

# Alabama Sentencing Commission Legislative Committee

## Minutes of January 7, 2004 Meeting

Dr. Lou Harris, Chair of the Sentencing Commission's Legislative Committee called the meeting to order. Also present were:

- Sharon Bivins, Legislative Fiscal Office
- Rosa Davis, Chief Assistant Attorney General and Commission member
- Judge Jerry L. Fielding, Circuit Judge, Talladega
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Bill Segrest, Director, Board of Pardons and Paroles
- Suzanne Webb, Director, Constituent Affairs, Office of Attorney General

Dr. Harris began the meeting by distributing the agenda of bills to be considered to the committee members. After explaining the main provisions of each proposed bill, noting the action taken by the Legislative Committee of Association of Community Corrections, and discussing the merits and disadvantages of each, the members made the following recommendations:

(Vote of Legislative Committee of the Community Corrections Association also noted)

### 1. Supplemental Appropriations for Community Corrections

**The Committee discussed the need to pursue this bill because funding had been a major part of our Community Corrections bill and is required before DOC establishes a Community Corrections Division and appoints a full-time Director. \$2.9 million was line itemed in DOC's budget for Community Corrections and the \$2.6 million requested in this bill will provide DOC with the \$5.5 million originally requested. APPROVED**

*The Legislative Committee of CCA unanimously approved and strongly encouraged that this bill be a priority in the legislative package presented by the Sentencing Commission this year because funding of community corrections programs is essential for state-wide expansion and is a fundamental part of the Commission's 2003 Sentencing Reform Legislative package.*

### 2. Bondsman's Process Fee for Community Corrections

**A recommendation was made that the Code section, establishing the State-County Community Corrections Partnership Fund be referenced rather than Act 2003-353, throughout the bill.**

**It was suggested that the Commission staff contact the Clerk's Association to obtain their approval and also contact the President of the Bondsmen Association to determine if they would oppose the assessment of a fee. APPROVED**

Lynda contacted the President of the Bondsmen Association, Sonny Kyle Livingston, and he advised that the members of the Association did not oppose a \$15 bondsmen's process fee being assessed in District and Circuit Courts but did oppose the fee being collected in Municipal Courts unless the funds were required to be distributed to the State-County Community Corrections Partnership Fund.

*The Legislative Committee of CCA unanimously approved and requested that this bill be a priority in the legislative package presented to the Legislature by the Sentencing Commission during the 2004 Regular Session. Changes were made from the original proposal to clarify that the bondsmen's process fee be deposited in the State-County Community Corrections Partnership Fund and governed by the provisions of § 15-18-186, Code of Alabama 1975.*

### **3. Probation Revocation Fee for Community Corrections**

**The Committee made the following recommendations: 1) Change to provide that the fee was to be assessed "upon the filing of a petition for revocation" rather than as originally drafted, "Upon entry of revocation of probation." 2) A provision should be added to make it mandatory that these fees be collected out of an inmate's PMOD account.**

**Although there was a discussion on whether to include fees for Municipal Courts, to increase funds in the Municipal General Funds and to gain their support for the bill, it was decided that because this bill is primarily to provide monies for the State-County Community Corrections Partnership Fund, it would be preferable for the Commission Staff to notify the Municipal Court Clerk's Association and make them aware of this bill in the event they want to pursue a separate bill of their own.**

**Staff was requested to check on the number of revocation petitions filed in the last year to help determine an estimate of the amount of money that might be generated from this bill.**

**APPROVED WITH AMENDMENTS**

*The Legislative Committee of CCA approved this bill as originally drafted.*

### **4. Additional Drug Fee – Amendment of § 36-18-7**

**The Committee reviewed the provisions of § 36-18-7 which now assesses an additional fee of \$100 on all convictions for drug possession, drug sale, drug trafficking and drug paraphernalia offenses for deposit in the Forensic Services Trust Fund, to determine if an additional amount might be added as a separate fee**

to help support the statewide expansion of Community Corrections programs. After considering the needs of the Department of Forensic Sciences, the additional fees also assessed on these defendants by the Demand Reduction Assessment fees, along with the court costs that are assessed, the Committee voted not to pursue assessing an additional drug fee.

