Alabama Sentencing Commission
Drafting Committee

January 31, 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;
- 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 draft of the "Alabama Sentence Reform Act of 2003" distributed at the beginning of the meeting.

Although not a part of the current draft legislation, Ms. Davis asked the group whether or not the drafting committee should work on a proposal for the Sentencing Commission to submit to the Legislature that would establish a cabinet level position to oversee the operations of the state's probation, community corrections and corrections agencies. The goal would be to establish a "super agency" charged with overseeing all punishment options available to the state's criminal justice system. Ms. Davis noted several other states she has studied – Georgia, North Carolina and Virginia – have a unified "corrections" system, and this organizational structure appears to have several distinct advantages.

First, a united "corrections" agency would be better equipped to make policy and budgetary recommendations based on the needs of the corrections system as a whole. Presently, probation, community corrections and the state's prison system must all compete for scarce financial resources within the budgetary process. If these functions could be merged, the result would be to present a budget to the Legislature that reflects the needs and priorities of the system as a whole – not just a single agency or department.

Second, information sharing could be improved. Under the existing system, separate files and databases are maintained by Pardons and Paroles, the Department of Corrections and local community corrections providers. When an offender is transferred from one entity to another for supervision, a new "file" has to be created or re-entered upon his or her entry into the program or facility. This inefficient in terms of manpower, and it increases the potential for errors in recording information. Establishing a unified system of offender supervision and incarceration

would increase efficiency in such areas as client intake, case management, accounting and data entry.

According to Ms. Davis, one way to structure the new "super agency" would be to set up a department with three divisions – probation/community corrections, institutions (prisons) and parole/post-release supervision. Under this concept, the parole board would no longer oversee the day to day operations of probation and parole field services. Rather, the parole board would become a stand alone agency with a small docketing staff and would only be charged with making release and parole revocation decisions.

Ms. Davis also indicated that in some states the Department of Public Safety and the Criminal Justice Information Center also fall under the umbrella of a single criminal justice agency. Mr. Segrest noted that Louisiana has this type of fully unified system.

No consensus was reached relative to whether or not the Committee should recommend that Alabama adopt either version of a unified criminal justice system. However, Ms. Davis indicated that she would continue to explore this concept, and she asked that the other members give this matter additional thought.

Next the Committee discussed what types of punishment should be authorized in the definitions section of the proposed sentencing reform legislation. After some deliberation it was decided that under the proposed sentencing guidelines there should be three basic dispositions recommended to judges – Incarceration, Intermediate Punishment (Probation and Community Corrections) and Probation. The intermediate punishment category would be the broadest category and would include all of the various punishment options currently available through either Pardons and Paroles staff and local community corrections providers. The only non-incarcerative option falling outside of the intermediate punishment category would be court supervised probation which does not include any reporting requirements or other restrictions for individuals sentenced to this type of probation.

After this discussion, the Committee was asked to determine whether or not Felony DUI should be included as a "violent" offense within the definition in the proposed sentencing reform legislation. Several members thought this offense should be considered for inclusion because of the dangerousness of driving under the influence of drugs or alcohol. Several other members opposed including Felony DUI, because – while dangerous – the act of driving under the influence is not inherently necessarily violent. Ms. Brooks and Dr. Harris explained that in the event a person driving under the influence harms another person the offense would be charged as an assault or vehicular homicide – not driving under the influence – and the defendant would be classified as a violent offender anyway. Once those present had a chance to state their position on the Felony DUI issue, the Committee voted to omit this offense from the definition with the understanding that the Sentencing Commission and the Alabama Legislature would ultimately be charged with making this decision.

The Committee next discussed whether or not drug trafficking should be included within the violent offense definition. Several members argued it should be included because of the societal harm cause by drugs and drug addiction. Others favored omitting trafficking from the violent

offense definition and including only those convicted under the "Alabama Drug Trafficking Enterprise Act" (Section 13A-12-233, Code of Alabama). Several committee members noted that most individuals charged with drug trafficking are "mules" who are only responsible for transporting drugs – not major drug dealers.

After deliberating this issue at length, the Committee voted to include drug trafficking within the proposed violent offender definition. However, the Committee decided that it would also recommend a review of the state's trafficking statutes to see if changes need to be made concerning the quantities of drugs required to constitute drug trafficking under state law.

