Alabama Sentencing Commission

Minutes of Legislative Committee Meeting

October 9, 2008

The Legislative Committee of the Alabama Sentencing Commission met in the Conference Room of the Judicial Building in Montgomery on Thursday, October 9, 2008. Present at the meeting were:

Lou Harris, D.P.A., Chair, Faulkner University
Lynda Flynt, Director, Alabama Sentencing Commission
Hon. John B. Bush, Presiding Judge, 19th Circuit
Nathan Wilson, Staff Attorney, AOC
Stacey Neeley, Director DeKalb County Community Punishment & Corrections Authority, Inc
John Rice, DeKalb County Community Punishment and Corrections
Rosa Davis, Chief Assistant Attorney General and Commission member
Bernadette Chappel, for Representative John F. Knight
David Horn, Director, Shelby County Community Corrections and President of the Alabama Association of Community Corrections
Jeff Williams, Department of Corrections
Sharon Bivens, Legislative Fiscal Office
Bennet Wright, Statistician, Alabama Sentencing Commission
Eddie Cook, Jr., Deputy Director, Board of Pardons and Paroles
Tommy Smith, District Attorney, Tuscaloosa County
Cathy Eade, ADA, Jefferson County District Attorney's Office
Ralph Hendrix, TASC
Buddy Sharpless, Executive Director, Association of County Commissions
Judge Pete Johnson, Drug Court Task Force
Foster Cook UAB, TASC, Jefferson County

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m. in the formal conference room of the judicial building, with Dr Lou Harris calling the meeting to order. Ms. Lynda Flynt distributed notebooks containing the agenda and copies of the bills to be reviewed. The following items were considered and addressed by the committee:

A. Truth- In-Sentencing (TIS)

Ms. Flynt referred the committee members to HB413, on page 1 of the handout, a Bill to delay Truth-In-Sentencing and to make minor amendments to the current legislation. A bill postponing development and the implementation of truth-in-sentencing was approved by the Commission last year and presented to the Legislature but was not passed. Ms. Flynt highlighted the changes as follows:

1. Amendment of §12-25-32 to the definition of Initial Voluntary Standards on Page 4 subsection "(5), to delete '2004' and insert '2006', and subsection "(10) defining Truth-in-Sentencing (TIS) to delete '2006' and insert '2011'.

    - Ms. Flynt highlighted that the most recent Alabama Sentencing Commission report explains why the delay in TIS is required. That is, there has not been enough time to determine compliance; in particular whether judges are using the worksheets and following the recommendations, which the Commission hopes to have in the 2009 Commission report. Another key factor is that until Alabama has a place for non-violent offenders, there is insufficient bed space to introduce TIS. Experience has shown that all jurisdictions that have gone to TIS have had an increase in the prison population. Therefore, before TIS is implemented, Alabama needs to ensure that a plan is in place to provide alternative punishment for non-violent offenders, reserving scarce prison beds for the violent offenders that need to be incarcerated.

    - In addition Ms. Flynt highlighted that the TIS blueprint that is in the current legislation needs to be revisited. She explained that it was drafted as a proposed plan in 2003 (Rosa Davis confirmed this) and it has not been looked at since.

    - Rosa Davis stated that the Standards Commission will be looking at the TIS blueprint and the standards; in particular they will be looking to clarify the current Standards statute and instructions.

2. Amendment of §12-25-34, page 8 subsection (4), changing TIS dates from 2009 to 2011.

    - This was previously approved by the commission.

3. Page 8, §12-25-36, inserted "*The Provision of this statute, section 12-25*-37 and *section 12-25-38 shall only apply after the development and legislative approval of the proposed truth-in-sentencing standards in 2011."*

    - Ms. Flynt explained Sharon Bivens recommended adding this sentence to clarify that truth-in-sentencing standards are not yet in effect.

    - Sharon Bivens recommended specifying each particular statute rather than referring to "this statute" in adding this sentence as it detailed the specific sections that will be applicable once the TIS is approved.

    - After a motion by Rosa Davis, which was seconded by Dr. Harris, by unanimous vote, the Committee agreed to amend §12-25-36 as follows: **"The provisions of sections 12-25-36, 12-35-37, and 12-25-38 shall only apply after development and legislative approval of the proposed truth-in-sentencing standards in 2011."**

4. Page 9, subsection (4) included a proposed amendment on extended sentence terms under TIS standards, once adopted.

    - The amendment was originally proposed by Ms. Flynt, but she explained that because Rosa Davis had stated that the Standards Committee was to meet to revisit these statutes, she wanted that committee to consider any amendments to the TIS statutes. Based on this recommendation, Ms. Flynt withdrew the proposed amendment and the suggested change was sent to the Standards Committee to include on the agenda for their next meeting and to report any changes that committee recommended to the Sentencing Commission at their next meeting, scheduled for November 7, 2008.