**REJECTED**

*The Legislative Committee of CCA also rejected this proposed amendment for the same reasons noted by the Commission's Legislative Committee, noting that any additional fees on drug addicts and defendants with drug abuse problems would be an additional burden that would only hinder rehabilitation efforts.*

**5. Amendments to Community Corrections Punishment Act (CCPA)**

**Increase in % Deducted from Wages for Community Corrections - REJECTED**

The Committee discussed the need to amend § 15-18-180 of the CCPA to increase the % now authorized to be deducted from an inmate's wages for costs of confinement in a residential facility. After discussing the fact that a total of 45% is now deducted [an additional 20% is deducted for fines, court costs, attorney fees and restitution (10% for costs and fees and 10% for restitution) and comparing the percentages now authorized to be deducted for state work release (40%) county work release (25%) and municipal work release (20%), the committee voted not to increase the amount now authorized.

*The Legislative Committee of CCA also rejected this proposal.*

**Administrative Expenses of DOC specified in § 3**

The Committee reviewed the provisions of Section 3 contained on page 16 of the handout to determine if specific wording needed to be added to ensure the administrative costs associated with Community Corrections programs incurred by the Department of Corrections could be paid from the funds in the State-County Community Corrections Partnership Fund. The committee determined that the existing language is broad enough to authorize payment of these costs. The Committee also reviewed this section for other needed changes and determined that none were needed.

**NO CHANGES RECOMMENDED**

*The Legislative Committee of CCA believed no change was needed in this section. Reviewing the other parts of the Act, the Committee did recommend that § 15-18-175 be amended to authorize a judge to reduce Good time and restore Good Time, the same as the DOC. This amendment was made and presented the next day to the Legislative Committee of the Alabama Sentencing Commission.*

*There was also an extended discussion of other parts of the Act. Bill Strickland recommending deleting the provision now prohibiting defendants on community corrections to receive parole. The Committee voted against a change, after David Horn explained that the problems they had encountered were worked out administratively.*

*There was also a discussion regarding the defendants that are eligible for diversion or sentencing to community corrections. After reading the entire provisions of the act [specifically the definitions in § 15-18-171(13) and (14) relating to eligible offenders and excluded offenders], the committee members agreed that there was no ambiguity in §15-19-175 (b) and (c). No change was recommended.*

**Amendment of § 15-18-175 (d)((3) to authorize reduction of Good Time by Judge and authorize judge to restore GT.**

**The Committee abstained from voting on this bill, indicating that they needed more input from trial judges. It was agreed that this bill would be presented to the Commission for consideration. TABLED**

*This was a recommended amendment of the Legislative Committee of the Community Corrections Association, based on the fact that they thought a judge should have as much authority as the DOC over these defendants. The recommendation was made after a discussion of the problems encountered when community corrections offenders with a short release date (due to Good Time) violate a condition of participation in the program.*

**6. Amendment of § 15-22-30 - Increase in Pardon and Paroles Residential Fees**

**Bill Segrest requested that the Sentencing Commission also include a bill in its legislative package amending § 15-22-30 to increase the fee charged any resident (probationers and parolees) residing in community residential facilities from 25% to comport with the amounts now provided in 15-18-80. The Committee approved this proposal in regard to parolees. Adding probationers was not discussed. APPROVED**

*This bill was drafted based on the recommendation of the committee. Since the proposal was made in the Legislative Committee meeting of the Sentencing Commission, the Association of Community Corrections Legislative Committee did not consider.*

**7. Amendment of Split Sentence – Hollis Case**

**The Committee reviewed the opinion of Hollis v. State, 845 So.2d 5 and agreed that amendment was necessary to clarify the continuing jurisdiction of the trial court over defendants who have completed their incarceration term and are now serving the probation part of the split sentence, to ensure that the judge has options on revocation other than simply revoking and incarcerating the parolee for the**

remainder of the sentence. Also, based on (dicta?) in another appellate case the bill will ensure that a reverse split is authorized. *APPROVED*

*The Legislative Committee of the Community Corrections Association also agreed that this bill was needed and approved the amendments, contingent on approval of the judges.*

## **8. Increased Fines for Felony Offenses**

### **Fine increase by 300%**

The Committee discussed increasing the fine amount to present value, which would be 300% of the current amount. It was pointed out that even with this increase the judge retains discretion to impose any amount of fine and that this amendment would simply authorize a larger fine in appropriate cases. Some committee members objected to this large of an increase because nonpayment of a large fine would make it impossible for the offender to have his voting rights restored. The Committee approved the fine amounts in the bill as drafted, with increase justified based on inflation index. *APPROVED*