Next, Mr. Segrest indicated that if probation officers are going to be responsible for preparing sentencing worksheets under the new guidelines, then there needs to be a provision added to the Code of Alabama allowing probation officers to conduct investigations of defendants prior to adjudication. Ms. Brooks noted that she would have reservations about allowing probation officers access to the District Attorney's Office case file prior to a defendant's guilty plea. She indicated she would prefer that the district attorney and defense attorney complete the pre-sentencing worksheets under the new voluntary guidelines system. After this discussion, there was no consensus relative to who should complete the worksheets. *Author's Note: As the proposed legislation is currently drafted, a probation officer would be allowed to complete the sentencing worksheets. If this provision is to remain, the law concerning pre-sentencing investigations performed by probation officers needs to be changed as per Mr. Segrest's suggestion.*

After this discussion, Ms. Davis called the Committee's attention to the amendments to the felony theft statutes the Sentencing Commission plans to recommend to the Legislature. (The draft legislation concerning this issue was distributed by mail to Commission members.) Ms. Brooks noted that there are several other theft statutes sprinkled throughout the criminal code, and suggested that these need to be made consistent with those threshold amounts being recommended. Examples include: Criminal Mischief, Charitable Fraud, Illegal Possession of Food Stamps, Offenses Against Intellectual Property, Offenses Against Computer Equipment or Supplies, etc. The Committee agreed that these offenses should be made consistent with other theft offenses. Ms. Brooks indicated she would have someone on her staff perform a code search on similar offenses and report back to the Committee.

Several members of the Committee wanted to know if the new thresholds should be applied "retroactively" for the purposes of future sentence enhancements based on prior convictions. For instance, if a defendant was previously convicted of Theft of Property II where the value of the item stolen was $300, should this still count as a previous felony conviction even though the crime would no longer be a felony under the new law? The Committee agreed that previous convictions should be counted based on the offense definition at the time the offense was committed.

Next, the Committee discussed whether or not it should recommend modifying or repealing the Habitual Felony Offender Act (HFOA). The Committee agreed that under the voluntary guideline sentence guidelines an offender's prior criminal history would be a major factor in determining the recommended sentence duration and disposition to be imposed by the sentencing

judge. However, the Committee did not reach a consensus as to whether or not the HFOA should be repealed. This was because there was insufficient information at the time to determine 1) the actual number of offenders sentenced under the HFOA and 2) what the HFOA's impact on historic sentencing practices has been. The Committee did not rule out repealing the HFOA in the future, but the decision will depend on the information currently being compiled and analyzed by Applied Research Services (ARS) in Atlanta.

Ms. Davis also asked the Committee whether or not the Sentencing Commission should present a bill during the upcoming legislative session concerning the retroactive application of the 2000 amendments to the Habitual Felony Offender Act. (House Bill 61 was passed in 2001 that sought to apply the changes retroactively, but this Act has been deemed to be unworkable.) Ms. Davis indicated a new proposal seeking to apply the amendments of the HFOA is likely to emerge from the Legislature, and it might be wise for the Sentencing Commission to have a proposal it could submit in the event another untenable bill is introduced. The Committee decided that more information was needed prior to making a decision on this issue.

Ms. Brooks suggested that the Committee should take a look at the number of offenders who would have been impacted by HB61 had it been properly constructed. Ms. Dillard volunteered to ask the Department of Corrections to run a list of the 49 drug and property offenders serving life without parole sentences under the HFOA who were convicted prior to its amendment to see how many might qualify as nonviolent offenders in order to have their sentences reviewed. Ms. Brooks also asked if it would be possible to determine how many Class A felons are serving a sentence of life without parole who do not have a previous conviction of a Class A felony. (This would be the other potential pool of inmates who might stand to benefit from the provisions of HB61.) Ms. Davis noted that this information should be available through ARS, and this information would be made available to the Committee prior to making a decision regarding this issue.

The Committee also discussed the fact that the penalty for a Class B felony with three prior felony convictions was changed by the 2000 amendment to the Habitual Felony Offender Act. There was a short discussion relative to reviewing these inmates to see what the potential impact of applying the new provisions retroactively would be. However, the Committee noted that since offenders sentenced under the old law are already eligible for parole, there was no need to revisit these sentences.

At the beginning of the meeting, Ms. Davis had distributed a concept paper outlining a process by which inmates could be reviewed for possible retroactive application of the HFOA as amended. Judge Rains asked if the ARS consultants could use the newly developed inmate simulation model to determine the impact of this proposal. Ms. Davis said they could and indicated she would ask about this and report the findings back to the committee.

Ms. Goggins suggested that the Committee may wish to consider replacing the present Habitual Felony Offender Act with a Habitual Violent Offender Act. Judge Rains noted that if a decision was made to decrease penalties for nonviolent habitual offenders, then the Committee should offer a companion recommendation to increase penalties for violent offenses.

Finally, the Committee discussed draft legislation which would: 1) set minimum qualifications for members of the parole board; 2) establish a mechanism to allow board members to recuse themselves from hearings; and 3) create three alternate parole board positions which would allow hearings to be held in the event a regular board member recuses himself from a hearing or is otherwise unable to be present for a hearing.

The Committee decided to recommend that **all** parole board members and alternates should be required to have a four year college degree and at least five years of related criminal justice experience in order to be nominated for the parole board. The draft bill as distributed created an exception for one board member based on "exceptional qualifications or aptitude." The Committed rejected this notion in favor of making the job requirements consistent for everyone. The Committee opted to recommend the remainder of the draft legislation as circulated.

The attached copies of the proposed legislation reflect the committees changes and recommendations made on January 31, 2003.

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