        - Jeff Williams referred to pp. 1-2, definition of "active incarceration" He highlighted that the Department of Corrections also has a Supervised Re-Entry program which that definition does not seem to cover.

        - The committee discussed whether it needed to be included, and it was determined that it should be included in the definition.

Rosa Davis moved to add the words "the Supervised Re-Entry Program or" after the word "in" and before words "the Supervised Intensive Restitution program. Stacey Neeley seconded the motion and the motion was unanimously approved.

Subsection (2)a will be amended as follows:

"a. Active incarceration. A sentence, other than an intermediate punishment or unsupervised probation, that requires an offender to serve a sentence of imprisonment. The term includes time served in a work release program operated as a custody option by the Alabama Department of Corrections or in <u>the Supervised Reentry program or</u> the Supervised Intensive Restitution program of the Department of Corrections pursuant to Article 7, commending with Section 15-18-110, of Chapter 18 of Title 15."

Outstanding business/actions

- The Standards Committee is to consider the suggested amendments on p 9, subsection (4) dealing with extended terms of sentence and report directly to the Sentencing Commission.

B. Review of Failure to Consider Standards

Ms. Flynt referred the committee members to page 10 of the handout and explained the background of the proposed amendment. The Alabama Sentencing Reform Act provides: "*the trial court <u>shall</u> review the sentencing standards worksheets and consider the suitability of the applicable voluntary standards."* The proposed amendment seeks to allow judicial review if the judge fails to consider the standards for applicable worksheet offenses. As presently worded, despite the use of the word "shall" in the provision stating that "the trial

court *shall* review the sentencing standards worksheet and consider the suitability of the applicable voluntary sentencing standards" and "*shall* indicate on the record that the worksheet and applicable sentencing standards have been reviewed and considered," because of the broad catch-all provision prohibiting review or appeal, failure to consider is also not subject to review. The Criminal Court of Appeals has held that even if a judge says he/she is not going to considering the standards nothing can be done as it is not reviewable. *Ducker v. State*, 2007 WL 2459964 (Ala.Crim.App. 2007) and *Williams v. State*, 2008 WL 902889 (Ala.Crim.App. 2008). Rosa Davis noted that the judge could be reported to JIC since the law does require the judge to consider the standards in worksheet cases. In the light of Rosa Davis's suggestion that the Standards Committee also consider these changes, Ms. Flynt stated that she would not pursue amendment through the Legislative Committee, but rather, would refer this issue to the Standards Committee to be considered at their next meeting. She noted that if judges are not looking at the worksheets they often do not have criminal histories on plea day.

- **The proposed amendment was as follows: "*With the exception of subsection (b) requiring judges to review and consider the recommended sentence under the sentencing standards for applicable worksheet offenses," failure ~~Failure~~ to follow any or all of the provisions of this section, or failure to follow any or all of the provisions of this section in the prescribed manner, shall not be reviewable on appeal or the basis of any post conviction relief."***

- Mr. Tommy Smith asked what the sanction would be imposed for failure to consider the standards upon review? It was agreed that that this would result in reversal of a sentence and the case would be sent back for resentencing. There was a mixed feeling about the proposed amendment.

- As the chair of the Standards Committee, Rosa Davis strongly recommended that this matter needed to be brought before the Standards Committee. Rosa Davis stated that while she supports the change, it could undermine the current standards. Rosa Davis highlighted that the Standards Committee was very intentional when they made it unreviewable. Ms. Flynt asked why the word "shall" was used; to which Rosa Davis responded, that the committee wanted it to be mandatory as judges are expected to comply with the law, and while it is not reviewable it is an ethical issue for the JIC.

- Mr. Smith raised the issue that in a plea agreement, that using the standards potentially wastes time for the judge when it is not a standards case. There was further discussion on this. Judge Pete Johnson noted that it appears that judges simply do not want to fill out worksheets. Judge Bush highlighted that in his experience it does not take very long to complete the worksheets. Discussion concluded that the plea agreement should include a statement that the court has considered the sentencing standards. It was noted that the defendant should agree to the standards to avoid Rule 32 petition issues.

