

**Alabama Sentencing Commission
Drafting Committee**

**December 12, 2002
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:

- Cynthia Dillard, 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); and
- Hon. Malcolm Street, Judge, 7th Judicial Circuit.

Ms. Davis began the meeting by asking the committee review the list of Alabama offenses circulated at the beginning of the meeting to determine which ones should be considered as "violent" for the purposes of implementing the "Sentencing Reform Act of 2003." When deciding which offenses should be classified as "violent," Ms. Davis asked the group to use the following definition:

"A violent offense is an offense that 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."

Ms. Davis explained that the definition of "violent offense" would be different from that of a "violent offender" for the purpose of making sentencing and release decisions – with a violent offender being somewhat more broadly defined. The consensus of the group was to adopt the following definition for a violent offender:

*"A violent offender is one who is convicted of a violent crime as defined above **or** one who is determined by the trial court or release authority to have demonstrated a propensity for violence, aggression or weapons related behavior based on the defendant's criminal record and/or behavior while under criminal justice system supervision."*

Ms. Landers asked if sentences would be based on the offense as charged or as convicted (in the event of a plea bargained charge reduction) for the purpose of determining a sentence under voluntary guidelines. Ms. Davis explained that the offense for which the defendant was convicted would determine the sentence imposed. However, the sentencing judge would be able to use the defendant's behavior during the commission of the crime as a factor to enhance the sentence imposed.

Ms. Davis indicated that in the future the list of violent crimes – once adopted by the Sentencing Commission – may be used to fashion a workable proposal for retroactively applying the provisions of the Habitual Felony Offender Act. The drafting committee did not reach a consensus as to whether or not to pursue this issue, and Ms. Davis said that the matter would be held for discussion at a later date.

Ms. Davis also noted that this list will be helpful when the Sentencing Commission begins the process of trying to identify for the Legislature the potential number of offenders who could safely be diverted from the prison system each year. In addition to this list of crimes, The Sentencing Commission will use several risk assessment instruments currently used by the Department of Corrections (DOC) and Board of Pardons and Paroles to determine what percentage of DOC admissions would likely be good candidates for a less restrictive sanction.

The Committee suggested that Ms. Davis should include a definition in the proposed Sentence Reform Act of 2003 that states that a “nonviolent” offense is any offense not listed as a violent offense. This definition, however, should not preclude a defendant convicted of a nonviolent offense from being categorized as a violent offender by the trial judge or prison release authority.

Next, the Committee reviewed the list of potential list of violent crimes provided by Ms. Davis and determined that the following offenses should be classified as violent:

1. Homicide - Murder, Section 13A-6-2, Class A Felony;
2. Homicide - Capital Murder, Section 13A-5-39, Class A Felony;
3. Manslaughter (Reckless) - Section 13A-6-3 (a)(1), Class B Felony;
4. Assault I - Section 13A-6-20, Class B Felony;
5. Assault II - Section 13A-6-21(a)(1) , Class C Felony;
6. Assault II - Section 13A-6-21(a)(2) , Class C Felony;
7. Assault II - Section 13A-6-21(a)(6) , Class C Felony;
8. Kidnapping I - Section 13A-6-43, Class A Felony;
9. Kidnapping II - Section 13A-6-44, Class B Felony;
10. Rape I - Section 13A-6-61, Class A Felony;
11. Rape II - Section 13A-6-62, Class B Felony;
12. Sodomy I - Section 13A-6-63, Class A Felony;
13. Sodomy II - Section 13A-6-44, Class B Felony;
14. Sexual Torture - Section 13A-6-65.1, Class A Felony;
15. Sexual Abuse I - Section 13A-6-66, Class C Felony;
16. Enticing a Child to Enter a Vehicle, Etc. for Immoral Purposes - Section 13A-6-69;
17. Stalking - Section 13A-6-90, Class C Felony;
18. Aggravated Stalking - Section 13A-6-91, Class B Felony;
19. Soliciting Child by Computer - Section 13A-6-110, Class B Felony;
20. Domestic Violence I - Section 13A-6-130, Class A Felony;
21. Domestic Violent II - Section 13A-6-131, Class B Felony (Only in cases where the assault would have been considered violent under Section 13A-6-21.);

22. Burglary I - Section 13A-7-5, Class A Felony (Except in cases where a firearm or deadly weapon was not present upon entry and there was no use, attempted use, implied use or threatened use of a weapon during the commission of the crime or the flight therefrom.);
23. Burglary II - Section 13A-7-6, Class B Felony;
24. Burglary III - Section 13A-7-7, Class C Felony (In cases where the defendant's intent was to commit a violent crime.);
25. Arson I - Section 13A-7-41, Class A Felony;
26. Criminal Possession of Explosives - Section 13A-7-44, Class C Felony;
27. Robbery I - Section 13A-8-41, Class A Felony;
28. Robbery II - Section 13A-8-42, Class B Felony;
29. Robbery III, Section 13A-8-43, Class C Felony;
30. Pharmacy Robbery, Section 13A-8-52;
31. Use of Physical Force of Deadly Weapon or Instrument in Escaping or Attempting to Escape - Section 13A-10-31(a)(1), Class B Felony;
32. Intimidating a Witness - Section 13A-10-123, Class C Felony;
33. Intimidating a Juror - Section 13A-10-127, Class C Felony;
34. Treason - Section 13A-11-2, Class A Felony;
35. Killing a Police Dog - Section 13A-11-15, Class C Felony;
36. Promoting Prostitution I - Section 13A-12-111, Class B Felony; and
37. Production of Obscene Matter Involving a Minor - Section 13A-12-197, Class A Felony.

The Committee was split in its decision as to whether or not to include the following offenses in its list of violent crimes in its report to the Sentencing Commission: 1) Manslaughter committed in the heat of passion and 2) Theft of Property I when the theft is from the person of another.

Next, Ms. Davis asked the members of the committee to review the "continuum of punishments" outline she had prepared for inclusion in Section II, Paragraph I of the draft of the Sentencing Reform Act of 2003. She asked those present to make suggestions for what types of punishment options need to be included in this section.

The Committee also reviewed the "Considerations for Legislation" document that Ms. Davis distributed. (Changes are italicized on the attached draft.)

The next Drafting Committee meeting will be held on Friday, January 10, 2003. There being no other business to discuss, the meeting was adjourned.