

**Alabama Sentencing Commission
Legislative Committee**

Minutes of November 30, 2004 Meeting

Lynda Flynt, Executive Director of the Alabama Sentencing Commission, called the Legislative Committee meeting to order. Also present were:

- Ellen Brooks, District Attorney, Fifteenth Judicial Circuit
- Rosa Davis, Chief Assistant Attorney General and Commission member
- Cynthia Dillard, Assistant Director, Board of Pardons and Paroles
- Dr. Lou Harris, Faulkner University
- Steve Hayes, Assistant to the Commissioner, Department of Corrections
- Chris Booth, Alabama Sentencing Commission

Lynda Flynt began the meeting by distributing the agenda and copies of bills to be considered to the committee members. After reviewing the provisions of each proposed bill, noting those that the Sentencing Commission had approved at its meeting of October 29th, and discussing the merits and disadvantages of each, the members made the following recommendations:

Proposed Bills to Include in the Commission's 2005 Legislative Package

1. Sentencing Standards Bill

Same as last year with the exception that dates were changed for implementation effective October 1, 2005 if approved by the Legislature in the 2005 Regular Session and minor corrections were made, i.e., reference to standards applying to 26, rather than 27 felony offenses.

2. Access to Juvenile and YO Records

This bill amends §§ 12-15-100 and 15-19-7 of the Code of Alabama 1975, to provide that juvenile and youthful offender records shall be made available to judges, prosecutors, victim service officers, probation and parole officers and court personnel in completing the worksheets required for the implementation of sentencing standards.

3. DUI Statute – Out of State Convictions

This bill would amend Alabama's DUI statute to specifically authorize the use of out-of-state DUI convictions to enhance the punishment under the provisions of Alabama's DUI as well as in-state or out-of-state convictions pursuant to municipal ordinance violations.

4. Maximum Fine Increase

Increase of Authorized (not mandated) Fine - 300% Increase

This was among the bills the Commission submitted to the Legislature last year – no changes have been made to this year's proposal. It amends §13A-5-11 and §

13A-5-12 to increase, based on the inflation index, the maximum amount of fines authorized to be assessed upon conviction for a felony, misdemeanor or state violation. The judge retains discretion to impose any amount of fine; the amendment only increases the amount that the judge can impose. This amendment simply authorizes a larger fine in appropriate cases.

The fine amounts in the Criminal Code have not been revised since they were originally set in 1977. The Committee included this bill in its Legislative package last year justifying the increase based on the inflation index and the fact that the fine amounts in the Criminal Code have not been revised since they were originally set in 1977. The proposed fines are comparable to those authorized in Tennessee, Georgia and Virginia and, to the fines imposed for new offenses in Florida, Mississippi and South Carolina (states that do not have a general fine statute or that have not revised their statutes in many years.)

The Legislative Committee approved the bill as submitted last year.

5. Trafficking Statute

Same as the bill the Commission introduced last year. Alabama's current trafficking statute fails to provide a fine for the most serious trafficking offense. This bill, introduced in last year's legislative session, amends Alabama's trafficking statute, §13A-12-231, to provide a fine for the most serious trafficking offense and to correct the fine for trafficking in hydromorphone involving 4,000-9,999 pills to impose a graduated increase consistent with the other provisions of the statute. As now written the fine for this offense is the same as trafficking in hydromorphone involving 1,000-3,999 pills.

6. Pardon and Parole Facility Fees

This bill was included in last year's Legislative package at the request of Bill Segrest. It amends § 15-22-30 to increase the amount that can be deducted from the wages of residents of P&P residential facilities from 25% to 45% designated for the payment of court costs, fines, fees, assessments and victim restitution. This comports with the amounts now authorized to be deducted in 15-18-180, as amended by Act 2003-353, for defendants assigned to a work release or other residential program operated by a community corrections provider. Of the person's earnings, 25% of the gross wages are to be applied to costs incidental to the person's supervision and upkeep, 10% to court costs, fines, court-ordered fees and assessments and 10% to victim restitution. After the full 45% is deducted for these expenses, the remainder of the wages is to be credited to an account established for the person by the Board and may be paid out for dependent care, savings and spending money.