Rosa Davis moved to have the Standards Committee consider the issue of judicial review of considering the standards and to report directly to the Sentencing Commission. Tommy Smith seconded the motion and the motion was unanimously approved.

Outstanding Business/Action

- Standards Committee to consider judicial review issue and to report to the Sentencing Commission at their meeting of December 4, 2008.

- The Uniform Sentencing Order Committee should recommend to the UJS Forms Committed that plea agreements (guilty plea forms) should reference that the sentencing judge considered the sentencing standards and recommended sentence.

C. Community Corrections - Sale of Drugs Not Included

Background to HB414 was explained by Ms. Flynt, explaining that HB414, introduced last year as part of the Sentencing Commission's legislative package eliminates convictions for the 'sale of a controlled substance' from the 'excluded felony offenders' list for participation in community corrections programs. Ms. Flynt noted that the term 'distribution' of controlled substances is so broad that it includes giving away as well as the sale of drugs. She advised that this amendment will not include drug trafficking convictions.

- Proposed amendment was on p 13 "(14) which struck the words 'selling or', leaving the statute to read as follows:

  (14) EXCLUDED FELONY OFFENDERS. One who is convicted of any of the following felony offenses: murder, kidnapping in the first degree, rape in the first degree, sodomy in the first degree, arson in the first degree, trafficking in controlled substances, robbery in the first degree, sexual abuse in the first degree, forcible sex crimes, lewd and lascivious acts upon a child, or assault in the first degree if the assault leaves the victim permanently disfigured or disabled.

- Judge Johnson noted that the Drug Court Act he is proposing prohibits any person charged with distribution, manufacturing or trafficking of a controlled substance from participating in drug court. See page 32, subparagraph (i)(4).

Ms. Flynt moved to exclude convictions of 'selling' from excluded felony offenders. Lou Harris seconded the motion

- The chair called for general discussion on the motion: There was discussion about the offense "manufacture" and whether it should be included. Mr. Hendrix highlighted that the term "manufacture" is a loaded term in that it gives no consequence to the volume or weight/quantity of drugs. Further discussion on Manufacture Second situations was raised by Mr. Neeley, but no conclusions were drawn from discussion.

- Ms. Flynt highlighted that the statutory exclusion applies not only to those offenders that are diverted to community corrections on the front end programs but also to institutional diversions. She noted that also, under the current statute, the statutory exclusions appear to apply only to the current offense, not to prior offense. Ms. Flynt noted that this issue came up in a recent case in which a sex

offender arrested for violating the Community Notification Act was sentenced to community corrections. While he would not be eligible under the rules and regulations of the Department of Corrections governing Institutional Diversion (since priors as well as the current offense are considered) he would be eligible to be sentenced directly to community corrections under the community corrections regardless of his priors. The question was raised whether the eligibility provisions (whether by statute or DOC rules and regulations) should be the same. The Chair noted that the discussion did not impact upon the amendments of the bill that were currently being considered.

- Judge Bush stated that he was in favor of striking the provision that would prohibit offenders convicted of "selling controlled substances" from participating in community corrections programs. He noted that these should not be statutory excluded felonies, allowing judge's to use their discretion whether the offender should be excluded.

Dr. Harris moved to adopt the amendment, Mr. Neeley seconded the motion and it carried unanimously.

D. Split Sentence – Prohibit Consecutive Splits

Ms. Flynt explained that SB421 had been introduced last year but that it failed to pass. She indicated that there had been a few changes which reflected recommendations made by Sharon Bivens and which incorporated an express provision prohibiting work release, as well as parole or good time credit while an offender was serving the incarceration portion of his split sentence. Ms. Flynt highlighted the changes as follows:

1. Ms. Flynt referred the Committee to page 16, amending §15-18-8(a)(1), which was an amendment that had been added to ensure that an offender would not be eligible for parole or good time during the incarceration portion of his split sentence of 15 years or less. This provision appears to have been omitted when the statute was amended to authorize a split on a 20 year sentence. She noted that although subsection (g) apparently include such a provision, it was thought safer to include in both places. Sharon Bivens referenced the amendment from last year providing that anyone on *work release would also not be eligible for parole or goodtime, which was as follows:*

> **(1) ~~That~~ When the imposed sentence is not more than 15 years, the ~~convicted defendant~~ sentencing judge may order the convicted defendant to be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years ~~in cases where the imposed sentence is not more than 15 years~~, during which time the defendant shall not be eligible for parole *", or work release or any other early* release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Act), and that the execution of the remainder of the sentence be suspended ~~notwithstanding any provision of the law to the contrary~~ and that the defendant be placed on probation for such period and upon such terms as the court deems best.**

- Rosa Davis advised that the provision including offenders on "work release" was not an amendment the Sentencing Commission or the Department of Corrections wanted

and was not the same as release from DOC. She noted that this recommended amendment was vehemently opposed by DOC Commissioner Mr. Richard Allen.