*The Legislative Committee of the Community Corrections Association approved the bill, provided the increase was not 300% of the existing fine authorized. The Committee requested that the fines of other states be examined and compared with Alabama's to determine an appropriate amount. It was noted that of the states that were polled, many had fine amounts that had not been amended in many years, just as Alabama.*  
*APPROVED WITH MODIFICATION*

### **Fine Authorized Not Less than full Street Value of Drug Involved**

While approving the provision relating to the authorization of a fine not less than the full street value of the drug involved in an offense (drafted based on an Illinois statute that had a mandatory provision), the committee noted that this would require testimony on the street value and may be opposed by prosecutors and attorneys. *APPROVED*

*The Legislative Committee of the Community Corrections Association approved this provision.*

### **Definition of "Gain" - Exception for drugs**

The committee reviewed and approved the amendments to section (1)(a)(4) of § 13A-5-11, page 2, line 4, excepting controlled sentences from the definition of "gain," since as presently worded ("the value of property derived from the commission of the crime, less the ...value of property....seized or surrendered to lawful authority prior to the time sentence is imposed"), there would never be a gain derived for any drugs seized. A similar exception was noted in the statute setting fines for misdemeanors (p. 3, lines 7-8) for marihuana seized and involved in the commission of an offense. *APPROVED*

*The Legislative Committee of the Community Corrections Association approved this provision.*

## **9. Habitual Felony Offender Act**

### **- Applicable only to repeat violent offenders**

**After reviewing both proposals, the majority of the committee voted, as a first preference, to amend the Habitual Felony Offender Act to make it applicable only to violent offenders, as that term is defined in the Sentencing Reform Act. In lieu of listing these offenses in the bill, the committee recommended referring to the statute that defines “violent offender” and “violent offense,” § 12-25-32. Code of Alabama 1975 (Cum. Supp. 2003). This amendment would be prospective only. APPROVED**

*The majority of the Legislative Committee of the Community Corrections Association approved this bill provision as their first preference, with the suggestions that the bill reference the violent offense/offender definitions in the Sentencing Reform Act, rather than listing each offense. APPROVED*

### **- Weighing Priors by Classifications**

**As an alternative, the committee approved the idea of amending the Habitual Felony Offender Law to weigh the priors, according to classification (A,B,C) for felons with one and two priors. Because the Legislature recently amended the HFOA for felons with three prior felonies and only considered the classification of priors for those who are subsequently convicted of a Class A felony and because these type offenders should be sentenced more harshly, the committee suggested that these provisions not be amended. Data was requested on the affect of implementing both provisions and more research conducted on states with decaying provisions, i.e., limiting the consideration of priors to those that occurred within a certain period of time.**

*The majority of the Legislative Committee of the Community Corrections Association approved this bill as an alternative to the amendment applying the HFOA to violent offenders only. Data was requested on the effect of implementing both provisions and more research requested on states with decaying provisions, i.e., limiting the consideration of priors to those that occurred within a certain period of time.*

## **10. Medical and Geriatric Release**

**The bill presented to the Committee is a revised bill, amended in attempt to address some of the concerns that had previously been noted by Pardon and Paroles and the Department of Correction. In reviewing this new proposal, Bill Segrest advised the Committee that staff attorneys for the Board had noted several problems with this draft. Some of the specific problems mentioned were: 1) It creates a liberty interest in release; 2) Time constraints are mandatory and would result in liability of the department if unable to comply; 3) Inadequate provision for defendant’s with existing**

conditions at the time of the offense 4) Would require the Board to approve medical care plans; 5) mandates parole conditions 6) time limits are unrealistic in view of existing requirements for notifying victims and victims families since often time there is not name and/or address for the victim; 7) Medical and geriatric release is now authorized for most inmates (not those serving life without parole and there are no time limits set upon receipt of applications); and this bill is really just shifting the expenses of inmates from DOC to federal and state agencies.