7. Split Sentence Statute – Revocation of Probation Options

This bill would amend Alabama's split sentencing statute to grant the trial judges authority to impose various sanctions upon revocation of probation, including modifying any condition of probation, ordering the offender to participate in a

substance abuse or community corrections program or incarcerating the offender for any portion of his suspended sentence or for the entire term. It also amends § 15-22-54, the general statute governing probation and the termination of probation generally, to eliminate the provision authorizing the granting of half-credit for time spent by an offender while serving intermittent terms of incarceration or while on home detention or work release, consistent with Alabama's Community Punishment and Corrections Act.

B. Other Suggestions for Legislation

1. Amendment of Burglary 1st and 2nd statutes to eliminate loot rule for deadly weapons.

This bill amends §§ 13-7-5 and 13-7-6 relating to burglary in the 1st and 2nd degree to require the offender to either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to commit these crimes. It is specifically provided that the fact that a deadly weapon or dangerous instrument is one of the items stolen in the burglary does not constitute "use" or "threaten the use" of the deadly weapon or dangerous instrument.

2. Correction of TOP 2nd Statute

This bill is needed to change the theft of property 2nd statute to reflect the value changes made by the Legislature in 2003 as recommended by the Sentencing Commission. The statute was inadvertently amended in 2004 using the prior values of \$250 -\$1000 rather than \$500-\$2500 and grammatically changed to spell out the amounts, thereby amending that part of the statute.

C. Legislation Not to Pursue

1. Medical and Geriatric Release

This bill, which was introduced last year, would provide for the discretionary medical and geriatric release by the Board of Pardons and Paroles of "terminally ill, "permanently incapacitated," and geriatric inmates. A geriatric inmate is defined as an inmate convicted of a non-capital felony offense and sentenced to the penitentiary for less than life without parole who is 70 years of age or older and suffers from a chronic life threatening disease related to aging and who poses a low risk to the community and does not constitute a danger to himself or herself or society.)

The Legislative Committee voted not to include this bill in this year's legislative package but to request that the Board of Pardons and Paroles explore adopting and publishing administrative procedures for inmates that would be eligible for such release. The Committee requested Commission staff to provide the Commission with data on the number of inmates that would qualify under this

bill. The committee also questioned the effect of the amendment in last year's bill that prohibited offenders convicted of "sexual misconduct," from being eligible for medical or geriatric release eligibility.

2. Supplemental Appropriations for Community Corrections

The Committee discussed the need to pursue this bill again this year because funding had been a major part of our Community Corrections bill and \$5.5 million appropriated to DOC earmarked for community corrections (and deposited in the State-County Community Punishment Partnership Fund) is required before DOC establishes a Community Corrections Division and appoints a full-time Director. This bill was a priority in last year's legislative package because funding is essential for state-wide expansion of community corrections programs and is a fundamental part of the Commission's sentencing reform efforts.

Steve Hayes, Assistant to the DOC Commissioner Donal Campbell, stated that the Commissioner did not believe that this bill was one the Commission should sponsor. Steve advised that Commissioner Campbell said if the Association of Community Corrections wanted to introduce a supplemental appropriations bill for community corrections programs, the Commissioner would go to the Legislators with them and support the bill.

The members of the committee were reminded that DOC started this fiscal year with a \$28 million deficit and that there are many pressing needs of the department. They are hoping to receive a \$10.2 million conditional appropriation but these will be used for costs other than community corrections. Although DOC is requesting that VOTIS money be applied to fund diversions to community corrections programs, this is a one-time funding measure and is not money that will be available to reimburse programs for the cost of defendants judges sentence directly to community corrections programs. DOC has not yet obtained approval for this change in the VOTIS grant, but is hopeful that it will be approved soon.

The Legislative Committee voted to be supportive of this legislation but not to lead the fight by including it in its Legislative Package.

3. First Time Felony Offender

The bill that the Sentencing Commission considered last year which would apply to offenders charged with a crime subject to commitment of one year or more who had no prior felony conviction or youthful offender adjudication. Among the sanctions authorized would be 1) suspension of sentence, with or without probation; 2) probation not to exceed three years 3) fine with or without probation or commitment; commitment to DOC for no more than three years. The records of a first offender would not be open to public inspection and would not be

considered as convictions (except for enhancement purposes under the HFOA upon subsequent conviction).