- After discussion about the proposed amendment relating to the addition of the terms "work release" it was agreed that this amendment would not to be pursued.

- Ms. Flynt moved that the amendments on p 16, "(a)(1), as it reads in the handout be made. Rosa seconded the motion.

- Rosa suggested the word "term" in subsection (a)(1) and (a)(2) needs to be changed to "conditions".

  Rosa moved to delete the word "term" and insert "conditions" in subsection (a)(1) and (2). Ms. Flynt seconded the motion and the motion was carried unanimously.

  For consistency the committee also agreed to amend (a)(1) by deleting the word "such" and inserting "a" and by inserting after the word 'period' "not to exceed time specified in subsection (b)".

  "(1) ~~That~~ When the imposed sentence is not more than 15 years, the ~~convicted defendant~~ sentencing judge may order the convicted defendant to be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years ~~in cases where the imposed sentence is not more than 15 years~~, during which time the defendant shall not be eligible for parole or release because of time deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the execution of the remainder of the sentence be suspended ~~notwithstanding any provision of the law to the contrary~~ and that the defendant be placed on probation for ~~such~~ a period not to exceed the time specified in subsection (b) and upon such ~~terms~~ conditions as the court deems best.

2. The following amendments were highlighted in quick succession:

   - page 16 new subsection (a)(2) grammar change to read as follows:

     "(2) When the ~~In cases involving an~~ imposed sentence ~~of~~ is greater than 15 years, but not more than 20 years, the sentencing judge may order ~~that~~ the convicted defendant to be confined in a prison, jail-type institution, or treatment institution for a period not exceeding five years, but not less than three years, during which the offender shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for the period upon the ~~terms~~ conditions as the court deems best.

   - page 17, old subsection (a)(2) deleted entire subsection as it relates to boot camps, which were eliminated by the Department of Corrections. Concern was expressed that it may lead to confusion if it remained in the statute as a sentencing option.

- Buddy Sharpless questioned why the subsection on boot camps should be deleted, inasmuch as boot camps may come back into vogue. Ms. Flynt noted that research indicated that boot camps do not work and that Commissioner Allen had taken a poll in which judges responded that they did not think boot camps worked and therefore they did not use them. Ms. Flynt reiterated that the amendment had been approved last year and that leaving the subsection in could cause confusion for new judges.

Dr. Harris moved to strike the entire section relating to boot camp, Ms. Flynt seconded the motion and it was unanimously approved.

"~~(2) That the convicted defendant may be confined, upon consultation with the Commissioner of the Alabama Department of Corrections (hereinafter called department) in a disciplinary, rehabilitation, conservation camp program (hereinafter called program) of the department. The convicted defendant shall be received into the department in accordance with applicable department rules and regulations and may be placed in the program after completion of this initial reception. The program shall be not less than 90 days nor more than 180 days in duration and shall be operated in accordance with department rules and regulations and as otherwise provided for by law. The commissioner of the department or his or her designee shall report to the sentencing court of each convicted defendant whether or not the convicted defendant completes or does not complete the program with any additional information that the commissioner or his or her designee shall wish to provide the court. Upon receipt of this report, the sentencing court may, upon its own order, suspend the remainder of the sentence and place the convicted defendant on probation as provided herein or order the convicted defendant to be confined to a prison, jail-type institution, or treatment institution for a period not to exceed three years and that the execution of the remainder of the sentence be suspended and the defendant be placed on probation for such period and upon such terms as the court deems best. If the sentencing court imposes additional confinement, as outlined above, credit shall be given for the actual time spent by the convicted defendant in the program. Conviction of an offense or prior offense of murder, rape first degree, kidnapping first degree, sodomy first degree, enticing a child to enter vehicle, house, etc., for immoral purposes, arson first degree, robbery first degree, and sentencing of life without parole will not be eligible for this program. It shall be the duty of the joint prison committee as established by Sections 29-2-20 to 29-2-22, inclusive, to annually review the operation of the program and report their findings to the Alabama Legislature.~~

3. Ms. Flynt referred the committee to page 17 subsection (a)(3), highlighting that the section was added to prevent the stacking of split sentences. Ms. Flynt explained that the Chief Justice had raised concerns in that split sentences were originally designed for defendants that needed short terms of incarceration, but in practice were being

stacked by judges sentencing a defendant to consecutive mandatory (day-for-day) incarceration terms.

