Alabama Sentencing Commission
Drafting Committee

February 14, 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;
- Stephen Glassroth, Member, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Dr. Lou Harris, Faulkner University;
- Emily Landers, Alabama Governor's Office; 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. (The attached copies of the proposed legislation reflect the committees changes and recommendations made on February 14 2003.)

Specifically, Ms. Davis called the group's attention to several questions and comments made by Joseph Colquitt, Retired Judge (6th Judicial Circuit) and Chairman, Alabama Sentencing Commission. First, Judge Colquitt asked the Committee whether or not it was advisable to limit "violent" offenses committed in other states to our definition of violent offenses. He suggested it might be better to for Alabama to count an out-of-state offense as violent only in cases where the other state has defined the offense violent. The Committee decided it would be best to use Alabama's definition of violence when making a determination as to whether or not an offender has committed a violent offense as other state's may have a more or less restrictive definition for use in their own state.

Judge Colquitt also suggested that the Drafting Committee might want to review North Carolina's law requiring its Sentencing Commission to review and comment on legislation affecting the criminal justice system prior to its passage in their state Legislature. (Section III, Paragraph (j) in the draft legislation.) Ms. Davis noted that North Carolina appeared to have a good model for how this process should work, and she suggested it would be a good idea to review their statute. The Committee agreed that at the next meeting this part of North Carolina's sentence reform legislation should be discussed.

Judge Colquitt suggested removing the language in Section IV, Paragraph C that states that the voluntary truth in sentencing standards "shall become effective…following the legislative session in which the modifications are presented, unless rejected by an act of the legislature during the session in which the modifications are presented." He advised that this provision

would be unpopular with legislators and could result in the bill's failure to pass. Judge Street explained that this was the way judicial pay raise legislation had worked in the past, and he noted this type of mechanism was unpopular with the many members of the current legislature. Ms. Davis noted that this provision could be removed in the future in the event it becomes clear that it is unpopular with legislators, and the consensus of the Committee was to leave the language "as is" for the present time.

Ms. Brooks noted that she is still uncomfortable with the language on page 14, Section V, Paragraph A that states, "Sentences imposed pursuant to voluntary truth in sentencing standards shall not be subject to any other provision of law concerning the duration of sentence." Specifically, the bill as drafted would make it possible for judges to sentence outside of the statutory ranges set forth in §13A-5-6 (relating to punishments for felonies), §13A-5-9 (relating to punishments for habitual offenders), and other sections in the Code of Alabama relating to the length of sentence to be imposed. Ms. Brooks advised those present that she thought it would be preferable to re-classify felonies and change the statutory ranges of punishment authorized – as opposed to setting up a "loophole" to get around the statutory ranges. Ms. Davis explained that a rewrite of the criminal code would probably be forthcoming. In fact, the data being compiled by the Sentencing Commission will most likely provide the basis for a rewrite to occur. However, this will be a long-term project, and this language will be needed until such a rewrite can be accomplished. The consensus of the Committee was to leave the language as drafted, but to continue to consider the possibility of an eventual rewrite of the criminal code and reclassification of felony offenses.

Next, the Committee discussed several proposed changes to the Community Punishment and Corrections Act – specifically the section requiring the county to collect earnings from "inmates" sentenced to community corrections programs. (Section 15-18-180, Paragraph F.) The Committee noted that the requirement for the employer to turn over an offender's wages to the county was largely unworkable and rarely (if ever) enforced. For one thing, the county should not be required to perform these financial tasks on behalf of community corrections clients – the county stands to gain very little from what could amount to establishing and maintaining a potentially massive accounting system. Rather, in counties with residential community corrections programs, collecting paychecks and distributing proceeds should be the responsibility of the local community corrections provider. Additionally, clients in non-residential programs should be responsible for making their own payments to the community corrections provider and the circuit clerk's office.

After considerable discussion, the Committee recommended changing this part of the Community Correction Act to make this section apply to only those offenders serving time in residential programs. Additionally, the Committee suggested making the community corrections provider – not the county – responsible for collecting and disbursing inmate wages.

The Committee also noted that in the future it would be desirable to require community corrections officers to have arrest powers. Ms. Flynt noted that this idea would likely be opposed by the Alabama Association of Community Corrections. The Committee noted that this requirement still needs to be explored, but there was no consensus to include this provision in the legislation being prepared for submission to the legislature during the upcoming session.

However, the Committee expressed its desire to revisit this issue as many of those present believed that requiring community corrections officers to have arrest powers would be desirable.

Ms. Davis noted that the Sentencing Commission soon would be asked to begin exploring the concept of moving probation and parole services out from under the control of the parole board and merging these services with community corrections services. This would create a unified "field services" department overseeing all offenders under community supervision. Such an organizational structure could help to avoid duplication of services, lead to increased consistency in the level of community based punishment services throughout the state and improve accountability. The Committee agreed this idea had considerable merit and noted that it should be explored for implementation in Alabama.

Ms. Landers suggested that as community corrections continues to expand in Alabama efforts need to be made to ensure that victim notification procedures are consistent throughout the state.

Next, the Committee discussed who should be responsible for handling revocation procedures once a new "post release supervision" system is in place. There was a discussion as to whether revocation hearings should be handled by the parole board or the sentencing judge. After several minutes of discussion, the consensus was that the sentencing judge should hold revocation hearings when necessary. This is because the term of post release supervision will actually be a part of the sentence – therefore it is more appropriate to allow the judge to make return to custody decisions.

The Committee also discussed whether or not offenders should receive credit for time spent on post release supervision in the event their release status is revoked. The consensus of the Committee was to not award credit for time spent under post release supervision. For instance, if an offender has served 10 years with two years of "bad time" left on his or her original sentence, then the judge may order the person to serve up to the full two years upon having his or her release status revoked. This would be true no matter how much time the person had been under post release supervision.

Ms. Landers noted that several victims' advocates had expressed their continued concern with the draft legislation which would make changes to the parole board. She suggested a meeting between several victims and members of the Drafting Committee for February 19, 2003 and invited everyone present to attend. Several members of the Committee expressed an interest in participating in this meeting, and Ms. Landers volunteered to make the necessary scheduling arrangements.

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