The general consensus of the committee was that a Medical/Geriatric Release bill was needed, but the Board should be given the opportunity to suggest changes in the provisions with which they have problems. The committee requested Bill Segrest to ask the Board lawyer(s) to review and provide specific language that could be added to address their concerns. It was suggested that the time provisions on page 5, section G could be remedied if the notice provisions they are proposing in their Parole Reform bill were included. It was also suggested that language be included to ensure that notice is provided to the prosecutors and judges and that an adequate provision is included addressing revocations of medical and/or geriatric parole.

#### Age 60 or 65?

There was a discussion on whether the term “geriatric inmate” should be defined as an inmate who is 60 or 65 years of age or older (along with the other qualifying requirements, i.e. chronic infirmity, illness or disease relating to aging). The committee unanimously voted for age 65.

The committee asked how many of the active inmate population are 60 or over. David Horn of the Department of Corrections advised the staff of the Sentencing Commission that, as of this week, there were 620 inmates 60 years of age or older and 356 inmates 65 years of age or older. David is researching the number of ill and infirm inmates, and attempting to determine how many might be considered terminally ill. He advised that between 8-12 inmates die per month from natural causes. He will provide further data to the Commission, including the costs incurred by the Department in caring for inmates that might qualify for release under the provisions of this bill

#### Death within 6 months or 12 months?

The majority voted that the definition of “terminally ill inmate” should be one with an incurable condition that would, within reasonable medical judgment, produce death within 12 months. Judge Fielding voiced a strong dissent, and requested that it be noted in the minutes.

**APPROVED CONCEPT – REVISED PROPOSAL FROM BOARD TO BE PRESENTED TO COMMISSION**

*The Legislative Committee of the Association of Community Corrections approved the bill but requested that David Horn of the Department of Corrections provide the Committee and Association with data regarding the number of inmates and costs incurred by the Department for those that may qualify for release under the bill’s provisions. APPROVED*

**11. Marihuana Possession**

**The Committee approved this bill, but requested that the Sentencing Commission provide an impact statement on this bill. It was noted that according to the Commission's cohort, 328 inmate per year were sentenced for possession of marijuana and of these, perhaps 1/3 were repeat offenders. APPROVED**

*The Legislative Committee of the Association of Community Corrections approved the bill. APPROVED*

**12. Proposed Parole Reform Act**

**A copy of this bill was provided to the Sentencing Commission members at their last meeting. Bill Segrest explained the major provisions of this bill, (noted in the summary attached to the front) and emphasized the importance of changing the notice provisions to authorize that notice be provided to victim's named in the indictment at their last known address in the Board's files by certified mail. He strongly encouraged the committee to recommend that this bill be a part of its legislative package.**

**The Committee recommended amendment of the bill to include a provision to notify victims at the time of sentencing of the Board's notification procedure for future actions (perhaps with victim impact statement). It was also recommended that the Board undertake a public notice campaign for 12 months after passage of the act to publicize the board's new victim notification process.**

**APPROVED WITH AMENDMENTS**

*The Legislative Committee of the Association of Community Corrections approved the bill. APPROVED*

**13. First Felony Offender Bill**

**The Committee approved a previous version of this bill and recommended that it be revised to 1) specifically provide that the provisions would not be applicable to offenders who had previously been granted YO status; 2) include a provision to specifically allows judges to take into consideration the nature of the offense (there were 2 objections, favoring an amendment to limit eligibility to only non-violent offenders, which would avoid unwarranted sentencing disparity)) and; 3) include a provision to ensure that the Alabama Sentencing Commission has access to all case information pertaining to first offender adjudications for data analysis purposes. These changes have been made and are noted in italics in the copies distributed to the Commission members.**

*The Legislative Committee of the Association of Community Corrections approved the concept of a first felony offender bill patterned after the YO Act and requested that*

*Becki Goggins provide a copy of the bill that had previously been drafted.*  
**APPROVED CONCEPT.**

#### **14. Probation/Parole – Limit Prison Term for Technical Violations**

##### **Parole Revocations**

**Bill Segrest advised the committee that the Board of Pardons and Paroles would probably oppose the bill limiting prison terms on parole revocations based on technical violations because they would see it as an erosion of their discretion. Questions were asked as to how many technical violations occurred in a year's time. Bill reported that over the last 12 months their had been 328 revocations for technical violations, however, some of these included violations based on new charges. He said it was difficult to determine those that were strictly technical violations, since many with new criminal charges were revoked in lieu of being prosecuted. The committee members requested that Bill provide the Commission with additional data on the number of parole revocations based on technical violations. TABLED until Bill Segrest can provide more information on the Board's actions for technical violations.**