- The proposed amendment to subsection (a)(3) reads: Notwithstanding any law to the contrary, a defendant may not be sentences to serve consecutive incarceration portions of split sentences for multiple convictions.

- Mr. Smith raised concerns over this amendment, resulting in a general discussion of what a legal spilt sentence was and how they were being utilized. Mr. Smith commented that by introducing this amendment judges would lose control and that is why they used spilt sentences as opposed to a straight sentence. He suggested that perhaps providing caps could be pursued rather than eliminating consecutive split sentences altogether. Mr. Smith expressed his concern that removing the ability to stack split sentences removes 'middle ground' sentences. There was a discussion in which Judge Bush stated that there are sentencing options that allow the integrity of the 'spilt' sentence to be maintained. Rosa highlighted that the intent of the legislation was for incarceration of terms of no more than 3 or 5 years.

  Judge Bush noted that he could understand Mr. Sharpless' reservation, inasmuch as prohibiting the stacking of splits limits the judges' control over the offender; but that his gut feeling is that the proposed amendment solves more problems than it creates and that it does not take away judicial discretion and if an offender does get parole a judge can always object. Tommy restated his concern was based on the fact that a spilt sentence gives the judge control when the offender is released, as opposed to a straight sentence where the offender can get parole.

Ms. Flynt moved to approve the proposed amendment to (a)(3) prohibiting the stacking of split sentences. Dr. Harris seconded the motion and it was approved.

> **"(3) Notwithstanding any law to the contrary, a defendant may not be sentenced to serve consecutive incarceration portions of split sentences for multiple convictions.**

- page 17 subsection 3(b) inserted time limits on probation periods. Deleted last sentence of (3)(b) and inserted sentence with time limits of five years for felony and three years for misdemeanors which will be amended to read two years.

- Tommy Smith indicated that he thought that the probation limitation could effect the incarceration time. For this reason, Rosa Davis suggested that the amendment for probation time limitations should include "and shall be in addition to incarceration portion of the split sentence".

Rosa moved to include "and shall be in addition to incarceration portion of the split sentence" on the end of the sentence amending (b). Ms. Flynt seconded the motion and motion carried unanimously

Dr. Lou Harris moved for the committee to approve the amendment to subsection (3)(b) to read as follows, the amendment was seconded by Stacey Neeley and unanimously approved.

"(b) Probation may not be granted for a criminal sex offense involving a child as defined in Section 15-20-21(5), which constitutes a Class A or B felony. Otherwise, probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. ~~Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment~~. The probation portion of a split sentence shall not exceed five years for a felony offense and two years for a misdemeanor offense and shall be in addition to the incarceration portion of the split sentence.

Break to get lunch
Continued over lunch.

4. Ms Flynt referred to page 17, subsection (3)(c) highlighting the following changes:

   - inserted the word 'the';
   - remaining amendments to (3)(c) and amendments to § 15-22-54 on page 18 are the result of the appellate courts interpretation. That is, when an offender violates probation having been sentenced to a split sentence, and who has served the 3 or 5 year term of incarceration, the only option the judge has is to invoke the remaining suspended sentence, i.e., on a 15 year split 3 to serve sentence, 12 years.

"(c) Regardless of whether the defendant has begun serving the minimum period of confinement ordered under the provisions of subsection (a), the court shall retain jurisdiction and authority throughout the period to suspend that portion of the minimum sentence that remains and place the defendant on probation, notwithstanding any provision of the law to the contrary. While the defendant is serving either the incarceration or probation portion of his or her split sentence, ~~and~~ the court may revoke probation or modify any condition of probation or may change the period of probation. Upon determination of a violation of a condition of probation, either prior to or after serving a term of incarceration, the court may impose any of the sanctions authorized in Section 15-22-54, which may include revoking the defendant's probation and incarcerating the defendant for any portion of his or her suspended sentence.

§ 15-22-54.

