison plus an adequate period of post release supervision upon the offender's release. The Committee decided that the judge should select a minimum term from the voluntary guidelines (based on a completed sentencing worksheet), then set a maximum term that equals 120 percent of the minimum term. Then, a judge should impose an additional period of time to be served under post release supervision. For example, a judge would impose a 60 month minimum term of incarceration accompanied by a 12 month period of post release supervision which would equal a maximum term of 72 months.

Next, the committee discussed how revocations from post release supervision would be handled. It was decided that in the event an offender was returned to prison or jail, the judge would set a period of confinement not to exceed the remainder of the maximum prison sentence imposed originally. For instance, if the defendant in the above example was released after serving 64 months, then the judge could order that the defendant serve up to an additional eight months in confinement. (i.e., 72 months minus 64 months equals eight months.) However, in the event an inmate serves the maximum imposed sentence prior to release and needs to have his or her release status revoked, then the judge may order a period of confinement not to exceed the amount of time ordered under post release supervision.

It was also determined that an inmate who is returned to custody after serving time under post release supervision should not receive prison or jail credit for time served while under post release supervision.

The Committee decided that anyone released from DOC custody should have an approved home plan in place prior to being placed back into the community. These home plans would have to meet the same requirements as those currently required for release by way of parole, and the Alabama Board of Pardons and Paroles would be responsible for developing and verifying these home plans. Inmates serving split sentences would be exempted from this requirement.

Mr. Segrest noted that while requiring home plans is a good idea, the state will have to provide additional resources in terms of additional probation and parole staff to conduct the investigative work and a statewide network of ½ way houses to accept inmates who otherwise

would not have a place to reside upon release. The Committee agreed that such resources would be needed, and Mr. Segrest agreed to develop cost estimates for these resource requirements.

Next, Ms. Davis asked the Committee whether or not the state's "three-mile" sentence enhancements (which allow judges to impose an additional five years of incarceration for drug distribution cases occurring within a three mile radius of a school or public housing authority) should be modified to reduce the radius to 500 yards (Code of Alabama, §13A-12-250 and §13A-12-270). While the Committee agreed that these sentence enhancements are too severe in many cases, the members determined that it would be better to leave the laws as they are today. This is because the Court of Criminal Appeals decision in Soles v. State of Alabama (CR-00-1429) effectively makes these enhancements discretionary. The Committee feared that any amendments to §13A-12-250 and §13A-12-270 would have the effect of making the sentence enhancement provisions mandatory once again, and the Committee thought it best to avoid this.

After the discussion regarding sentence enhancements, Ms. Davis asked the Committee whether or not the Sentencing Commission should be asked to propose a statewide pre-trial diversion act. Ms. Brooks noted that Montgomery County has had a very successful pre-trial diversion program since 1979 with only three percent of program participants committing a new crime. The Montgomery program operates under a state act of local application, and it was noted that several other counties have adopted pre-trial diversion models based on the one in Montgomery. The Committee did not reach a consensus as to whether a statewide pre-trial diversion law is desirable, however, it was agreed that these programs are effective and should be expanded.

Next, Ms. Davis asked Ms. Goggins to discuss a bill she had prepared which if adopted would establish a emergency release mechanism for inmates in the event state prisons become overcrowded as a result of future sentencing reforms. (Please see attachment.) No decision was made relative to whether or not the draft as circulated should be recommended to the Sentencing Commission to become a part of its sentencing reform package. However, there was a consensus that a "release valve" of some kind is needed in the event that the abolition of parole and/or failure to construct adequate prison facilities results in severe overcrowding.

Ms. Flynt reported that she planned to circulate a parole reform bill to the drafting committee during the week of January 13, 2003. She asked everyone to please review the bill prior to the next Committee meeting as it will be one of the first discussion items on the agenda.

Ms. Davis also reported that Maury Mitchell in the Attorney General's Office was preparing a first offender bill, and this too would be discussed at the next Drafting Committee meeting.

The attached copy of the proposed legislation reflects the committees' changes and recommendations made on January 10, 2003.

Ms. Davis concluded the meeting by reminding those present of several upcoming meeting dates:

- Friday, January 17, 2003 – Alabama Sentencing Committee Meeting;
- Friday, January 31, 2003 – Drafting Committee Meeting; and
- Friday, February 7, 2003 – Alabama Sentencing Commission Meeting.

There being no other business to discuss, the meeting was adjourned.