*This bill was not drafted for consideration by the Legislative Committee of the Association of Community Corrections. Approved Concept.*

##### **Probation Revocation**

This bill would limit a judge's discretion on the amount of time (18 month limit) a judge could order a defendant to serve for a technical violation. The provisions of this bill relating to probation revocations was rejected by the committee because it would impinge on judicial discretion and would be counter to the Commission's legislative charge to retain meaningful judicial discretion. **REJECTED**

##### **½ Credit for Time Credit for Time Spent On Work Release, Home Detention**

The Committee approved amendment of § 15-22-54(d)(3) to provide that half credit *shall* be provided to probationers who are revoked for time spent in work release programs, intermittent confinement, and home detention. As the statute now reads, although there is a specified presumption that ½ time credit be given, it leaves award up to a judge's discretion, which the committee considered could lead to unwarranted sentencing disparity. **APPROVED**

**Although this change was thought to be similar to the change in the Community Corrections Punishment Act passed last year (§ 15-18-175), that bill actually eliminated the discretionary ½ credit for time spent on work release, in intermittent confinement and home detention. If a change is made in this statute it should be consistent with the CCPA.**

*The Legislative Committee of the Association of Community Corrections did not consider the ½ credit provision since the bill was not drafted when they met.*

**15. Trafficking – Clean-up – Fines for serious offenders**

**The Committee approved the amendments to the drug trafficking statute.  
APPROVED**

**Since this statute was ruled unconstitutional as applied in the case of *Wilson v. State*, 830 So.2d 765 (Ala.Crim.App. 2001), if this statute is going to be amended that the Sentencing Commission may want to consider amendments that would 1) define the term “mixture” to prohibit dilution or require that the a certain percentage of the drug be represented in the mixture and 2) provide that trafficking would have to contain an additional element and not just depend on the amount of the drug.**

**16. Pretrial Diversion Programs Authorized Statewide**

**Authorizing DA’s to establish in any county (now requires local act)**

**Establishing General Standards**

**Encourage to utilize community corrections service**

**Reporting requirements for all established programs**

**Provision for Indigent Defendants**

**The Committee approved a bill incorporating the above concepts and requested that a bill be drafted and presented to the Sentencing Commission for its consideration. Becki Goggins volunteered to review the local acts we had collected and to draft a bill. APPROVED CONCEPT.**

*The Legislative Committee of the Association of Community Corrections approved the concept. . APPROVED CONCEPT.*

*After the draft was written, Commission Staff was advised by Randy Hillman, Director of the Office of Prosecution Services, that the District Attorney’s Association was drafting a bill for Senator Holley and that consideration of a separate bill by the Commission at this time would be premature. We advised him that we had been instructed by the Legislative Committee to present a draft to the Commission at the meeting Friday, but that we would encourage no further action until input could be obtained from the DAs. We provided him with a copy of the draft and told him of our concerns with some of the local acts that now exist and the provisions (especially on reporting) that we wanted.*

**For Consideration – No bills drafted**

**1. Drug Courts - Reporting component**

Central Reporting on Who Is Approved, Succeeds, Fails

Both legislative committees agreed that some type of central reporting was needed for drug courts (and community correction programs) for data analysis and to inform judges and prosecutors throughout the state on the defendants that had been approved for these programs and whether they failed or succeeded. Rather than pursue legislative requiring reporting, it was suggested that we work out a procedure through the Supreme Court's Drug Court Committee and through AOC's Midas system.

**2. Misdemeanor level for small amounts of drugs**

The Legislative committee for ASC voted to consider next year after researching statutes from other states.

*The Legislative Committee for the Association of Community Corrections did not consider.*

**3. Steering Wheel Interlock device as alternative for Felony DUI offenders – in conjunction with mandatory treatment and substantial civil penalties for owner who provides access to vehicle.**

**The committee voted not to pursue.**

*The Legislative Committee for the Association of Community Corrections indicated that the Commission should pursue the costs of the interlock device and other state statutes, but not necessarily this year.*

It was decided that the committee would await the action of the Commission on these proposed bills before scheduling another meeting. There being no further business, the meeting was adjourned.