"(a) The period of probation or suspension of execution of sentence shall be determined by the court~~,~~ and, notwithstanding any law to the contrary, the period of probation or suspension may be amended, modified, continued, extended, or terminated while the defendant is serving any portion of his or her sentence and prior to his or her discharge. However, in no case, including a sentence imposed pursuant to §15-18-8, shall the maximum probation period of a defendant guilty of a misdemeanor exceed two years,

nor shall the maximum probation period of a defendant guilty of a felony exceed five years. When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant.

- The committee discussed the above amendments raising no real issues.

Ms. Flynt moved to subsection (3)(c) and §15-22-54. Rosa seconded the motion. The motion was carried unanimously.

5. Amendment of section (4) on page 18, by adding subsection "(4), providing for the participation and completion of substance abuse or community punishment and corrections program as follows:

"(4) To participate in and complete a substance abuse or community punishment and corrections program, which may include residential facilities operated by the Board of Pardons and Paroles.

Ms. Flynt moved to add subsection (d)(4) as amended. Judge Bush seconded the motion. The Chair called for discussion:

- Mr. Hendrix asked whether there should be a time limitation on the programs, prompting a discussion that some programs were longer than 12 months. It was determined that there was no need for a specific requirement for program participation since the split sentencing statute has time limits for both the incarceration and probation periods.

The committee voted on the motions, which was unanimously approved.

6. The committee was referred to page 19, subsection (d)(2). Ms. Flynt noted that the proposed amendment changed the formatting of the section.

- Cathy Eade asked why the words "depending upon the seriousness of violation" were used. Judge Bush said that similar language is in the Criminal Rules for revocation.

- Tommy Smith asked why the statute included the provision "impose a lesser sentence," was included as an option for probation revocation. Lynda confirmed that this language was the same as in the current statute, the amendment did not change the wording, only the format.

- Rosa asked whether subsection (d)(2)c. should be in the same terms as d(4); **"(4) To participate in and complete a substance abuse or community punishment and corrections program, which may include residential facilities operated by the Board of Pardons and Paroles."** The committee members agreed.

Rosa moved to amend §15-22-54 (d)(2) as shown below but making subsection c. reflect the amendment made in §15-18-18(d)(4). Judge Bush seconded the motion. The motion was carried unanimously.

> **"(2) If the court revokes probation, it may, after a hearing, ~~impose the sentence that was suspended at the original hearing or any lesser sentence, including any option listed in subdivision (1).~~ depending on the seriousness of the violation, do any of the following:**
>
> **"a. Impose the sentence that was suspended at the original hearing.**
>
> **"b. Impose a lesser sentence or any option listed in subdivision (1).**
>
> **"c. Order the defendant to participate in and complete a substance abuse or community punishment and corrections program, which may include residential facilities operated by the Board of Pardons and Paroles.**

- Ms Flynt referred the committee to page 20, §15-22-54 (d)(3). It was noted that it was not clear what full credit meant. Sharon Bivens suggested an amendment to delete reference to "boot camp."

- Cathy Eade asked whether this amendment was designed to eliminate going to non-certified institutions. The answer was no, it was just for quality control.

- The committee discussed what earns credit. Rosa Davis indicated that residential treatment is meant to restrict the offenders' freedom of movement. Stacey Neeley noted that the treatment facility needs to be approved by the Joint Commission or Department of Mental Health or it needs to be a certified residential treatment program.

Ms. Flynt moved to amend 20 §15-22-54 (d)(3) as follows:

> ***"(3) If revocation results in a sentence of confinement, credit shall be given for all time spent in custody prior to revocation. Full credit shall be awarded for full-time confinement in facilities such as county jail and state prison~~, and boot camp~~. Full credit toward incarceration for the time served in a state certified residential treatment program, to which the defendant has been ordered, shall be awarded upon successful completion.***

Stacey Neeley seconded the motion and it was unanimously approved.

> ***"(3) If revocation results in a sentence of confinement, credit shall be given for all time spent in custody prior to revocation. Full credit shall be awarded for full-time confinement in facilities such as county jail and state prison~~, and boot camp~~. Full credit toward incarceration for the time served in a state certified residential treatment program, to which the defendant has been ordered, shall be awarded upon successful completion.*** **Credit for other penalties, such as work release programs, intermittent confinement, and home detention, shall be left to the discretion of the court, with the presumption that time spent subject to these penalties will receive half credit. The court shall also give significant**

weight to the time spent on probation in substantial compliance with the conditions thereof. The total time spent in confinement may not exceed the term of confinement of the original sentence."

