

Legislative Committee of the Sentencing Commission

Minutes

October 29, 2010

The Legislative Committee of the Alabama Sentencing Commission met in the small classroom of the Judicial Building in Montgomery on Friday, October 29, 2010. present at the meeting were:

Dr. Lou Harris, Chair
Ellen Brooks, District Attorney
Eddie Cook, Board of Pardons and Paroles
Mary Pons, Association of County Commissions
Bennet Wright, Alabama Sentencing Commission
Lynda Flynt, Alabama Sentencing Commission
Miriam Shehane, VOCAL
Mona Lee, VOCAL
Margie Cohen, VOCAL
Darlene Hutchinson Biehl, VOCAL
Carol Melton, VOCAL

Committee members were provided with handouts of proposed bills, existing statutes, statistical data, research material on laws from other states, and two recent publications from Vera Institute – “The Continuing Fiscal Crisis in Corrections: Setting a New Course and Criminal Justice Sentencing Policy Trends: 2001 – 2009.

Since there were several guests present, Chairman Harris asked that everyone identify themselves and the organizations they represented. Following introductions, Dr. Harris asked Ms. Flynt to review the bills on the agenda to start of discussion. Ms. Flynt explained that, since the Legislature did not meet until March of 2011, the committee was not as pushed to finalize a legislative package for the Commission to consider. She noted that the first two bills included in the handout were bills that were introduced last session but which failed to pass.

1. Sentencing Standards

Ms. Flynt stated that while the Sentencing Standards Committee was considering modifications to this bill at their next meeting, scheduled November 5, 2010, she wanted the Legislative committee to have a chance to comment on whether they still recommended two main provisions that were included in last year’s bill, i.e. amendment of the standards and worksheets to include attempts, conspiracies, and solicitations for murder and certain drug crimes and requiring that the completed worksheet be made a part of the record.

Recommendation: These provisions should be included in the bill the standards committee is drafting.

2. Split Sentence and Probation Statutes

Ms. Flynt reviewed the split sentencing bill that was introduced last year, as well as the general probation revocation statute that was amended last year by Act 2010-753, the Technical Probation Revocation. She advised that, although the bill would have to be changed to reflect the provisions of Act 2010-753, the bills provisions would include:

- ❑ Amendment of § 15-18-8, Alabama's Split Sentencing Statute to:
 - Prohibit the imposition of multiple consecutive split sentences for separate convictions sentenced at the same sentencing event.

The stacking of splits defeats the purpose of a split sentence (to serve some limited time in prison day for day, without credit for good time or parole eligibility, followed by a term of probation).

- Amendment requested by Chief Justice Sue Bell Cobb.
- Clarify that split sentence is not authorized for Class A or B child sex offenses.
- Specify that a defendant can be ordered to participate and complete a substance abuse or community corrections program while serving any part of the split sentence or if probation is revoked.

- ❑ Amendment of § 15-22-54, Alabama's General Probation Statute, to:

- Apply the same limitation period (5 years for a felony and 2 years for a misdemeanor) to the probation portion of a split sentence.
- Authorize the trial judge to award credit for time served upon successful completion of a certified residential treatment program (full credit is awarded for full-time confinement in facilities such as jail, prison or boot camp, under current law.

Data regarding split sentences prepared last year by Bennet Wright year (which are currently being updated) and a copy of revised §15-22-54 were distributed.

FACTS ON SPLIT SENTENCES

- Split sentences are those in which a maximum term of imprisonment is imposed (up to 3 years on a sentence of 15 years or less and up to 5 years on a sentence more than 15 years up to 20 years) followed by a period of probation.

- Under a split sentence, the judge retains jurisdiction during the incarceration and probation portion of the sentence.
- Current law does not impose a limit on the term of the probation portion of a split sentence, as it does for a straight sentence of probation (5 years for a felony, 2 years for a misdemeanor).
- Over a six year period, split sentences have ranged from a high of 40% to a low of 38% of admissions to ADOC.
- There was a 2% increase in split sentence admissions to ADOC in FY 08.
- Of the 23,687 number of sentences in which a split sentence was imposed, 12.4% of the cases had sentences of incarceration of over 3 years. During this time, the defendant was not eligible for good time credit or parole release.

Recommendation: The committee recommended introduction of this bill in the 2010 Legislative Session, with amendments to include the revised §15-22-54.

3. Driver's License Suspension

Based on a recommendation of Judge John Bush, the Legislative Committee was asked to review §13A-12-291 which requires suspension of driver's license of defendants convicted of unlawful possession or receipt of a controlled substance, unlawful distribution of controlled substances, unlawful possession of marijuana in the first and second degrees, trafficking in controlled substances, DUI involving a controlled substance and sale, and attempts, solicitations or conspiracies to commit a controlled substance crime. After discussing the options of deleting the statute in its entirety and amending the statute to omit only certain offenses, e.g. possession, the committee voted to take no action on this proposed legislation. Ms. Brooks stated that she would like to get input from the district attorneys and judges (including city judges). She volunteered to contact the district attorneys and obtain their input if Ms. Flynt would send her an e-mail outlining the suggested changes. The following e-mail was sent November 1, 2010:

As we discussed in the Sentencing Commission's Legislative Committee meeting Friday, although a suggestion was made to repeal or amend the statute (§13A-12-291) that requires that a person lose their driver's license when convicted of a marijuana or drug offense, the committee wanted input from the district attorneys and judges before any action is taken. You graciously volunteered to poll the district attorneys on possible repeal or amendment of this statute. The argument for amendment was that this statute is counter-productive to any treatment or rehabilitation and also to employment and the payment of court ordered money and treatment expenses.