- Buddy Sharpless noted that there were issues regarding who is liable for medical costs of an offender incurred prior to revocation. He gave the following example: Defendant is sentenced to DOC on a split sentence. While defendant is on probation, the defendant violates the conditions of probation and is taken the county jail awaiting a revocation hearing, at which time medical expenses are incurred. Who bears the medical costs while in the county jail pending probation revocation?

- Ms. Flynt stated that the Supreme Court recently ruled that the county was responsible for medical expenses incurred by an offender serving on probation prior to revocation if he is housed in the county jail. Mr. Sharpless stated that he would propose an amendment to the bill relieving the county of liability for medical expenses. Ms. Flynt asked how he wanted the provision to read, indicating that if he was proposing an amendment, the committee needed to review the suggested language during this meeting. After Mr. Sharpless stated that he was unable to draft language now, Ms. Flynt indicated that he could have his legal counsel, Mary Pons draft it and she could send it out to the members of the committee for a vote. It was decided that the draft should be sent to Ms. Flynt within 10 days, no later than October 21, 2008 so that she could circulate it and get a vote of the committee.

- Rosa Davis stated that the bill should be amended to have a limit of the time a defendant spends in custody because the medical bills are tied to the issue of who has custody of the prisoner.

- It was recognized that there are huge issues, for example issues of negligence. Foster reiterated the complexity of the subject and recommended that there needs to be a time limit as that will limit the exposure to liability and responsibility.

- It was also noted that the transcript is the document that 'transfers' an inmate to the Department of Corrections.

Outstanding Business/Action

- The Alabama Association of County Commissions is to propose an amendment on medical costs which will be circulated to the committee members via email to vote on, with any additional amendments that are proposed in regard to limiting liability.

E. Theft of Property

Ms. Flynt explained that SB 413 was approved by the committee last year; that it was introduced in the Legislature but was not passed. It was drafted at the request of the Warrant and Indictment Committee and was in response to an amendment to the theft statutes which created an offense and penalties in the definitional section. The

amendment did not seem to correlate with the theft offense, in particular with the dollar amounts required. Ms. Flynt advised the Legislative Committee members that at the last Warrant and Indictment Manual Committee meeting, the members voted to request that the Sentencing Commission not pursue this amendment.

Ms. Flynt moved not to pursue this bill again. Rosa seconded the motion and the motion was unanimously carried.

F. Drug Court Act

Ms. Flynt referred the committee members to the line numbered version of the bill drafted by the Legislative Reference Service, which was handed out. She then requested for Judge Johnson to explain the bill's provisions. Judge Johnson advised the committee members that the bill was the product of the Drug Court Task Force, and was developed from the Model Drug Court Act. He noted that although it has been approved by the Task Force, it was by no means perfect.

- Judge Johnson provided a history of drug courts in Alabama, highlighting that when the Drug Court Task Force was created there were 15 drug courts in the state. As of April 2008 there are 43 drug courts in 41 counties. He explained that the Chief Justice's aim was to establish a drug court in all 67 counties of Alabama. While this goal is close to being met, there is one county that will not start a drug court until there is a bill expressly authorizing drug courts. The majority of the counties have established drug courts under the Drug and Alcohol Statute or by local acts establishing DA Diversion programs. Some counties have also said that they will not establish a drug court unless it is mandatory.

- Judge Johnson drew the committee's attention to the following:

    - The Bill uses the word 'shall' in Section 4 (p. 7) requiring the presiding judge of each circuit to establish a drug court or courts.

    - There is no funding to accompany the bill but the Chief Justice obtained funding in FY 2008 of $1.7 million and for the current fiscal year she has obtained $3.4 million, noting in the next few weeks they hope to develop a plan as to how the funding will be spent and hope to receive $4.4 million next year.

    - Noting that Line 27, page 7 of the bill (for the DA's concern over diversion programs), the bill does not affect DA deferred prosecution or pre-trail authority. This was inserted because there were concerns that a judge may try to usurp the DA's authority.

- Ms. Flynt noted that the wording requiring all drug courts to comply with the Act's provisions and rules relating to drug courts promulgated by the Supreme Court had been changed from the legislative committee's approved wording and reformatted. Under the provisions of the bill as now worded, specifically referencing Section 4,

she asked what happens with the counties that have a drug courts under a District Attorney's pretrial diversion program, e.g. Montgomery. Judge Johnson stated that existing drug courts could continue to operate as they always have. Ms. Flynt expressed her concerns that the bill provision will only relate to new drug courts and the bill will not provide true uniformity unless it applies to DA drug courts already in existence.

- Ms. Flynt asked whether existing drug courts still have to comply with provisions of the proposed bill? Judge Johnson responded by saying yes that they would be required to comply with the provisions of the Act and any Supreme Court rule governing drug courts.

- Tommy Smith asked a question in respect to page 7 line 25, which proved: "Nothing in this act shall affect the authority of the district attorney to establish a deferred prosecution program or a pretrial diversion program within his or her judicial circuit or affect his or her ability to nolle prosse a particular case." He asked whether this allowed for diversion for nondrug offenders. Judge Johnson said that this was not a problem, DA diversion programs can include other than drug offenders. Judge Johnson assured Mr. Smith that he can continue to screen and collect funds as he presently does and work with non-addicts. Mr. Smith followed up by asking what they would have to report for nondrug issues. Judge Johnson responded by stating the bill allows for various tiers of drug courts, noting that on page 13, line 22 offenders charged with drug distribution are excluded from participating in drug courts.

- Judge Johnson stated that the Drug Court Task Force was meeting Oct 28, 2008, to review the bill again. He requested the committee members forward any other comments/ issues before then to him or Ms. Flynt. Ms. Flynt re-iterated that the bill has to be ready for introduction and in final form before it is taken before the Sentencing Commission for a vote to include in their 2009 legislative package.

- The committee members raised the following issues:
  - Ms Flynt noted that the term "violent offense (or charge)" was omitted from the LRS draft. It should be inserted to read as per the handout page 26.
  - Rosa noted that the definition of drug offender needs to meet the Federal guidelines. To which Foster responded by highlighting that access to drug courts needs to be more open and should not be governed by Federal guidelines.

- Ms. Flynt stated that all comments need to be emailed to her no later than Oct 21, 2008. She will then consolidate and forward them to Judge Johnson for the Drug Court Task Force meeting on Oct 28th, from which a final bill will be emailed to the legislative committee for a vote.

- Dr. Harris asked the committee members if there were any substantial objections to the Drug Court Act.

- Judge Bush objected to the bill using the term 'shall', mandating that each circuit establish a drug court where there is no funding mechanism. He noted that a drug court needs to staffed, and while some counties have the staff others do not. Judge Bush stated that while it is important to have drug courts, there is insufficient support and he objected to the bill as written. Judge Johnson did state that there are ways to minimize staff requirements.

- Dr. Harris confirmed that any comments or issues are to be emailed to Lynda Flynt no later than Oct 21, 2008.

Outstanding Business/Action

- Committee members are to email Ms Flynt any comments/suggestions no later than Oct 21st.

- After the Drug Task Force meets Oct 28th, a final draft bill will be emailed to all committee members to vote on.

G. Community Corrections – No Good Time – Majority Voted Not to Approve

Ms. Flynt referred members to page 40 of the handout noting that the proposed amendment was suggested by Judge David Rains. Under current law if a judge sentences an offender directly to community corrections the defendant is treated as an inmate so that he would receive good time credit. If, however, a defendant charged with the same or similar offense is given probation and community corrections as a condition of probation, that defendant does not get good time.

- This bill would amend §15-18-172 of the Community Corrections Act to specifically provide that an inmate assigned to a community punishment and corrections program is not eligible to earn correctional incentive time credit regardless of how they entered community corrections.

Ms. Flynt moved to insert 'or earn correctional incentive time credit while participating in the community corrections program.' In §15-18-172 (d).

- Discussion: Rosa Davis noted that the purpose of incentive good time was to encourage people to go onto community corrections rather than prison.

Judge Bush seconded the motion. Motion not carried. Rosa Davis, Lynda Flynt and Judge Bush voted for the amendment and Ralph Hendrix, Stacey Neeley, David Horn, Buddy Sharpless and Foster Cook voted against the amendment.

H. Community Corrections Act

Ms. Flynt, deferring to David Horn, President of the Alabama Association of Community Corrections, to express any changes that the Association wanted. Mr. Horn stated that he had not had time to review the proposed amendment nor had the Association members reviewed it. Mr. Horn confirmed the Association was having its Fall Conference on October 22nd, where he would ask the members to review the bill and provide him their suggestions. Mr. Horn will provide a revised copy of the bill to Ms. Flynt no later Oct 28th.

New Business
No new business.

There being no further business the meeting was adjourned at 1:40 p.m.