As currently written, the statute reads as follows:

§ 13A-12-291 Specific crimes warranting suspension of driver's license

A driver's license shall be suspended pursuant to Section 13A-12-290 for conviction of, adjudication of, or a finding of delinquency based on, the following crimes:

- (1) Criminal solicitation to commit a controlled substance crime under Section 13A-12-202.
- (2) Attempt to commit a controlled substance crime under Section 13A-12-203.
- (3) Criminal conspiracy to commit a controlled substance crime under Section 13A-12-204
- (4) Unlawful distribution of controlled substances under Section 13JA-12-211.
- (5) Unlawful possession or receipt of controlled substances under Section 13A-12-212
- (6) Unlawful possession of marihuana in the first degree under Section 13A-12-213
- (7) Unlawful possession of marihuana in the second degree under Section 13A-12-214
- (8) Sale or furnishing of controlled substances by persons over age 18 to persons under age 18 under Section 13A-12-215.
- (9) Trafficking in specified substances under Section 13A-12-231.
- (10) Driving under the influence of a controlled substance, or under the combined influence of a controlled substance and alcohol under Sections 32-5A-191 (a)(3) and §32-5A-191(a)(4)

Could you see if the district attorneys would oppose

- 1) Repeal
- 2) Amendment to change the mandatory suspension to a determination within the judge's discretion;
- 3) Amendment to delete (1) - (7)
- 4) Any amendment

Recommendation: Voted not to include in this year's Legislative Package.

4. 3 Mile Radius Statutes § 13A-12-250 and § 13A-12-270

The Legislative Committee reviewed the two statutes mandating an additional 5 years imprisonment be imposed for drug sales on or near a school campus (§ 13A-12-250) or public housing project (13A-12-270) for possible repeal or amendment. There was the suggestion that they could be repealed, combined and/or amended to provide shorter distances and/or §13A-12-250 could be amended to apply only during times school was in session or children present. While the members considered the possibility of combining the statutes to impose 5 years additional imprisonment for sales near either a school or a housing project, there was a consensus that this legislation should not be pursued by the Sentencing Commission.

Recommendation: Voted not to include in this year's Legislative Package.

5. First Time Felony Offender Act

A proposed bill that was drafted several years ago, with provisions similar to those included in Alabama's Youthful Offender Act was considered by the committee. The provisions of this bill would authorize a special status for first time felony offenders

which would allow the case to be discharged and record sealed upon successful completion of probation or incarceration (3 year max). There is a specific provision included to provide access to case information to the Sentencing Commission for data analysis.

Recommendation: Voted not to include in this year's Legislative Package.

6. Good Time Statute

The committee was asked to consider whether amendment of the good time statute was a bill that they wanted to recommend. As currently written § 14-9-41 only applies to certain offenders who have received a sentence of 15 years or less. There have been suggestions from non-Commission members that this statute be amended to authorize good time for otherwise eligible inmates sentenced up to 20 years. It is argued that this amendment would be consistent with the amendment of the split sentence statute's last amendment authorizing splits for defendants sentenced to 20 years. Any amendment would still prohibit Class A felons, child sex offenders, inmates convicted for assaults resulting in permanent loss or use of bodily organs or appendages and those given life sentences from getting good time.

Recommendation: Voted not to include in this year's Legislative Package.

7. Other Possible Bills that the Legislative Committee considered but voted not to pursue were:

(1) A bill requiring that all cases include an SID # from arrest through prosecution, and completion of the imposed sentence.

(2) A bill amending the theft statutes to increase the threshold values (possibly utilizing the inflationary increases since amended by Act 2003-355.

It was noted that the Sentencing Coalition may be considering this legislation.

(3) Amendment of 2010 Technical Violator Act

It was noted that a committee drawn up of judges and AOC staff were meeting today to consider changes to address and clarify provisions of the recently enacted statute.

(4) Technical Violator Act for parolees

(5) Prison Industries – ADOC is planning to reintroduce the same bill as last year.

(6) Definition of Violent offense/offender

(7) Earned Time for probationers

(8) Repeal of Pharmacy Robbery Statute

It was the consensus of the Committee that the Sentencing Commission should focus on a small number of bills, primarily the sentencing standards modification and TIS bill and the Split Sentencing Bill.

It was decided that no additional meeting of the Legislative Committee would be needed unless the Commission assigned them bills to consider and/or topics to research.

There being no further business, the meeting was adjourned.